



Privacy & Proxy Service Provider Accreditation Agreement

This PRIVACY & PROXY SERVICE PROVIDER ACCREDITATION AGREEMENT (this “Agreement”) is by and between the Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation (“ICANN”), and [Provider Name], a [Organization type and jurisdiction] (“Provider”), and shall be deemed made on _____ (the “Effective Date”), at Los Angeles, California, USA.

1. DEFINITIONS. For purposes of this Agreement, the following definitions shall apply.

1.1 “Abuse” means distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.

1.2 “Accredited” or “Accreditation” means (i) to identify and set minimum standards for the performance of the Services, (ii) to recognize Persons meeting those standards, and (iii) to enter into an accreditation agreement with ICANN that sets forth the rules and procedures applicable to the provision of the Services.

1.3 “Affiliate” means a ~~person or entity~~ Person that, directly or indirectly, through one or more intermediaries, Controls, is controlled by, or is under common control with, the ~~person or entity~~ Person specified.

1.4 “Affiliated Provider” is any ~~Aaccredited provider~~ Service Provider that is an Affiliate of Provider.

1.5 “Affiliated Registrar” is a Registrar that is an Affiliate of Provider.

1.6 “Consensus Policy” has the meaning set forth in the Consensus Policies and Temporary Policies Specification attached hereto.

1.7 “Control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a ~~person or entity~~ Person, whether through the ownership of securities, as trustee or executor, by serving as an

Comment [CT1]: Lindsay Hamilton-Reid: In respect of Affiliated Provider, as we have defined Affiliate and Registrar, I see no reason to have this or Affiliated Registrar.

employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

1.8 “Customer” means a Person for whom Provider provides the Services.

1.9 “Customer Data Accuracy Program Specification” means the Customer Data Accuracy Program Specification attached hereto, as updated from time to time in accordance with this Agreement.

1.10 “Disclosure” means the Reveal of a Customer’s identity or contact details to a third-party Requester without Publication in the Registration Data Directory Service.

1.11 “DNS” refers to the Internet domain-name system.

1.12 “gTLD” or “gTLDs” refers to the top-level domain(s) of the DNS delegated by ICANN pursuant to a registry agreement that is in full force and effect, other than any country code TLD (ccTLD) or internationalized domain name (IDN) country code TLD.

1.13 “gTLD Zone-File Data” means all data contained in a DNS zone file for the registry, [of a gTLD](#) or for any [subdomain](#) [domain of a gTLD](#) for which Registry Services are provided and that contains Registered Names, as provided to nameservers on the Internet.

1.14 “Illegal Activity” means conduct involving use of a Registered Name that is prohibited by applicable law or exploitation of domain name resolution or registration services in furtherance of conduct involving the use of a Registered Name that is prohibited by applicable law.

1.15 “Labeling Specification” means the Registration Data Directory Service Labeling Specification attached hereto, as updated from time to time in accordance with this Agreement.

1.16 “Law Enforcement Authority” means law enforcement, [consumer protection](#), quasi-governmental or other similar authorities designated from time to time by the national or territorial government of the [jurisdiction](#) in which Provider is [organized](#) [or](#) established or maintains a physical office.

1.17 A “Persistent Delivery Failure” occurs when an electronic communications system abandons or otherwise stops attempting to deliver an electronic communication to a Customer after a certain number of repeated or duplicate delivery attempts within a reasonable period of time, in each case, consistent with generally accepted industry protocols.

Comment [CT2]: Sara Bockey: It’s noted that ICANN staff has replace “Registered Name Holder” with “Customer” in many instances, but I question the logic in that since it is inconsistent with the RAA.

Darcy Southwell: Regarding universally changing “Registered Name Holder” with “Customer,” we should consider each change very carefully to avoid operational issues or failures.

Comment [CT3]: Lindsay Hamilton-Reid: Why did we need to even discuss gTLD Zone-File Data?

Theo Geurts: Is this relevant for a privacy service? The zonefile does not contain WHOIS info.

Comment [CT4]: James Bladel: Does this language mirror the RAA? I know there was some controversy over “Consumer Protection”

Comment [CT5]: James Bladel: Could Provider be “subject to” a different jurisdiction other than where they are located or organized?

1.18 “Person” means an individual, corporation, limited liability company, partnership, association, trust, joint venture, unincorporated organization, other entity or group.

Comment [CT6]: Lindsay Hamilton-Reid: Person should be changed to Entity.

1.19 “Personal Data” refers to data about any identified or identifiable natural person.

Comment [CT7]: Theo Geurts: “personal data” shall mean any information relating to an identified or identifiable natural person (“Data Subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

1.20 “Privacy Service” means a service by which a Registered Name is registered to a Customer as the Registered Name Holder, but for which alternative, reliable contact information is provided by a Service Provider for display in lieu of the [Registration Data Directory Service](#) rather than the Customer’s contact information in the Registration Data Directory Service.

Comment [CT8]: Sara Bockey: The definitions of Privacy Service and Proxy Service [should] reflect those in the 2013 RAA.

1.21 “Provider Approval” means the receipt of the affirmative approval of 50% plus one of the ~~Service Providers as of the date ICANN provides notice pursuant to Article 6 or Section 7.4 seeking approval of the~~ [Voting Eligible](#) Service Providers.

Comment [CT9]: Rob Golding: should just be “at least 50.1%” not exactly 50% plus one

1.22 “Proxy Service” means a service through which a Service Provider, as a Registered Name Holder, licenses use of a Registered Name to a Customer in order to provide the Customer use of such Registered Name, and the Service Provider’s contact information is displayed in the Registration Data Directory Service rather than the Customer’s contact information.

Comment [CT10]: Sara Bockey: The definitions of Privacy Service and Proxy Service [should] reflect those in the 2013 RAA.

1.23 “Publication” means the reveal (i.e. displaying) of a Customer’s identity or contact information in the Registration Data [Directory](#) Service ~~in place of~~ rather than the [Service](#) Provider’s identity and contact information.

1.24 “Registered Name” refers to a domain name within the domain of a gTLD, whether consisting of two (2) or more (e.g., john.smith.name) levels, about which a gTLD Registry Operator (or an Affiliate or subcontractor thereof engaged in providing Registry Services) 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 zone file~~ the [gTLD Zone-File Data](#) (e.g., a registered but inactive name).

Comment [CT11]: Lindsay Hamilton-Reid: The Registered Name definition is far too convoluted.

Sara Bockey: In this context, the 2013 RAA also defines “Registered Name” as a domain name within the domain of a gTLD, about which a gTLD Registry Operator (or an Affiliate or subcontractor thereof engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance, and “Registered Name Holder” is defined as the holder of a Registered Name.

1.25 “Registered Name Holder” means the holder of a Registered Name.

Comment [CT12]: Lindsay Hamilton-Reid: The Registered Name Holder definition needs reworking, if we need it at all.

1.26 “Registrar” means a Person that has entered into a Registrar Accreditation Agreement with ICANN that contracts with Registered Name Holders and with a Registry Operator and collects registration data about the Registered Name Holders and submits registration information for entry in the Registry Database.

1.27 “Registrar Accreditation Agreement” means any Registrar Accreditation Agreement between a Registrar and ICANN that is based on that certain 2009 Registrar Accreditation Agreement approved by ICANN’s Board of Directors on May 21, 2009, that certain 2013 Registrar Accreditation Agreement approved by ICANN’s Board of Directors on June 27, 2013 ([the “2013 Registrar Accreditation Agreement”](#))

or any successor to such agreements that is approved by ICANN's Board of Directors.

1.28 "Registration Data Directory Service" means the current globally accessible gTLD Registration Data Directory Service (WHOIS), and any successors or replacements thereto.

Comment [CT13]: Lindsay Hamilton-Reid: why do we not just refer to this as WHOIS rather than using this definition?

1.29 "Registry Database" means a database comprised of data about one or more DNS domain names within the domain of a registry [of a gTLD](#) 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.

1.30 A "Registry Operator" is the Person then responsible, in accordance with an agreement with ICANN (or its assignee) for providing Registry Services for a specific gTLD.

1.31 "Registry Services" with respect to a particular gTLD, shall have the meaning defined in the agreement between ICANN and the Registry Operator for that gTLD.

1.32 "Relay" when used in the context of a request to a Service Provider from a Requester, means to forward the request to, or otherwise notify, the Customer that a Requester is attempting to contact the Customer.

1.33 A "Reseller" is a ~~person or entity~~ [Person](#) that participates in a Registrar's distribution channel for domain name registrations (a) pursuant to an agreement, arrangement or understanding with a Registrar or (b) with a Registrar's actual knowledge, provides some or all Registrar Services, including collecting registration data about Registered Name Holders, submitting that data to a Registrar, or facilitating the entry of a registration agreement between the Registrar and the Registered Name Holder.

Comment [CT14]: Lindsay Hamilton-Reid: The Reseller definition also needs work.

1.34 "Restricted Amendment" means (a) an amendment of the Consensus Policies and Temporary Policies Specification or (b) the term of this Agreement as specified in Section 5.1, as such term may be extended pursuant to Section 5.2.

Comment [CT15]: Lindsay Hamilton-Reid: We need to remove restricted amendment and redraft the whole two pages in relation to amendments.

1.35 "Requester", when used in the context of Relay, Disclosure, or Publication, means a Person (or a representative of such Person pursuant to the Intellectual Property Disclosure Framework Specification) that requests from a Service Provider either a Relay, Disclosure or Publication of the identity or contact details of a Customer, as the case may be.

1.36 A Registered Name is "sponsored" by the Registrar that placed the record associated with that registration into the registry. Sponsorship of a registration may be changed at the express direction of the Registered Name Holder or, in the event a Registrar's Registrar Accreditation Agreement is terminated, in accordance with then-current ICANN Specifications and [/or](#) Policies.

Comment [CT16]: Lindsay Hamilton-Reid: I have no idea why 1.36 is included. It's not a definition.

1.37 “Service Provider” means a Person that provides Privacy Services or Proxy Services, ~~who that~~ has been Accredited and entered into an agreement with ICANN substantially similar to this Agreement, including Provider.

Comment [CT17]: Eric Rokobauer: “Service Provider” is defined here and should be used consistently throughout (i.e., don’t use “Provider” when “Service Provider” is the defined term).

1.38 “Services” means, individually and collectively, Privacy Services and Proxy Services.

1.39 “Specifications and/or Policies” include Consensus Policies, Specifications (such as the Customer Data Accuracy Program Specification) referenced in this Agreement, and any amendments, policies, procedures, or programs specifically contemplated by this Agreement or authorized by ICANN’s Bylaws.

1.40 “Substantial and Compelling Reason in the Public Interest” means a reason that is justified by an important, specific, and articulated public interest goal that is within ICANN’s mission and consistent with a balanced application of ICANN’s core values as defined in ICANN’s Bylaws.

1.41 “Term of this Agreement” begins on the Effective Date and continues to the earlier of (a) the Expiration Date, or (b) termination of this Agreement.

1.42 “Voting Eligible Service Providers” means those (and only those) Service Providers that, in each case, are Accredited as of the date ICANN provides notice pursuant to Article 6 or Section 7.4 seeking approval of the Service Providers.

Comment [CT18]: Lindsay Hamilton-Reid: Voting Eligible Service Providers – surely the only way to offer these services would be to be accredited? Registrars/Resellers should always check. I assume a list will be maintained on the ICANN website.

~~1.42~~ 1.43 “Working Group” means a standing working group appointed by the Generic Names Supporting Organization (“GNSO”) comprised of representatives of the Service Providers and other members of the community for purposes of this Agreement; provided, that, if the Generic Names Supporting Organization (the “GNSO”) forms a stakeholder group for Service Providers (the “Provider Stakeholder Group”), then following the date of the formation of the Provider Stakeholder Group, the Provider Stakeholder Group shall appoint the representatives of the Service Providers and other members of the community to constitute the Working Group. The Working Group will serve as a working group to consult on amendments to the Service Provider Agreements (excluding bilateral amendments pursuant to Section 6.9).

Comment [CT19]: Lindsay Hamilton-Reid: Why are we defining a working group in 1.43? That should have finished by the time this goes live. I see no point in continuing with a working group.

Deleted: ~~members of the community appointed from time to time by a majority of the Service Providers who elect to participate in the Working Group selection process interested parties.~~

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Comment [CT20]: Steve Metalitz: strike “comprising the Working Group,” insert “representatives of the Service Providers.” This issue is noted on page 2 of the Discussion Items document.

James Bladel: I’m not sure we should be defining GNSO structures in to this agreement. For example, what if the best approach is a Constituency rather than a Stakeholder Group? And the GNSO/Council doesn’t create working groups, unless they are initiating a PDP...

Comment [CT21]:

Deleted: ~~making up~~ comprising the Working Group

2. ICANN OBLIGATIONS.

2.1 Accreditation. During the Term of this Agreement and subject to the terms and conditions of this Agreement, Provider is hereby Accredited by ICANN.

2.2 Provider Use of ICANN Name, Website and Trademarks. ICANN hereby grants to Provider a non-exclusive, worldwide, royalty-free license during the Term of this Agreement solely for the following purposes: (a) to state that it is Accredited by ICANN, and (b) to link to pages and documents within the ICANN website. No other use of ICANN’s name, website or trademarks is licensed hereby. This license

may not be assigned or sublicensed by Provider to any other party, including, without limitation, any Affiliate of Provider.

2.3 General Obligations of ICANN. With respect to all matters that impact the rights, obligations, or role of Provider under this Agreement, ICANN shall during the Term of this Agreement:

2.3.1 exercise its responsibilities in an open and transparent manner;

2.3.2 not unreasonably restrain competition and, to the extent feasible, promote and encourage robust competition;

2.3.3 not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and not single out Provider for disparate treatment unless justified by substantial and reasonable cause; and

2.3.4 ensure, through its reconsideration and independent review policies, adequate appeal procedures for Provider, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

2.4 Use of ICANN Accredited Service Providers. ~~In order to promote competition in the registration of domain names, and, in recognition of the value that Service Providers bring to the Internet community,~~ ICANN intends to abide by Consensus Policies that require Registrars under contract with ICANN to refrain from registering a Registered Name to a Person providing services similar to the Services where the Registrar has actual knowledge that such Person is not Accredited, and ICANN will, during the Term of this Agreement, abide by any ICANN-adopted Specifications and/or Policies governing the use of Service Providers by Registrars as may be adopted from time to time.

3. PROVIDER OBLIGATIONS.

3.1 Obligations to Provide the Services. During the Term of this Agreement, Provider agrees that it will provide the Services in accordance with this Agreement.

3.2 Retention of ~~Registered Name Holder~~ Customer and Registration Data.

3.2.1 For each Registered Name for which Provider provides the Services, Provider shall collect and securely maintain, in its own electronic database, as updated from time to time the data specified in the Data Retention Specification attached hereto for the period specified therein.

3.2.2 During the Term of this Agreement and for one year thereafter, Provider (itself or by its agent(s)) shall maintain the following records relating to its dealings with Customers and Registrars:

Comment [CT22]: Lindsay Hamilton-Reid: 12. Under ICANN obligations, why are 2.3.2 and 2.3.3 necessary

Comment [CT23]: Lindsay Hamilton-Reid: 13. We need to redraft 2.4 or move it – it is surely a registrar obligation to ensure the entity is ICANN accredited to provide P/P services? How would this apply to ICANN?

Rob Golding: 2.4 wouldn't be considered legal or enforceable in most jurisdictions.

Comment [CT24]: Rob Golding: MAY not WILL provide the Services

Comment [CT25]: Lindsay Hamilton-Reid: 3.2.2 content and retention periods. Under the GDPR, this will be impossible unless there are solid legitimate or public interest reasons for doing so. 3.2.3 will have the same issues in respect of the GDPR. Is there any reason why ICANN would need this data?

3.2.2.1 In electronic form, the submission date and time, and the content, of all registration data (including updates) submitted in electronic form to the Registrars;

3.2.2.2 In electronic or paper form, all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Customers, including contracts; and

3.2.2.3 In electronic form, records of the accounts of all of Provider's Customers.

3.2.3 During Subject to Section 7.2, during the Term of this Agreement and for one year thereafter, Provider shall make the data, information and records specified in this Section 3.2 available for inspection and copying by ICANN upon reasonable notice. In addition, upon reasonable notice and request from ICANN, Provider shall deliver copies of such data, information and records to ICANN in respect to limited transactions or circumstances that may be the subject of a compliance-related inquiry; provided, however, that such obligation shall not apply to requests for copies of Provider's entire database or transaction history. Such copies are to be provided at Provider's expense. In responding to ICANN's request for delivery of electronic data, information and records, Provider may submit such information in a format reasonably convenient to Provider and acceptable to ICANN so as to minimize disruption to Provider's business. In the event Provider believes that the provision of any such data, information or records to ICANN would violate applicable law or any legal proceedings, ICANN and Provider agree to discuss in good faith whether appropriate limitations, protections, or alternative solutions can be identified to allow the production of such data, information or records in complete or redacted form, as appropriate. ICANN shall not disclose the content of such data, information or records except as expressly required by applicable law, any legal proceeding or Specification and/or Policy.

3.2.4 Notwithstanding any other requirement in this Agreement or the Data Retention Specification, Provider shall not be obligated to maintain records relating to a domain registration beginning on the date one year following (i) the date of the termination of the registration of a Registered Name or (ii) the date Provider ceases to provide any and all Services relating to a Registered Name.

3.3 Rights in Data, Provider does not disclaim rights in the data elements listed in Sections 3.3.1-3.3.1 through 3.3.4 concerning active Registered Names for which it provides the Services, and agrees to grant non-exclusive, irrevocable, royalty-free licenses to make use of and disclose such data elements for the purpose of providing a service or services (such as a WHOIS service Registration Data Directory Service)

Comment [CT26]: Lindsay Hamilton-Reid: 3.2.2 content and retention periods. Under the GDPR, this will be impossible unless there are solid legitimate or public interest reasons for doing so. 3.2.3 will have the same issues in respect of the GDPR. Is there any reason why ICANN would need this data?

Rob Golding: * 3.2.3 and for one year thereafter, Provider shall make the data, ... available for inspection and copying by ICANN
Inspection - ok
Copying - not okay

Comment [CT27]: Eric Rokobauer: As Theo and Sara had already articulated in a previous comment, need specifics illustrated with regards to data and adding "subject to applicable" law.

Comment [CT28]: Lindsay Hamilton-Reid: as all of this data will be with the registrar, who will have to work with the privacy provider. I see no need for this extended paragraph.

Rob Golding: 3.3 makes no sense following the redlining (and possibly didn't before)

Theo Geurts: What is the use of this section? What are we trying to solve here?

James Bladel: I think our ability to share this information with ICANN should also be subject to applicable law.

Comment [CT29]: James Bladel: Can we reference the data fields in the RAA here? If those ever change, then we only have to update one doc.

providing interactive, query-based public access). ~~Provider acknowledges that, upon a Customer transferring its Registered Name from Provider (e.g. a Customer's transfer to another Service Provider or Registrar), the gaining Service Provider or Registrar shall not have the rights of an owner to the data elements listed in Sections 3.3.1-3.3.4, and that the gaining Provider or Registrar shall update these data elements in the Registration Data Directory Service when the name is transferred.~~

3.3.1 The name and postal address of the Registered Name Holder.

3.3.2 The name, postal address, e-mail address, voice telephone number, and (where available) **fax number** of the technical contact for the Registered Name.

3.3.3 The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the Registered Name.

3.3.4 Any other data the Registry Operator requires be submitted to it.

3.4 **Data Escrow**. Provider shall comply with the data escrow [requirements and procedures](#) set forth in the Data Escrow Specification attached hereto.

3.5 Business Dealings, Including with Customers.

~~3.5.1 In the event ICANN adopts a Specification or Policy that is supported by a consensus of Service Providers, establishing or approving a Code of Conduct for Service Providers, Provider shall abide by that Code of Conduct.~~

~~3.5.2~~ [3.5.1](#) Provider shall abide by applicable laws and governmental regulations.

~~3.5.3~~ [3.5.2](#) Provider shall require all Customers to enter into an electronic or paper service agreement with Provider including at least the provisions set forth in Subsections ~~3.5.4.1~~ [3.5.3.1](#) through ~~3.5.4.17~~ [3.5.3.17](#), and which agreement shall otherwise set forth the terms and conditions applicable to the Customer receiving the Services. Provider shall use commercially reasonable efforts to enforce compliance with the provisions of the service agreement between Provider and any Customer that relates to implementing the requirements of Subsections ~~3.5.4.1~~ [3.5.3.1](#) through ~~3.5.4.17~~ [3.5.3.17](#) or any Consensus Policy.

~~3.5.4~~ [3.5.3](#) The Customer shall provide to Provider accurate and reliable contact details and correct and update them **within seven (7) days** of any change during the term of the Registered Name registration, including: the full name, postal address, e-mail address, voice telephone number, and fax number if available of the Customer; [and](#) name of authorized person for

Comment [CT30]: Rob Golding: is fax still required for these type of documents? Is there perhaps a legal reason to use this communication method?

Comment [CT31]: Rob Golding: Data Escrow needs *except* where already escrowing the data as an ICANN Accredited Registrar, or prohibited by law.

Theo Geurts: Most likely covered in the SPEC itself.

Comment [CT32]: Rob Golding: * 3.5.3 (and parts) 7 days is far too short - needs to be 30+ - would never be accepted as "reasonable" time in a court

contact purposes in the case of a Customer that is an organization, association, or corporation. Provider shall inform each Customer annually of such Customer's obligation to provide accurate and up-to-date contact information to the Provider, and the consequences for failure to comply with Provider's requests related thereto.

~~3.5.4.13.5.3.1~~ A Customer's willful provision of inaccurate or unreliable information, its willful failure to update information provided to Provider within seven (7) days of any change, or its failure to respond ~~for over~~ to inquiries by Provider within the time frame required by Provider's terms of service (which time frame shall not exceed fifteen (15) days ~~to inquiries by Provider)~~ concerning the accuracy of contact details associated with the Registered Name for which Provider is the Registered Name Holder for the account or benefit of such Customer or provides the Services shall constitute a material breach of the service agreement between such Customer and Provider ~~and be a basis for suspension or cancellation of, following which Provider shall (i) promptly either terminate or suspend the Services and for the Registered Name registration, (ii) notify the sponsoring Registrar of the termination or suspension of the Services, and (iii) request that such Registrar either terminate or suspend such Registered Name or place such registration on clientHold and clientTransferProhibited until such time as Provider has validated the information provided by the Customer.~~

~~3.5.4.23.5.3.2~~ Any Customer that intends to license use of a domain name for which Provider is ~~the Registered Name Holder for the account or benefit of such Customer~~ providing the Services to a third party, is nonetheless the Customer of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Customer licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it discloses the current contact information provided by the licensee and the identity of the licensee within seven (7) days to a party providing Customer reasonable evidence of actionable harm.

~~3.5.4.33.5.3.3~~ Provider shall provide notice to a Customer upon each initial each initial agreement to provide Services and each renewal or

Comment [CT33]: Theo Geurts: Third party providers are not in a position to enforce this. Nor have they a contractual agreement with the Registrar to force such party to comply with the requests from such third party. Provider is not in all cases linked to the registration services of the domain name. suspension etc may not be applicable.

Comment [CT34]: Eric Rokobauer: "Terminating a Registered name" should not be included and a viable option here.

Comment [CT35]: Sara Bockey: Edit Sections 3.5.3.3. thru 3.5.3.6 to take into consideration GDPR requirements regarding consent. Consent must be explicitly given for each purpose and can be withdrawn at any time and not a requirement for registration or use of the service. Therefore, 3.5.3.3. - 3.5.3.6 (at a minimum) are not compatible and must be revise.

Lindsay Hamilton-Reid: check these provisions against our responsibilities under GDPR.

Theo Geurts: third party providers have no access to such data, nor do they know the real renewal date. For example a domain can be registered for 5 years and is set to auto renew for 5 years by the Registrar to fulfill contractual obligations.

~~extension of such agreement~~ for which Provider is providing the Services stating:¹

Deleted: registration and each renewal

Deleted: registration of a Registered Name

~~3.5.4.3.1~~~~3.5.3.3.1~~ The purposes for which any Personal Data collected from the Customer are intended;

~~3.5.4.3.2~~~~3.5.3.3.2~~ The intended recipients or categories of recipients of the data (including the Registrar, Registry Operator and others who will receive the data from Registry Operator and the Registrar);

~~3.5.4.3.3~~~~3.5.3.3.3~~ Which data are obligatory and which data, if any, are voluntary; and

~~3.5.4.3.4~~~~3.5.3.3.4~~ How the Customer or data subject can access and, if necessary, rectify the data held about them.

~~3.5.4.4~~~~3.5.3.4~~ The Customer shall **consent** to the data processing referred to in Subsection ~~3.5.4.3~~~~3.5.3.3~~.

Comment [CT36]: Theo Geurts: Requiring consent is often used within the USA and some other jurisdictions but does not have to be leading for the rest of the world. Obtaining the service and having the agreement available at the provider can be sufficient in some jurisdictions.

~~3.5.4.5~~~~3.5.3.5~~ The Customer shall represent that notice has been provided equivalent to that described in Subsection ~~3.5.4.3~~~~3.5.3.3~~ to any third-party individuals whose Personal Data are supplied to Provider by Customer, and that the Customer has obtained consent equivalent to that referred to in Subsection ~~3.5.4.3~~~~3.5.3.3~~ of any such third-party individuals.

~~3.5.4.6~~~~3.5.3.6~~ Provider shall agree that it will not process the Personal Data collected from the Customer in a way incompatible with the purposes and other limitations about which it has provided notice to the Customer in accordance with Subsection ~~3.5.4.3~~~~3.5.3.3~~ above.

~~3.5.4.7~~~~3.5.3.7~~ Provider shall agree that it will take reasonable precautions to protect Personal Data from loss, misuse, unauthorized access or disclosure, alteration, or destruction.

~~3.5.4.8~~~~3.5.3.8~~ The Customer shall represent that, to the best of the Customer's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party.

~~3.5.4.9~~~~3.5.3.9~~ For the adjudication of disputes concerning or arising from use of the Registered Name, the Customer shall submit, without prejudice to other potentially applicable jurisdictions, to the

¹ [Note to IRT: Please advise as to what notices may be duplicative to those that are already sent to customers by Registrars.](#)

jurisdiction of the courts (1) of the Customer's domicile, (2) where the Registrar sponsoring such ~~Register name~~Registered Name is located and (3) where Provider is located.

~~3.5.4.10~~3.5.3.10 The Customer shall agree that ~~Provider's~~the registration of the Registered Name for ~~the account or benefit of such Customer~~which Provider is providing the Services shall be subject to suspension, cancellation, or transfer pursuant to any ~~Specification or Policy~~Specifications and/or Policies, or pursuant to any Provider, Registrar or registry procedure not inconsistent with any ~~Specification or Policy~~Specifications and/or Policies, (1) to correct mistakes by Provider, Registrar or the Registry Operator in registering the name or (2) for the resolution of disputes concerning the Registered Name.

~~3.5.4.11~~3.5.3.11 Providers shall clearly identify and describe all ~~Customer~~the Customer's rights, responsibilities and obligations (including as the beneficial registrant of the Registered Name). Such identification and description shall include, at a minimum, the following:

~~3.5.4.11.1~~3.5.3.11.1 The Provider's obligations in managing ~~Customer~~the Customer's rights ~~and~~, responsibilities and obligations;

~~3.5.4.11.2~~3.5.3.11.2 Any specific requirements applying to transfers of a domain name, including: (a) the conditions under which the Service may be terminated in the event of a transfer of the ~~domain name~~Registered Name; and (b) how requests for transfers of a ~~domain name~~Registered Name will be reviewed, processed and effected; and

~~3.5.4.11.3~~3.5.3.11.3 Any specific requirements applying to Provider's renewals of a Registered Name for the account and benefit of Customer, and the renewal of the Services related ~~thereto~~to a Registered Name.

~~3.5.4.12~~3.5.3.12 Provider shall specify clearly when any communication provided to the Customer by Provider is referring to a Publication request (and potential consequences of such request) or a Disclosure request (and potential consequences of such request).

~~3.5.4.13~~3.5.3.13 Provider shall expressly and clearly explain the meaning and consequences of Disclosure and Publication to the Customer.

~~3.5.4.14~~3.5.3.14 Provider shall specify clearly the specific grounds upon which a Customer's details may be Disclosed or Published or the Services suspended or terminated, including Publication in the event of a Customer's initiation of a transfer of the underlying ~~domain name~~Registered Name.

~~3.5.4.15~~3.5.3.15 Provider ~~shall~~ include a link or other direction to the ICANN website ~~where a person~~(e.g. to the Privacy and Proxy Service Provider Accreditation Agreement) where a Person may look up the definitions and meanings of specific terms such as Disclosure or Publication.

Deleted: should

~~3.5.4.16~~3.5.3.16 Provider shall specify clearly, including required timelines and processes, whether or not:

~~3.5.4.16.1~~3.5.3.16.1 A Customer will be notified when ~~a~~ Provider receives a Publication or Disclosure request from a third party; and

~~3.5.4.16.2~~3.5.3.16.2 A Customer may opt to cancel its ~~domain registration~~Registered Name prior to and in lieu of Publication.

~~3.5.4.17~~3.5.3.17 If Provider permits its Customers to cancel a ~~domain~~Registered Name registration prior to and in lieu of Publication, Provider shall expressly prohibit cancellation of a ~~domain name~~Registered Name that is the subject of a Uniform Domain Name Dispute Resolution Policy ("UDRP") (as such policy is identified on ICANN's website www.icann.org/general/consensus-policies.htm) and ICANN's Uniform Rapid Suspension ~~system~~(Uniform Rapid Suspension system (System ("URS") adopted by ICANN (as posted at <http://www.icann.org/en/resources/registries/urs>), in each case as such policy or system may be modified from time to time.

Comment [CT37]: Eric Rokobauer: Should be removed. Service Providers will not have control to cancel a registered name.

~~3.5.5~~3.5.4 Provider shall comply with the obligations specified in the Customer Data Accuracy Specification.

~~3.5.6~~3.5.5 Provider shall make available a description of the customer service handling processes available to Customers regarding the Services, including a description of the processes for submitting complaints and resolving disputes regarding the Services.

~~3.5.7~~3.5.6 Nothing in this Agreement prescribes or limits the amount Provider may charge a Customer for the Services.

3.6 Accreditation Fees. As a condition of Accreditation, Provider shall pay an annual Accreditation fees to ICANN. ~~These fees consist of yearly and variable fees.~~

3.6.1 Provider shall pay ICANN a yearly Accreditation fee in an amount established by the ICANN Board of Directors, in conformity with ICANN's Bylaws. ~~This yearly~~ As of the Effective Date, the yearly Accreditation fee shall ~~[\$_]. Payment of the yearly fees \$4,000. (the "Accreditation Fee").~~ At the election of Provider, the Accreditation Fee shall either be paid in one (1) lump sum payment or four (4) equal quarterly installments. Each such lump sum payment or quarterly installment (as applicable) shall be due within thirty (30) days ~~after~~ following the date of the invoice ~~from~~ provided by ICANN.

~~3.6.2 Provider shall pay the variable Accreditation fees established by the ICANN Board of Directors, in conformity with ICANN's Bylaws, which such fees shall be reasonably allocated by ICANN among all Accredited providers and that any such fees must be expressly approved by providers accounting, in the aggregate, for payment of two-thirds of all provider-level fees. Provider shall pay such fees in a timely manner for so long as all material terms of this Agreement remain in full force and effect, and notwithstanding the pendency of any dispute between Registrar and ICANN.~~

~~3.6.3~~ 3.6.2 For any payments thirty (30) days or more overdue, Provider shall pay interest on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law from the later of the date of the invoice or the date the invoice is sent pursuant to Section ~~7.67.7~~ 7.67.7 of this Agreement. ~~On reasonable notice given by ICANN to Provider, accountings submitted by Provider shall be subject to verification by an audit of Provider's books and records by an independent third-party designated by ICANN that shall preserve the confidentiality of such books and records (other than its findings as to the accuracy of, and any necessary corrections to, the accountings).~~

~~3.6.4~~ 3.6.3 The Accreditation fees due under this Agreement are exclusive of tax. All taxes, duties, fees and other governmental charges of any kind (including sales, turnover, services, use and value-added taxes) that are imposed by or under the authority of any government or any political subdivision thereof on the Accreditation fees for any services, software or hardware shall be borne by Provider and shall not be considered a part of, a deduction from, or an offset against such Accreditation fees. All payments due to ICANN shall be made without any deduction or withholding on account of any tax, duty, charge, or penalty except as required by applicable law, in which case, the sum payable by Provider 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, ICANN receives (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.

Comment [CT38]: Lindsay Hamilton-Reid: This fee is excessive.

Theo Geurts: Still up for discussion. 4k is a lot of money for providers who are forced to offer this service for free. IMO there should be no annual fee, offering such a service is not by choice but rather due to ancient policies not being up to par when it comes to data protection laws, 110+ countries.

Sara Bockey: Agree - we need to discuss fees further

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~~3.7 Obligations of Providers under common controlling interest. Provider shall be in breach of this Agreement if:~~

~~3.7.1 ICANN terminates an Affiliated Provider's or an Affiliated Registrar's accreditation agreement with ICANN (an "Affiliate Termination");~~

~~3.7.2 Such Affiliated Provider or Affiliated Registrar has not initiated arbitration pursuant to the terms of such Person's accreditation agreement challenging ICANN's right to terminate such accreditation agreement, or such Person has initiated such arbitration and has not prevailed;~~

~~3.7.3 the Affiliate Termination was the result of misconduct that materially harmed consumers or the public interest;~~

~~3.7.4 a second Affiliated Provider or Affiliated Registrar has pursued, after the Affiliate Termination, the same course of conduct that resulted in the Affiliate Termination; and~~

~~3.7.5 ICANN has provided Provider with written notice that it intends to assert the provisions of this Section 3.7 with respect to Provider, which notice shall identify in reasonable detail the factual basis for such assertion, and Provider has failed to cure the impugned conduct within fifteen (15) days of such notice.~~

~~3.8.3.7~~ 3.8.7 **Provider Training.** Provider's primary contact as identified in Section ~~7.6~~7.7 or designee (so long as the designee is employed by Provider or an Affiliated Provider) and any updated primary contact or designee (as updated pursuant to Section ~~7.6~~7.7) shall complete a training course covering ~~provider~~Provider's obligations under ICANN policies and agreements. ~~Provider shall at all times employ at least one Person who has completed such training course. The course will be provided by ICANN at no expense to Provider, and shall be available in an online format.~~

Deleted: ee

Comment [CT39]: Eric Rokobauer: Change "at all times employee" to "dedicated"

~~3.9.3.8~~ 3.9.3.8 **Terms of Service; Website Publication; and Description of Procedures.**

~~3.9.1~~3.8.1 Provider shall publish on its websites and in all Publication and Disclosure-related policies and documents, a link to either a request form containing specific, minimum, mandatory criteria, or an equivalent list of such criteria, that the Provider requires in order to determine whether or not to comply with third party third-party requests, such as for the Disclosure or Publication of Customer identity or contact details.

Moved (insertion) [2]

~~3.9.2~~3.8.2 Provider shall state on any forms used for reporting and requesting purposes the applicable jurisdiction in which disputes (including disputes involving Law Enforcement Authorities or intellectual property holders) must be resolved. This provision should provide for the exercise of jurisdiction of the courts in the jurisdiction where the provider Provider

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Moved down [1]: Provider shall state on any forms used for reporting and requesting purposes the applicable jurisdiction in which disputes (including disputes involving Law Enforcement Authorities or intellectual property holders) must be resolved. This provision should provide for the exercise of jurisdiction of the courts in the jurisdiction where the provider Provider maintains its principal physical office; additional jurisdictions may also be specified.

Moved (insertion) [1]

maintains its principal physical office; additional jurisdictions may also be specified.

~~3.9.3~~3.8.3 Provider shall publish on its websites all pricing information for all Services offered by Provider.

~~3.9.4~~3.8.4 Provider should indicate clearly, on its websites and in all Publication or Disclosure-related materials, that a Requester will be notified in a timely manner of ~~the~~ Provider's decision:

~~3.9.4.1~~3.8.4.1 To notify its Customer of such Requestor's request for Publication or Disclosure; and

~~3.9.4.2~~3.8.4.2 Whether or not Provider agrees to comply with such Requestor's request for Publication or Disclosure.

~~3.9.5~~3.8.5 Provider shall publish on its website a copy of Provider's service agreement and description of Provider's procedures for handling the following, in each case of a domain name registration for which Provider is the Registered Name Holder or for which Provider provides Services:

~~3.9.5.1~~3.8.5.1 The process or facilities to report Abuse;

~~3.9.5.2~~3.8.5.2 The process or facilities to report infringement of trademarks or other rights of third parties;

~~3.9.5.3~~3.8.5.3 The circumstances under which Provider will Relay communications from third parties to the Customer;

~~3.9.5.4~~3.8.5.4 The circumstances under which Provider will terminate ~~service~~the Services provided to the Customer;

~~3.9.5.5~~3.8.5.5 The circumstances under which the circumstances under which the Customer's identity or contact data will be published in the RDDS; and

~~3.9.5.6~~3.8.5.6 A description of the support services offered by Provider to its Customers, and how to access these services.

~~3.10~~3.9 Provider Self-Assessment and Audits. Provider shall complete and deliver to ICANN, on a schedule and in the form specified by ICANN from time to time in consultation with the Working Group, a Provider's self-assessment. Provider shall complete and deliver to ICANN within twenty (20) days following the end of each calendar year, in a form specified by ICANN a certificate executed by the president, chief executive officer, chief financial officer or chief operating officer (or

Moved up [2]: Provider shall publish on its websites and in all Publication and Disclosure-related policies and documents, a link to either a request form containing specific, minimum, mandatory criteria, or an equivalent list of such criteria, that ~~the~~ Provider requires in order to determine whether or not to comply with ~~third party~~third-party requests, such as for the Disclosure or Publication of Customer identity or contact details. -

Comment [CT40]: Theo Geurts: This is problematic for wholesale registrars as it is up to the resellers when it comes to fees.

Deleted: Provider will Reveal or Publish in the Registration Data Directory Service the Customer's identity or contact data

Comment [CT41]: Lindsay Hamilton-Reid: as the working group shall not longer exist and I see no reason for it to exist, this needs to be redrafted.

their equivalents) of Provider certifying compliance with the terms and conditions of this Agreement. ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct on its behalf, contractual compliance audits to assess compliance by Provider with the terms and conditions of this Agreement. Any audits pursuant to this Section ~~3.10~~3.9 shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Provider. As part of such audit and upon request by ICANN, Provider shall timely provide all responsive documents, data and any other information necessary to demonstrate Provider's compliance with this Agreement. Upon no less than ten (10) days notice (unless otherwise agreed to by Provider), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Provider with the terms and conditions of this Agreement. ICANN shall not disclose Provider's confidential information gathered through such audits except as required by applicable law, legal proceedings, or as expressly permitted by any Specification and/or Policy (including ICANN's Documentary Information Disclosure Policy, as such policy may be amended from time to time); provided, however, that, except as required by applicable law or legal proceedings, ICANN shall not release any information that Provider has marked as, or has otherwise designated in writing to ICANN as, a "confidential trade secret," "confidential commercial information" or "confidential financial information" of Provider. If any applicable law, legal proceeding or Specification and/or Policy permits such disclosure, ICANN will provide Provider no less than fifteen (15) days notice of its intent to disclose such information, unless such notice is prohibited by law or legal proceeding. Such notice shall include to whom and in what manner ICANN plans to disclose such information.

~~3.11~~3.10 Link to Customer Educational Information. ICANN has published an educational webpage summarizing the terms of the Privacy & Proxy Service Provider Accreditation Agreement and related Consensus Policies, as updated by ICANN from time to time (as of the date of this Agreement, located at: <https://www.icann.org/resources/pages/pp-customers-2017-08-31-en>). Provider shall provide a link to such webpage on any website it may operate for the Services clearly displayed to its Customers at least as clearly as its links to policies or notifications required to be displayed under Consensus Policies. ICANN may, in consultation with providers of the Services, update the content or URL for this website.

~~3.12~~3.11 Provider Contact, Business Organization and Officer Information. Provider shall provide to ICANN the information specified in Section ~~3.12.4~~3.11.1 through Section ~~3.12.9~~3.11.9 as well as such information as ICANN may request from time to time and keep such information accurate and current. In addition, Provider shall publish on each website through which Provider provides or offers

the Services the information specified in Section ~~3.12.13.11.1~~ through Section ~~3.12.93.11.9~~. Provider shall notify ICANN within five (5) days of any changes to such information and update Provider's website(s) within twenty (20) days of any such changes.

~~3.12.13.11.1~~ Full legal name of Provider.

~~3.12.23.11.2~~ Correspondence address for Provider.

~~3.12.33.11.3~~ Address of Provider's principal place of business (no P.O. boxes).

~~3.12.43.11.4~~ Provider's telephone number.

~~3.12.53.11.5~~ Provider's email address.

~~3.12.63.11.6~~ Full name, contact information and position of all officers of Provider.

~~3.12.73.11.7~~ Provider's abuse contact information.

~~3.12.83.11.8~~ Ultimate parent entity of Provider, if applicable.

~~3.12.93.11.9~~ The names and ICANN IDs of all Affiliated Providers and Affiliated Registrars of Provider.

~~3.13~~~~3.12~~ Provider's Abuse Contact and Duty to Investigate Reports of Abuse.

~~3.13.13.12.1~~ Provider shall establish and maintain a designated Abuse contact to receive reports of Abuse involving Registered Names for which Provider is providing the Services, including reports of Illegal Activity. Provider shall publish (i) an email address to receive such reports on the home page of Provider's website or (ii) other mechanisms, such as a telephone number or an electronic form, that are clearly visible on Provider's website homepage (or, in each case, in another standardized place that may be designated by ICANN from time to time), ~~which shall be monitored 24 hours a day, seven days a week.~~ Provider shall take reasonable and prompt steps to investigate and respond appropriately to any reports of Abuse.

~~3.12.2~~ Provider shall establish and maintain a dedicated Abuse contact, including a dedicated email address and telephone number to receive reports of Illegal Activity by Law Enforcement Authorities of the jurisdiction in which Provider is established or maintains a physical office. Well-founded reports of Illegal Activity submitted to Provider's designated Abuse contact must be reviewed within 24 hours by an individual who is empowered by Provider to take necessary and appropriate actions in response to the report, ~~including reports of Abuse submitted by Persons and their representatives pursuant to~~

Comment [CT42]: Theo Geurts: Why is this even required for a privacy service? My email provider has not listed all their officers and their contact details.

Comment [CT43]: Lindsay Hamilton-Reid: . 3.12.1, 3.12.2 and 3.12.3 should be one paragraph.

Comment [CT44]: Darcy Southwell: Does not read consistent with the Final Report.

Comment [CT45]:

Comment [CT46]: High priority requests are usually emergencies where victims are moments away from danger. Not requiring immediate responses to these requests renders them moot. A request that is answered within 24 hours, but 20 hours after the victim is dead, does not respect the importance of the request or the imminence of the danger.

3.12.2 - If the abuse contact point is not monitored 24/7, how are providers going to respond to high priority requests in time?

Comment [CT47]: Peter Roman: High priority requests are usually emergencies where victims are moments away from danger. Not requiring immediate responses to these requests renders them moot. A request that is answered within 24 hours, but 20 hours after the victim is dead, does not respect the importance of the request or the imminence of the danger.

3.12.2 - If the abuse contact point is not monitored 24/7, how are providers going to respond to high priority requests in time?

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Comment [CT48]: Darcy Southwell: Does not read consistent with the Final Report.

Deleted: ~~that is monitored 24 hours a day, seven days a week.~~

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Comment [CT49]: Sara Bockey: Edit section 3.12.2, as it still contains new language that has been added since the IRT agreement on language in August. The first sentence in its entirety should be removed. The section should start with "Well founded..."

Comment [CT50]: Rob Golding: 3.12.2 Provider shall establish and maintain a dedicated Abuse contact, including a dedicated email address and telephone number that is monitored 24 hours a day, seven days a week Just NO. Abuse contact is already detailed in 3.12.1

the Intellectual Property Disclosure Framework Specification.² In responding to any such reports, Provider will not be required to take any action in contravention of applicable law.

~~3.13.~~~~3.12.3~~ Provider shall publish on its website a description of its procedures for the receipt, handling, and tracking of Abuse reports. Provider shall document its receipt of and response to all such reports. Provider shall maintain the records related to such reports for the shorter of two (2) years or the longest period permitted by applicable law, and during such period, shall provide such records to ICANN upon reasonable notice.

Comment [CT51]: Theo Geurts: perhaps we can bridge some language and solve the issue with 3.12.1 here?

~~3.14~~~~3.13~~ **Law Enforcement Authority Disclosure Framework Specification.** Provider shall comply with the Law Enforcement Authority Disclosure Framework Specification attached hereto.

~~3.15~~~~3.14~~ **Intellectual Property Disclosure Framework Specification.** Provider shall comply with the Intellectual Property Disclosure Framework Specification attached hereto. Provider shall not use high-volume, automated electronic processes (for example, processes that do not utilize human review) for sending Requests or responses to Requests to Requesters or Customers in performing any of the steps in the processes outlined in the Intellectual Property Disclosure Framework Specification.

Comment [CT52]: Sara Bockey: Edit Section 3.14 to remove the language re no automation. This is not feasible. This language must be removed: Provider shall not use high-volume, automated electronic processes (for example, processes that do not utilize human review) for sending Requests or responses to Requests to Requesters or Customers in performing any of the steps in the processes outlined in the Intellectual Property Disclosure Framework Specification.

~~3.16~~~~3.15~~ **Labeling.** Provider shall ensure that each Registered Name for which Provider is providing the Services is clearly labeled as such in the Registration Data Directory Service), as specified in the Labeling Specification attached hereto, and shall otherwise comply with the requirements of the Labeling Specification attached hereto.

Lindsay Hamilton-Reid: surely an automatic acknowledgement would be sensible while the claim is investigated?

~~3.17~~~~3.16~~ **Relay Requirements.**

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~~3.17.~~~~13.16.1~~ Provider shall Relay to its Customers any notices or communications required under this Agreement, the Registrar Accreditation Agreement or any Specifications and/or Policies.

Comment [CT53]: Sara Bockey: Edit Section 3.15 – Labeling – to remove excessive language. Provider shall ensure that each Registered Name for which Provider is providing the Services is clearly labeled as such in the Registration Data Directory Service, as specified in the Labeling Specification attached hereto, ~~and shall otherwise comply with the requirements of the Labeling Specification attached hereto.~~ This language is duplicative and not necessary. Let's not add unnecessary words to this already long document. If there are going to be extra works, perhaps mention complying with applicable local laws in light of GDPR.

~~3.17.~~~~23.16.2~~ For all other electronic communications received by Provider from a third party concerning a Customer, including any Registered Name for which Provider is providing Services to a Customer, Provider shall either:

~~3.17.2.~~~~13.16.2.1~~ Relay all electronic communications received (including those received via emails and web forms) by Provider to such Customer, but the Provider may implement commercially

James Bladel: Agree – this language should be removed.

Theo Geurts: We should not force providers in manually reviewing all these requests. if there is a better automated solution available than a provider should be able to implement such a solution. This could also be beneficial for the requesting party. We should have language here that enables such solution but is also within spirit of the current language.

² Note to IRT: Reference to Abuse pursuant to the IP Disclosure Framework has been deleted from Section 3.12.2, which focuses on Illegal Activity, as it is covered by Section 3.11.1, which focuses on Abuse.

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Comment [CT54]: Lindsay Hamilton-Reid: .3.16 should be much simpler and needs to be redrafted.

reasonable safeguards to filter out spam and other forms of abusive communications; or

~~3.17.2.2~~3.16.2.2 Promptly Relay to such Customer all electronic communications (including those received via emails and web forms) received from Law Enforcement Authorities and third parties containing allegations of Abuse (including Illegal Activity).

~~3.17.3~~3.16.3 Provider shall publish and maintain a mechanism (e.g. designated email point of contact) for a Requester to follow up on or escalate the request made by such Requester.

~~3.17.4~~3.16.4 When Provider becomes aware of a Persistent Delivery Failure to a Customer, Provider shall (a) promptly notify the Requester of the Persistent Delivery Failure and (b) perform the email verification procedure set forth in Section 1.f of the Customer Data Accuracy Program Specification.

~~3.17.5~~3.16.5 When Provider becomes aware of a Persistent Delivery Failure, Provider shall, upon request of the Requester, Relay a further form of notice to the applicable Customer, provided that ~~(a)~~ Provider shall have the discretion to select the most appropriate means of Relaying such a request to the Customer.

~~3.17.6~~3.16.6 Notwithstanding anything to the contrary in this Section ~~3.17.3.16~~3.16.6, Provider shall have the right to impose reasonable limits on the number of Relay requests made by the same Requester for the same Registered Name.

~~3.17.7~~3.16.7 The requirements set forth in this Section ~~3.17.3.16~~3.16.7 shall not preclude Provider from taking any additional actions in the event of a Persistent Delivery Failure, in accordance with terms and conditions concerning such matter set forth in the terms of service published on Provider's website.

~~3.18~~3.17 Reveal Requirements (Publication and Disclosure).

~~3.18.13~~3.17.1 Upon receipt of a Disclosure or Publication request from a Requester, Provider shall comply with the requirements set forth in the Intellectual Property Disclosure Framework Specification and the Law Enforcement Authority Disclosure Framework Specification attached hereto, to the extent applicable.

~~3.18.2~~3.17.2 Provider shall not mandate that a Requester first make a Relay request before Provider responds to or acts on a Disclosure or Publication request.

Comment [CT55]: Darcy Southwell: Does not read consistent with the Final Report.

Sara Bockey: Need clearer language here. Perhaps use the language from the Final Report?

Final Report states:

"in deciding whether or not to comply with a Disclosure or Publication request, providers not mandate that the Requester must have first made a Relay request"

Eric Rokobauer: Language should be revised to follow Final Report.

~~3.18.33.17.3~~ To the extent applicable to Provider, nothing in this Agreement should be read as being intended to alter Provider's prevailing practice to review Disclosure and Publication requests manually or to facilitate direct resolution of an issue between a Requester and a Customer. Disclosure of at least some contact details of the Customer may in some cases be required in order to facilitate such direct resolution.

~~3.19.3.18~~ **Transfer of Registered Names Requirements**³

~~3.19.13.18.1~~ Where a Change of Registrant (as defined under ICANN's Transfer Policy, as such policy is amended or modified) occurs during the process of de-Accreditation of Provider, a Registrar should lift the mandatory 60-day lock at the express request of the Customer, provided that the Registrar sponsoring the Registered Name for which Provider is providing Services to such Customer has also been notified of the de-Accreditation of Provider.

~~3.19.23.18.2~~ Provider should facilitate and not hinder (a) a Customer's request to transfer, renew or restore a ~~domain name~~Registered Name for which Provider is or was providing Services to such Customer, including a renewal during a Redemption Grace Period under ICANN's Expired Registration Recovery Policy (as such policy is be amended or modified) and (b) transfers of a Registered Name from the sponsoring Registrar to another Registrar.

~~3.19.33.18.3~~ Providers should use commercially reasonable efforts to avoid the need to disclose underlying Customer data in the process of renewing, transferring or restoring a ~~domain name~~Registered Name.

~~3.20.3.19~~ **Record Keeping.**

~~3.20.13.19.1~~ Provider shall maintain statistics on the number of Publication and Disclosure requests received from Requesters, and the number of actual Publications and Disclosure as a result of such requests.

~~3.20.23.19.2~~ Providers shall provide these statistics in aggregate form to ICANN for periodic publication, ~~in the form~~utilizing ICANN's reporting interface, as specified ~~by ICANN as may be amended or modified from time to time at [TBD]~~.⁴

~~3.21.3.20~~ **Notice of Bankruptcy, Convictions and Security Breaches.** Provider will give ICANN notice within seven (7) days of (a) the commencement of any of the proceedings referenced in Section 5.5.8, (b) the occurrence of any of the matters

³ Note to IRT: Subject to review following further Transfer Policy work.

⁴ Note to IRT: Creation of a reporting specification or other methodology under consideration by ICANN.

Comment [CT56]: Lindsay Hamilton-Reid: 23. 3.18 should just say in the event of a transfer away, the service shall be cancelled. If a customer does transfer away, it would be difficult not to make their information public if the service is cancelled.

Comment [CT57]: Theo Geurts: Third party providers cannot facilitate a renewal process. This is up to the Registrar.

Eric Rokobauer: Theo made comments here that I agree with. Staff, will you please identify which paragraphs of the policy does this operation relate to? I think at minimum we must remove "facilitate and" as Service Provider does not have control in respect to those registrar functions called out within.

Comment [CT58]: Theo Geurts: Is this still realistic to ask when providers have to provide the service for free due to data protection laws?

There is no juicy business model in most cases to soak up the costs here.

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specified in Section 5.5.2 or Section 5.5.3 or (c) any unauthorized access to or disclosure of Customer account information or registration data. The notice required pursuant to Subsection (c) shall include a detailed description of the type of unauthorized access, how it occurred, the number of Customers affected, and any action taken by Provider in response.

3.223.21 Obligations of Providers Affiliated with Registrars. In the event Provider is Affiliated with any Affiliated Provider or Affiliated Registrar (an “Affiliated Relationship”) during the Term of this Agreement, Provider shall comply with all Specifications and/or Policies that may be developed from time to time with respect to such Affiliated Relationships, and will notify ICANN within thirty (30) days of the occurrence of the event that created the AffiliateAffiliated Relationship (e.g., the closing of any merger, acquisition or other transaction, or the execution of any agreement, in each case, giving rise to such Affiliated Relationship).

4. PROCEDURES FOR ESTABLISHMENT OR REVISION OF SPECIFICATIONS AND POLICIES.

4.1 Compliance with Consensus Policies and Temporary Policies. During the Term of this Agreement, Provider shall comply with and implement all Consensus Policies and Temporary Policies in existence as of the Effective Date found at <http://www.icann.org/general/consensus-policies.htm>, and as may in the future be developed and adopted in accordance with ICANN’s Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedures and relate to those topics and subject to those limitations set forth in the Consensus Policies and Temporary Policies Specification to this Agreement.

5. TERM, TERMINATION AND DISPUTE RESOLUTION.

5.1 Term of Agreement. This Agreement shall be effective on the Effective Date and shall have an initial term running until the five year anniversary of the Effective Date (the “Expiration Date”), unless sooner terminated.

5.2 Renewal. This Agreement and Provider’s Accreditation will be renewed for successive periods of five (5) years upon the Expiration Date and the expiration of each successive five-year term thereafter under the terms and conditions of this Agreement, unless:

5.2.1 at the time of such renewal, Provider no longer meets the ICANN provider Accreditation criteria then in effect;

5.2.2 Provider is not in compliance with its obligations under this Agreement at the time of the Expiration Date or at the expiration of any successive five (5) year term thereafter;

5.2.3 Provider has been given notice by ICANN of three (3) or more material breaches of this Agreement within the two (2) years preceding the

Comment [CT59]: Lindsay Hamilton-Reid: why is there a five-year term? Why not allow the agreement to run continuously until terminated?

Expiration Date or the date of expiration of any successive five (5) year term thereafter; or

5.2.4 this Agreement has terminated prior to the Expiration Date or the expiration date of any successive five (5) year term thereafter.

In the event Provider intends to renew this Agreement pursuant to this Section 5.2, Provider shall provide ICANN written notice thereof during the period that is no more than ninety (90) days and no less than sixty (60) days prior to the Expiration Date and each successive five (5) year term thereafter. The provision of such notice shall not be a condition to renewal hereunder. Pursuant to its customary practices (as may be modified by ICANN), ICANN will provide notice to Provider of the Expiration Date and the date of expiration of any subsequent term hereunder.

5.3 **Right to Substitute Updated Agreement.** In the event that, during the term of this Agreement, ICANN adopts a revised form accreditation agreement for the provision of the Services (the "Updated PPAA"), Provider (provided Provider has not received (a) a notice of breach that it has not cured or (b) a notice of termination or suspension of this Agreement under this Section 5) may elect, by giving ICANN written notice, to enter into the Updated PPAA. In the event of such election, Provider and ICANN shall as soon as practicable enter into the Updated PPAA for the term specified in the Updated PPAA, and this Agreement will be deemed terminated.

5.4 **Termination of Agreement by Provider.** This Agreement may be terminated before its expiration by Provider by giving ICANN thirty (30) days advanced written notice. Upon such termination by Provider, Provider shall not be entitled to any refund of fees paid to ICANN pursuant to this Agreement.

5.5 **Termination of Agreement by ICANN.** This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:

5.5.1 There was a material misrepresentation, material inaccuracy, or materially misleading statement in Provider's application for Accreditation or renewal of Accreditation or any material accompanying the application.

5.5.2 Provider:

5.5.2.1 is convicted by a court of competent jurisdiction of a felony or other serious offense related to financial activities, or is judged by a court of competent jurisdiction to have:

5.5.2.1.1 committed fraud,

5.5.2.1.2 committed a breach of fiduciary duty, or

5.5.2.1.3 with actual knowledge (or through gross negligence) permitted Illegal Activity in the registration or use of domain

Comment [CT60]: Steve Metalitz: Section 5.3 does not give ICANN the right to substitute the new version of the agreement, it gives that right to the **provider**. Furthermore, 5.3 addresses the scenario in which the new agreement is swapped in during the term of the current agreement. The point I was trying to raise on the call (and I am sorry if this was not clear) is ensuring that all renewals of the agreement **at the end of the term** reflect the most recent version. As currently drafted, section 5.2 seems to give the provider the option of renewing under the terms of the old agreement ("under the terms and conditions of this agreement"), even if it has been superseded by a new form of agreement that is materially different. This could be fixed by adding a subsection 5.2.5 along the following lines: "5.2.5: this Agreement has been superseded by a revised form accreditation agreement for the provision of the Services ("Updated PPAA") that is materially different from this Agreement, in which case the right of renewal provided by this section shall be under the terms and conditions of the Updated PPAA."

Lindsay Hamilton-Reid: 25. . any reference to updated agreements really means amendments by ICANN and should be redrafted.

Comment [CT61]: Lindsay Hamilton-Reid: Causes for termination are normally mutual and this needs to be simplified.

names or in the provision to Provider by any Customer of inaccurate WHOIS or Customer information; or

5.5.2.1.4 failed to comply with the terms of an order issued by a court of competent jurisdiction relating to the use of a Registered Name for which Provider is ~~Providing~~providing the Services;

or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing; or

5.5.2.2 is disciplined by the government of its domicile for conduct involving dishonesty or misuse of funds of others; or

5.5.2.3 is the subject of a non-interlocutory order issued by a court or arbitral tribunal, in each case of competent jurisdiction, finding that Provider has, directly or through an Affiliate, committed a specific violation(s) of applicable national law or governmental regulation relating to cybersquatting or its equivalent; or

5.5.2.4 is found by ICANN, based on its review of the findings of arbitral tribunals, to have been engaged, either directly or through its Affiliate, in a pattern and practice of trafficking in or use of domain names identical or confusingly similar to a trademark or service mark of a third party in which the Customer has no rights or legitimate interest, which trademarks have been registered and are being used in bad faith.

5.5.3 Provider knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) days of Provider's knowledge of the foregoing; or any member of Provider's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Provider's board of directors or similar governing body within thirty (30) days of Provider's knowledge of the foregoing.

5.5.4 Provider fails to cure any breach of this Agreement within twenty-one (21) days after ICANN gives Provider notice of the breach.

5.5.5 Provider fails to comply with a ruling granting specific performance under Sections 5.7 or 7.1.

5.5.6 Provider has been in fundamental and material breach of its obligations under this Agreement at least three (3) times within a twelve (12) month period.

5.5.7 Provider continues acting in a manner that ICANN has reasonably determined endangers the stability or operational integrity of the Internet after receiving three (3) days notice of that determination.

5.5.8 (a) Provider makes an assignment for the benefit of creditors or similar act; (b) attachment, garnishment or similar proceedings are commenced against Provider, which proceedings are a material threat to Provider's ability to provide the Services, and are not dismissed within sixty (60) calendar days of their commencement; (c) a trustee, receiver, liquidator or equivalent is appointed in place of Provider or maintains control over any of Provider's property; (d) execution is levied upon any material property of Property, (e) proceedings are instituted by or against Provider under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within sixty (60) calendar days of their commencement, or (f) Provider files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations.

[5.5.9 \(a\) ICANN terminates an Affiliated Provider's or an Affiliated Registrar's accreditation agreement with ICANN \(an "Affiliate Termination"\), and \(b\) such Affiliated Provider or Affiliated Registrar has not initiated arbitration pursuant to the terms of such Person's accreditation agreement within fifteen \(15\) days challenging ICANN's right to terminate such accreditation agreement, or such Person has initiated such arbitration within such period and has not prevailed in such arbitration;](#)⁵

5.6 Termination Procedures. This Agreement may be terminated in circumstances described in Subsections 5.5.1 ~~though~~through 5.5.6 above only upon ~~fifteen (15) days written notice to Provider~~ (in the case of Subsection 5.5.4 occurring after Provider's failure to cure), with Provider being given an opportunity during that time to initiate arbitration under Subsection 5.8 to determine the appropriateness of termination under this Agreement. This Agreement may be terminated immediately upon notice to Provider in circumstances described in Subsections 5.5.7 ~~and~~, 5.5.8 and 5.5.9.

⁵ Note to IRT: The former Section 3.7 has been deleted, and partially restated/moved to Section 5.5.9 to more clearly provide that ICANN may terminate this Agreement immediately if there is an effective Affiliate Termination.

Comment [CT62]: Lindsay Hamilton-Reid: if you are both a registrar and privacy provider? It should be specified that even if one agreement is terminated, it will not necessarily affect the other agreement.

Comment [CT63]: Lindsay Hamilton-Reid: In respect of notice periods, fifteen days may not be long enough.

5.7 Suspension.

5.7.1 Upon the occurrence of any of the circumstances set forth in Section 5.5, ICANN may, in ICANN's sole discretion, upon delivery of a notice pursuant to Subsection 5.7.2, elect to suspend Provider's Accreditation and ability to provide the Services for any new registrations following the delivery of such notice for a period of up to twelve (12) months following the effectiveness of such suspension. Suspension of a Provider does not preclude ICANN's ability to issue a notice of termination in accordance with the notice requirements of Section 5.6.

5.7.2 Any suspension under Subsections 5.7.1 will be effective upon fifteen (15) days written notice to Provider, with Provider being given an opportunity during that time to initiate arbitration under Subsection 5.8 to determine the appropriateness of suspension under this Agreement.

5.7.3 Upon suspension, Provider shall notify Customers and other users, by posting a prominent notice on its web site, that it is unable to offer or provide the Services **for any new registrations**. Provider's notice shall include a link to the notice of suspension from ICANN.

5.7.4 If Provider acts in a manner that ICANN reasonably determines endangers the stability or operational integrity of the Internet and upon notice does not immediately cure, ICANN may suspend this Agreement for five (5) working days pending ICANN's application for more extended specific performance or injunctive relief under Subsection 7.1 **or its invocation of section 5.5.7**. Suspension of the Agreement under this Subsection 5.7.4 may, at ICANN's sole discretion, preclude Provider from providing the Services. Provider must also post the statement specified in Subsection 5.7.3.

5.8 Resolution of Disputes Under this Agreement. Subject to the limitations set forth in Section 6 and Section 7.4, disputes arising under or in connection with this Agreement, including (a) disputes arising from ICANN's failure to renew Provider's Accreditation and (b) requests for specific performance, shall be resolved in a court of competent jurisdiction or, at the election of either party, by an arbitration conducted as provided in this Subsection 5.8 pursuant to the International Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted in English and shall occur in Los Angeles County, California, USA. Except as set forth in Section 7.4.5, there shall be one (1) arbitrator agreed by the parties from a list of AAA arbitrators, or if parties do not agree on an arbitrator within fifteen (15) days of the AAA request that the parties designate an arbitrator, the AAA shall choose and appoint an arbitrator, paying due regard to the arbitrator's knowledge of the DNS. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrator to reallocate the costs in their award as provided in the AAA rules. The parties shall bear their own attorneys' fees in

Comment [CT64]: Thomas Keller:

Language like 5.7.4 or 6.1, 7.4 and its subsections are a cause for concern, and one has to wonder if Registrar lawyers will sign off on such contractual provisions.

Theo Geurts: This could indeed be a cause for concern. What is reasonable? How is this determined? We need clearer language. The RAA language was always very vague, there is no reason to continue this practice for a privacy service. Agreements should be clear, and understandable for "most" folks.

connection with the arbitration, and the arbitrator may not reallocate the attorneys' fees in conjunction with their award. The arbitrator shall render its decision within ninety (90) days of the conclusion of the arbitration hearing. In the event Provider initiates arbitration to contest the appropriateness of termination of this Agreement by ICANN pursuant to Section 5.5 or suspension of Provider by ICANN pursuant to Section 5.7.1, Provider may at the same time request that the arbitrator stay the termination or suspension until the arbitration decision is rendered. The arbitrator shall order a stay: (i) upon showing by Provider that continued operations would not be harmful to consumers or the public interest, or (ii) upon appointment by the arbitrator of a qualified third party to manage the operations of Provider until the arbitration decision is rendered. In furtherance of sub-clause (ii) above, the arbitrator is hereby granted all necessary authority to appoint a qualified third-party to manage the operations of Provider upon Provider's request and if the panel deems it appropriate. In selecting the third-party manager, the arbitrator shall take into consideration, but shall not be bound by, any expressed preferences of Provider. Any order granting a request for a stay must be issued within fourteen (14) days after the filing of the arbitration. If an order granting a request for a stay is not issued within fourteen (14) days, ICANN has the right to proceed with the termination of this Agreement pursuant to Section 5.5 or suspension of the Provider pursuant to Section 5.7.1. In the event Provider initiates arbitration pursuant to and in accordance with ICANN's Bylaws to contest an Independent Standing Panel's decision sustaining the ICANN Board of Director's determination that a specification or policy is supported by consensus, Provider may at the same time request that the arbitrator stay the requirement that it comply with the policy until the arbitration decision is rendered, and that request shall have the effect of staying the requirement until the decision or until the arbitrator has granted an ICANN request for lifting of the stay. In all litigation involving ICANN concerning this Agreement (whether in a case where arbitration has not been elected or to enforce an arbitration award), jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles, California, USA; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction. For the purpose of aiding the arbitration or preserving the rights of the parties during the pendency of an arbitration, the parties shall have the right to seek temporary or preliminary injunctive relief from the arbitrator or in a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

5.9 **Limitations on Monetary Remedies for Violations of this Agreement.** ICANN's aggregate monetary liability for violations of this Agreement shall not exceed an amount equal to the Accreditation fees paid by Provider to ICANN under Subsection 3.6 of this Agreement during the preceding twelve-month period. Provider's monetary liability to ICANN for violations of this Agreement shall be limited to Accreditation fees owing to ICANN under this Agreement and, except in the case of a good faith disagreement concerning the interpretation of this agreement, reasonable payment to ICANN for the reasonable and direct costs including attorneys' fees, staff time, and other related expenses associated with

Comment [CT65]: Lindsay Hamilton-Reid: Limitations on monetary remedies should be mutual.

legitimate efforts to enforce Provider's compliance with this Agreement and costs incurred by ICANN to respond to or mitigate the negative consequences of such behavior for Customers and the Internet community. In the event of repeated willful material breaches of the Agreement, Provider shall be liable for sanctions of up to five (5) times ICANN's enforcement costs, but otherwise in no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages for any violation of this Agreement.

6. AMENDMENT AND WAIVER.

6.1 If the ICANN Board of Directors determines that an amendment to this Agreement (including to the Specifications referred to herein, unless such Specifications expressly do not permit amendment thereto) and all other provider agreements between ICANN and the Service Providers (the "Service Provider Agreements") is desirable (each, a "Special Amendment"), ICANN may adopt a Special Amendment pursuant to the requirements of and process set forth in this Section 6; provided that a Special Amendment may not be a Restricted Amendment.

6.2 Prior to submitting a Special Amendment for Provider Approval, ICANN shall first consult in good faith with the Working Group regarding the form and substance of such Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such Special Amendment on its website for no less than thirty (30) calendar days (the "Posting Period") and providing notice of such proposed amendment to the Service Providers in accordance with Section ~~7.67.7~~. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Service Providers).

6.3 If, within one hundred eighty (180) calendar days following the expiration of the Posting Period (the "Approval Period"), the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment, but must address the subject matter of the Special Amendment posted for public comment, as modified to reflect or address input from the Working Group and public comments), ICANN shall provide notice of, and submit, such Special Amendment for approval or disapproval by the Service Providers. If, during the sixty (60) calendar day period following the date ICANN provides such notice to the Service Providers, such Special Amendment receives Provider Approval, such Special Amendment shall be deemed approved (an "Approved Amendment") by the Applicable Registrars, and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Approved Amendment to Provider (the "Amendment Effective Date"). In the event that a Special Amendment does not receive Provider Approval, the Special Amendment shall be deemed not approved by the Service Providers (a "Rejected Amendment"). A Rejected Amendment will

Comment [CT66]: Lindsay Hamilton-Reid: this is ridiculously long and needs to be redrafted. I am still concerned about the mention of a working group. I fail to see the need for special or restricted amendments.

have no effect on the terms and conditions of this Agreement, except as set forth below.

6.4 If the ICANN Board of Directors reasonably determines that a Rejected Amendment falls within the subject matter categories set forth in Section 1.2 of the Consensus Policies and Temporary Policies Specification, the ICANN Board of Directors may adopt a resolution (the date such resolution is adopted is referred to herein as the "Resolution Adoption Date") requesting an Issue Report (as such term is defined in ICANN's Bylaws) by the GNSO regarding the substance of such Rejected Amendment. The policy development process undertaken by the GNSO pursuant to such requested Issue Report is referred to herein as a "PDP." If such PDP results in a Final Report supported by a GNSO Supermajority (as defined in ICANN's Bylaws) that either (i) recommends adoption of the Rejected Amendment as Consensus Policy or (ii) recommends against adoption of the Rejected Amendment as Consensus Policy, and, in the case of (i) above, the ICANN Board of Directors adopts such Consensus Policy, Provider shall comply with its obligations pursuant to Section 4 of this Agreement. In either case, ICANN will abandon the Rejected Amendment and it will have no effect on the terms and conditions of this Agreement. Notwithstanding the foregoing provisions of this Section 6.4, the ICANN Board of Directors shall not be required to initiate a PDP with respect to a Rejected Amendment if, at any time in the twelve (12) month period preceding the submission of such Rejected Amendment for Provider Approval pursuant to Section 6.3, the subject matter of such Rejected Amendment was the subject of a concluded or otherwise abandoned or terminated PDP that did not result in a GNSO Supermajority recommendation.

6.5 If (a) a Rejected Amendment does not fall within the subject matter categories set forth in Section 1.2 of the Consensus Policies and Temporary Policies Specification, (b) the subject matter of a Rejected Amendment was, at any time in the twelve (12) month period preceding the submission of such Rejected Amendment for Provider Approval pursuant to Section 6.3, the subject of a concluded or otherwise abandoned or terminated PDP that did not result in a GNSO Supermajority recommendation, or (c) a PDP does not result in a Final Report supported by a GNSO Supermajority that either (i) recommended adoption of the Rejected Amendment as Consensus Policy or (ii) recommended against adoption of the Rejected Amendment as Consensus Policy (or such PDP has otherwise been abandoned or terminated for any reason), then, in any such case, such Rejected Amendment may still be adopted and become effective in the manner described below. In order for the Rejected Amendment to be adopted, the following requirements must be satisfied:

6.5.1 the subject matter of the Rejected Amendment must be within the scope of ICANN's mission and consistent with a balanced application of its core values (as described in ICANN's Bylaws);

6.5.2 the Rejected Amendment must be justified by a Substantial and Compelling Reason in the Public Interest, must be likely to promote such interest, taking into account competing public and private interests that are likely to be affected by the Rejected Amendment, and must be narrowly tailored and no broader than reasonably necessary to address such Substantial and Compelling Reason in the Public Interest;

6.5.3 to the extent the Rejected Amendment prohibits or requires conduct or activities, imposes material costs on the Service Providers, or materially reduces public access to domain name services, the Rejected Amendment must be the least restrictive means reasonably available to address the Substantial and Compelling Reason in the Public Interest;

6.5.4 the ICANN Board of Directors must submit the Rejected Amendment, along with a written explanation of the reasoning related to its determination that the Rejected Amendment meets the requirements set out in Sections 6.5.1 through 6.5.3 for public comment for a period of no less than thirty (30) calendar days; and

6.5.5 following such public comment period, the ICANN Board of Directors must (i) engage in consultation (or direct ICANN management to engage in consultation) with the Working Group, subject matter experts, members of the GNSO, relevant advisory committees and other interested stakeholders with respect to such Rejected Amendment for a period of no less than sixty (60) calendar days; and (ii) following such consultation, reapprove the Rejected Amendment (which may be in a form different than submitted for Provider Approval, but must address the subject matter of the Rejected Amendment, as modified to reflect or address input from the Working Group and public comments) by the affirmative vote of at least two-thirds of the members of the ICANN Board of Directors eligible to vote on such matter, taking into account any ICANN policy affecting such eligibility, including ICANN's Conflict of Interest Policy (a "Board Amendment").

Such Board Amendment shall, subject to Section 6.6, be deemed an Approved Amendment, and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Board Amendment to Provider (which effective date shall be deemed the Amendment Effective Date hereunder). Notwithstanding the foregoing, a Board Amendment may not amend the provider fees charged by ICANN hereunder, or amend this Section 6.

6.6 Notwithstanding the provisions of Section 6.5, a Board Amendment shall not be deemed an Approved Amendment if, during the thirty (30) calendar day period following the approval by the ICANN Board of Directors of the Board Amendment, the Working Group, on the behalf of the Service Providers, submits to the ICANN

Board of Directors an alternative to the Board Amendment (an “Alternative Amendment”) that meets the following requirements:

6.6.1 sets forth the precise text proposed by the Working Group to amend this Agreement in lieu of the Board Amendment;

6.6.2 addresses the Substantial and Compelling Reason in the Public Interest identified by the ICANN Board of Directors as the justification for the Board Amendment; and

6.6.3 compared to the Board Amendment is: (a) more narrowly tailored to address such Substantial and Compelling Reason in the Public Interest, and (b) to the extent the Alternative Amendment prohibits or requires conduct or activities, imposes material costs on Affected Registrars, or materially reduces access to domain name services, is a less restrictive means to address the Substantial and Compelling Reason in the Public Interest.

Any proposed amendment that does not meet the requirements of Sections 6.6.1 through 6.6.3 in the immediately preceding sentence shall not be considered an Alternative Amendment hereunder and therefore shall not supersede or delay the effectiveness of the Board Amendment. If, following the submission of the Alternative Amendment to the ICANN Board of Directors, the Alternative Amendment receives Provider Approval, the Alternative Amendment shall supersede the Board Amendment and shall be deemed an Approved Amendment hereunder (and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Alternative Amendment to Provider, which effective date shall be deemed the Amendment Effective Date hereunder), unless, within a period of sixty (60) calendar days following the date that the Working Group notifies the ICANN Board of Directors of Provider Approval of such Alternative Amendment (during which time ICANN shall engage with the Working Group with respect to the Alternative Amendment), the ICANN Board of Directors by the affirmative vote of at least two-thirds of the members of the ICANN Board of Directors eligible to vote on such matter, taking into account any ICANN policy affecting such eligibility, including ICANN’s Conflict of Interest Policy, rejects the Alternative Amendment. If (A) the Alternative Amendment does not receive Provider Approval within thirty (30) days of submission of such Alternative Amendment to the Service Provider (and the Working Group shall notify ICANN of the date of such submission), or (B) the ICANN Board of Directors rejects the Alternative Amendment by such two-thirds vote, the Board Amendment (and not the Alternative Amendment) shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice to Provider (which effective date shall be deemed the Amendment Effective Date hereunder). If the ICANN Board of Directors rejects an Alternative Amendment, the ICANN Board of Directors shall publish a written rationale setting forth its analysis of the criteria set forth in Sections 6.6.1 through 6.6.3. The ability

of the ICANN Board of Directors to reject an Alternative Amendment hereunder does not relieve the ICANN Board of Directors of its obligation to ensure that any Board Amendment meets the criteria set forth in Section 6.5.1 through 6.5.5.

6.7 In the event that Provider believes an Approved Amendment does not meet the substantive requirements set out in this Section 6 or has been adopted in contravention of any of the procedural provisions of this Section 6, Provider may challenge the adoption of such Special Amendment pursuant to the dispute resolution provisions set forth in Section 5.8, except that such arbitration shall be conducted by a three-person arbitration panel. Any such challenge must be brought within sixty (60) calendar days following the date ICANN provided notice to Provider of the Approved Amendment, and ICANN may consolidate all challenges brought by providers (including Provider) into a single proceeding. The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process.

6.8 Provider may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Provider hereunder, an "Exemption Request") during the thirty (30) calendar day period following the date ICANN provided notice to Provider of such Approved Amendment.

6.8.1 Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by Provider.

6.8.2 An Exemption Request may only be granted upon a clear and convincing showing by Provider that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Provider. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to Customers or result in the denial of a direct benefit to Customers.

6.8.3 Within ninety (90) calendar days of ICANN's receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement.

6.8.4 If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement; provided, that any conditions, alternatives or variations of the Approved Amendment required by ICANN shall be effective and, to the extent applicable, will amend this Agreement as

of the Amendment Effective Date. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Provider may, within thirty (30) calendar days following receipt of ICANN's determination, appeal ICANN's decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Section 5.8.

6.8.5 The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For the avoidance of doubt, only Exemption Requests submitted by Provider that are approved by ICANN pursuant to this Article 6 or through an arbitration decision pursuant to Section 5.8 shall exempt Provider from any Approved Amendment, and no Exemption Request granted to any other Service Provider (whether by ICANN or through arbitration), shall have any effect under this Agreement or exempt Provider from any Approved Amendment.

6.9 Except as set forth in Section 4, Subsection 5.3, this Section 6, Section 7.4 and as otherwise set forth in this Agreement and the Specifications hereto, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 6 or Section 7.4 shall restrict ICANN and Provider from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 6 or Section 7.4 shall be deemed to limit Registrar's obligation to comply with Section 4.

6.10 Notwithstanding anything in this Section 6 to the contrary, (a) if Provider provides evidence to ICANN's reasonable satisfaction that the Approved Amendment would materially increase the cost of providing the Services, then ICANN will allow up to one-hundred eighty (180) calendar days for the Approved Amendment to become effective with respect to Provider, and (b) no Approved Amendment adopted pursuant to Section 6 shall become effective with respect to Provider if Provider provides ICANN with an irrevocable notice of termination pursuant to Section 5.4.

7. MISCELLANEOUS PROVISIONS.

7.1 Specific Performance. While this Agreement is in effect, either party may seek specific performance of any provision of this Agreement in the manner

provided in Section 5.8, provided the party seeking such performance is not then in material breach of its obligations under this Agreement.

7.2 **Handling by ICANN of Provider-Supplied Data.** Before receiving any Personal Data from Provider, ICANN shall specify to Provider in writing the purposes for and conditions under which ICANN intends to use the Personal Data. ICANN may from time to time provide Provider with a revised specification of such purposes and conditions, which specification shall become effective no sooner than thirty (30) days after it is provided to Provider. ICANN shall not use Personal Data provided by Provider for a purpose or under conditions inconsistent with the specification in effect when the Personal Data was provided. ICANN shall take reasonable steps to avoid uses of the Personal Data by third parties inconsistent with the specification.

Comment [CT67]: Lindsay Hamilton-Reid: in view of GDPR, it is not clear if we will be giving ICANN any data.

Comment [CT68]: Theo Geurts: These conditions/purpose should be known prior to collection.

7.3 **Assignment; Change of Ownership or Management.**

7.3.1 Except as set forth in this Section 7.3.1, either party may assign or transfer this Agreement only with the prior written consent of the other party, which shall not be unreasonably withheld. If ICANN fails to expressly provide or withhold its consent to any requested assignment (an "Assignment Request") of this Agreement by Provider within thirty (30) calendar days of ICANN's receipt of notice of such Assignment Request (or, if ICANN has requested additional information from Provider in connection with its review of such request, sixty (60) calendar days of the receipt of all requested written information regarding such request) from Provider, ICANN shall be deemed to have consented to such requested assignment. Notwithstanding the foregoing, (i) ICANN may assign this Agreement without the consent of Provider upon approval of the ICANN Board of Directors in conjunction with a reorganization, reconstitution or re-incorporation of ICANN upon such assignee's express assumption of the terms and conditions of this Agreement, (ii) Provider may assign this Agreement without the consent of ICANN to a wholly-owned subsidiary of Provider upon such subsidiary's express assumption of the terms and conditions of this Agreement, and (iii) ICANN shall be deemed to have consented to an Assignment Request in which the assignee associated with such Assignment Request is a party to a Provider Accreditation Agreement with ICANN on the terms set forth in this Agreement (provided that such assignee is then in compliance with the terms and conditions of such Registrar Accreditation Agreement in all material respects), unless ICANN provides to Registrar a written objection to such Assignment Request within ten (10) calendar days of ICANN's receipt of notice of such Assignment Request pursuant to this Section 7.3.1.

7.3.2 To the extent that an entity acquires a Controlling interest in Provider's stock, assets or business, Provider shall provide ICANN notice within seven (7) days of such an acquisition. Such notification shall include a statement that affirms that Provider meets the Specification or Policy on Accreditation criteria then in effect, and is in compliance with its obligations under this

Agreement. Within thirty (30) days of such notification, ICANN may request additional information from Provider establishing compliance with this Agreement, in which case Provider must supply the requested information within fifteen (15) days. Any disputes concerning Provider's continued Accreditation shall be resolved pursuant to Section 5.8.

7.4 Negotiation Process.

7.4.1 If either the Chief Executive Officer of ICANN ("CEO") or the Chairperson of the ~~Working~~ Provider Stakeholder Group ~~or~~, if it then exists, or the Working Group, if the Provider Stakeholder Group ~~(does not then exist~~ ("Chair") desires to discuss any revision(s) to this Agreement, the CEO or Chair, as applicable, shall provide written notice to the other person, which shall set forth in reasonable detail the proposed revisions to this Agreement (a "Negotiation Notice"). Notwithstanding the foregoing, neither the CEO nor the Chair may (i) propose revisions to this Agreement that modify any Consensus Policy then existing, (ii) propose revisions to this Agreement pursuant to this Section 7.4 on or before ~~[DATE TO BE INSERTED]~~ six months following the first execution of this Agreement by a Service Provider, or (iii) propose revisions or submit a Negotiation Notice more than once during any twelve month period beginning on ~~[DATE TO BE INSERTED]~~ the 24-month anniversary of the first execution of this Agreement by a Service Provider.

7.4.2 Following receipt of the Negotiation Notice by either the CEO or the Chair, ICANN and the Working Group shall consult in good faith negotiations regarding the form and substance of the proposed revisions to this Agreement, which shall be in the form of a proposed amendment to this Agreement (the "Proposed Revisions"), for a period of at least ninety (90) calendar days (unless a resolution is earlier reached) and attempt to reach a mutually acceptable agreement relating to the Proposed Revisions (the "Discussion Period").

7.4.3 If, following the conclusion of the Discussion Period, an agreement is reached on the Proposed Revisions, ICANN shall post the mutually agreed Proposed Revisions on its website for public comment for no less than thirty (30) calendar days (the "Posting Period") and provide notice of such revisions to all Service Providers in accordance with Section ~~7.6~~ 7.7. ICANN and the Working Group will consider the public comments submitted on the Proposed Revisions during the Posting Period (including comments submitted by the Service Providers). Following the conclusion of the Posting Period, the Proposed Revisions shall be submitted for Provider Approval and approval by the ICANN Board of Directors. If such approvals are obtained, the Proposed Revisions shall be deemed an Approved Amendment by the Service Providers and ICANN, and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Provider.

Comment [CT69]: Lindsay Hamilton-Reid: It still mentions the working group. This should be under amendments and I don't know what the difference is between them?

Eric Rokobauer: "Provider Stakeholder Group" needs to be defined here, but also recommend revising this paragraph to be more clear. Maybe we have this in brackets with a footnote that this is TBD until a stakeholder group is first created?

7.4.4 If, following the conclusion of the Discussion Period, an agreement is not reached between ICANN and the Working Group on the Proposed Revisions, either the CEO or the Chair may provide the other person written notice (the "Mediation Notice") requiring ICANN and the Working Group to attempt to resolve the disagreements related to the Proposed Revisions through impartial, facilitative (non-evaluative) mediation in accordance with the terms and conditions set forth below. In the event that a Mediation Notice is provided, ICANN and the Working Group shall, within fifteen (15) calendar days thereof, simultaneously post the text of their desired version of the Proposed Revisions and a position paper with respect thereto on ICANN's website.

7.4.4.1 The mediation shall be conducted by a single mediator selected by ICANN and the Working Group. If ICANN and the Working Group cannot agree on a mediator within fifteen (15) calendar days following receipt by the CEO or Chair, as applicable, of the Mediation Notice, ICANN and the Working Group will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity's selection, designate a mediator, who is a licensed attorney with general knowledge of contract law and, to the extent necessary to mediate the particular dispute, general knowledge of the domain name system. Any mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, or security holder of ICANN or an Service Provider. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Section 7.4.4.1.

7.4.4.2 The mediator shall conduct the mediation in accordance with the rules and procedures for facilitative mediation that he or she determines following consultation with ICANN and the Working Group. ICANN and the Working Group shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.

7.4.4.3 ICANN and the Working Group shall bear their own costs in the mediation. ICANN and the Working Group shall share equally the fees and expenses of the mediator.

7.4.4.4 If an agreement is reached during the mediation, ICANN shall post the mutually agreed Proposed Revisions on its website for the Posting Period and provide notice to all Service Providers in accordance with Section 7.6.7.7. ICANN and the Working Group will consider the public comments submitted on the agreed Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registrars). Following the conclusion of the Posting

Comment [CT70]: Theo Geurts: The working group members shall bear the costs for the mediation? How is this envisioned?

Period, the Proposed Revisions shall be submitted for Provider Approval and approval by the ICANN Board of Directors. If such approvals are obtained, the Proposed Revisions shall be deemed an Approved Amendment by the Service Providers and ICANN, and shall be effective and deemed an amendment to this Agreement upon sixty (60) days notice from ICANN to Registrar.

7.4.4.5 If ICANN and the Working Group have not resolved the dispute for any reason by the date that is ninety (90) calendar days following receipt by the CEO or Chair, as applicable, of the Mediation Notice, the mediation shall automatically terminate (unless extended by agreement of the parties). The mediator shall deliver to ICANN and the Working Group a definition of the issues that could be considered in future arbitration, if invoked. Those issues are subject to the limitations set forth in Section 7.4.5.2 below.

7.4.5 If, following mediation, ICANN and the Working Group have not reached an agreement on the Proposed Revisions, either the CEO or the Chair may provide the other person written notice (an "Arbitration Notice") requiring ICANN and the Service Providers to resolve the dispute through binding arbitration in accordance with the arbitration provisions of Section 5.8, subject to the requirements and limitations of this Section 7.4.5.

7.4.5.1 If an Arbitration Notice is sent, the mediator's definition of issues, along with the Proposed Revisions (be those from ICANN, Working Group or both) shall be posted for public comment on ICANN's website for a period of no less than thirty (30) calendar days. ICANN and the Working Group will consider the public comments submitted on the Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registrars), and information regarding such comments and consideration shall be provided to the a three (3) person arbitrator panel. Each party may modify its Proposed Revisions before and after the Posting Period. The arbitration proceeding may not commence prior to the closing of such public comment period, and ICANN may consolidate all challenges brought by providers (including Providers) into a single proceeding. Except as set forth in this Section 7.4.5.1, the arbitration shall be conducted pursuant to Section 5.8.

7.4.5.2 No dispute regarding the Proposed Revisions may be submitted for arbitration to the extent the subject matter of the Proposed Revisions (i) relates to Consensus Policy, (ii) falls within the subject matter categories set forth in Section 1.2 of the Consensus Policies and Temporary Policies Specification, or (iii) seeks to amend any of the following provisions or Specifications of this Agreement: Sections 2, ~~1.3.1~~, 3.2, 3.3, 3.5, 3.6, ~~3.22~~3.8, 3.9, 3.10, 3.11, 3.12, 3.16,

Comment [CT71]: Sara Bockey: Not really OK with this section and the IRT needs to discuss this. Specifically, the inclusion of 3.5, 3.17 and then Data Retentions, Customer Data Accuracy Program and/or LE Framework. This is language from the 2013 RAA and IRT needs to review these sections explicitly.

[3.17.3.21](#), 4, 5.1, 5.2, 5.3 and 6; and the Consensus Policies and Temporary Policies Specification, [Registration Data Directory Service Labeling Specification](#), Data Retention Specification ~~or~~, the Customer Data Accuracy Program Specification, [the Intellectual Property Disclosure Framework Specification or the Law Enforcement Authority Disclosure Framework](#).

7.4.5.3 The mediator will brief the arbitrator panel regarding ICANN and the Working Group's respective proposals relating to the Proposed Revisions.

7.4.5.4 No amendment to this Agreement relating to the Proposed Revisions may be submitted for arbitration by either the Working Group or ICANN, unless, in the case of the Working Group, the proposed amendment has received Provider Approval and, in the case of ICANN, the proposed amendment has been approved by the ICANN Board of Directors.

7.4.5.5 In order for the arbitrator panel to approve either ICANN or the Working Group's proposed amendment relating to the Proposed Revisions, the arbitrator panel must conclude that such proposed amendment is consistent with a balanced application of ICANN's core values (as described in ICANN's Bylaws) and reasonable in light of the balancing of the costs and benefits to the business interests of the Applicable Registrars and ICANN (as applicable), and the public benefit sought to be achieved by the Proposed Revisions as set forth in such amendment. If the arbitrator panel concludes that either ICANN or the Working Group's proposed amendment relating to the Proposed Revisions meets the foregoing standard, such amendment shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Provider and deemed an Approved Amendment hereunder.

7.4.6 With respect to an Approved Amendment relating to an amendment proposed by ICANN, Provider may apply in writing to ICANN for an exemption from such amendment pursuant to the provisions of Section 6.8.

7.4.7 Notwithstanding anything in this Section 7.4 to the contrary, (a) if Provider provides evidence to ICANN's reasonable satisfaction that the Approved Amendment would materially increase the cost of providing the Services, then ICANN will allow up to one-hundred eighty (180) calendar days for the Approved Amendment to become effective with respect to Provider, and (b) no Approved Amendment adopted pursuant to this Section 7.4 shall become effective with respect to Provider if Provider provides ICANN with an irrevocable notice of termination pursuant to Section 5.4.

7.5 Synchronization Amendment.

7.5.1 If (a) a provision in this Agreement (including any Specification to this Agreement) that appears in analogous form (but not necessarily in exact form) in the Registrar Accreditation Agreement is revised or (b) a new provision (including any Specification) is added to or included in the Registrar Accreditation Agreement that ICANN determines should be added to or included in this Agreement, in each case pursuant to Section 6 or Section 7.4 of the Registrar Accreditation Agreement that is based on the 2013 Registrar Accreditation Agreement, or any successor to such provision in such agreement or any successor Registrar Accreditation Agreement, then the analogous provision in this Agreement or such new provision shall be subject to the amendment process set forth in this Section 7.5 so as to amend this Agreement to conform to such revised or new provision (as applicable), except to the extent necessary to refer to Provider rather than Registrar, the Services rather than Registrar services and such other appropriate modifications as determined by ICANN, as applicable (an amendment pursuant to this Section 7.5.1, a "Synchronization Amendment").

7.5.2 Notwithstanding Section 7.5.1, the ICANN Board of Directors shall not approve a Synchronization Amendment pursuant to Section 7.5.3 unless and until:

7.5.2.1 ICANN has notified the Working Group that an amendment to the Registrar Accreditation Agreement that ICANN believes could necessitate a Synchronization Amendment has been posted for public comment on its website;

7.5.2.2 Following the approval of an amendment to the Registrar Accreditation Agreement pursuant to its terms, ICANN has posted a proposed Synchronization Amendment on its website for public comment for no less than thirty (30) calendar days, and provided notice of such posting to the Working Group prior to or substantially concurrent with such posting; and

7.5.2.3 ICANN has discussed in good faith with the Working Group the public comments submitted on the proposed Synchronization Amendment.

7.5.3 Following the conclusion of the steps set forth in Section 7.5.2, at ICANN's discretion, the proposed Synchronization Amendment may be submitted for approval by the ICANN Board of Directors. If the ICANN Board of Directors approves the proposed Synchronization Amendment, the Synchronization Amendment shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Provider.

Comment [CT72]: Lindsay Hamilton-Reid: I don't know why the RAA is even being mentioned. If ICANN choose to include updated specifications or further specifications, this again should be dealt with in amendments to the agreement. After all, not all privacy providers shall be registrars and therefore are not a party to the RAA.

7.57.6 No Third-Party Beneficiaries. This Agreement shall not be construed to create any obligation by either ICANN or Provider to any non-party to this Agreement, including any Customer.

Comment [CT73]: James Bladel: I understand we need to include the bit about 3rd party beneficiaries, but is this really true? The agreement has many provisions outlining our obligations to 3rd parties (IP complaints, law enforcement, etc.)

7.67.7 Notices and Designations. Except as provided in Section 7.4 and Section 6, all notices to be given under this Agreement shall be given in writing at the address of the appropriate party as set forth below, unless that party has given a notice of change of address in writing. Each party shall notify the other party within thirty (30) days of any change to its contact information. Any written notice required by this Agreement shall be deemed to have been properly given when delivered in person, when sent by electronic facsimile with receipt of confirmation of delivery, when scheduled for delivery by internationally recognized courier service, or when delivered by electronic means followed by an affirmative confirmation of receipt by the recipient's facsimile machine or email server. For any notice of a new Specification or Policy established in accordance with this Agreement, Provider shall be afforded a reasonable period of time after notice of the establishment of such Specification or Policy is e-mailed to Provider and posted on the ICANN website in which to comply with that Specification or Policy, taking into account any urgency involved. Notices and designations by ICANN under this Agreement shall be effective when written notice of them is deemed given to Provider.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, California 90094-2536 USA
Attention:
Telephone: 1-310-301-5800
Facsimile: 1-310-823-8649

If to Provider, addressed to:

[Provider Name]
[Courier Address]
[Mailing Address]
Attention: [contact person]
Provider Website URL: [URL]
Telephone: [telephone number]
Facsimile: [fax number]
e-mail: [e-mail address]

7.77.8 Dates and Times. All dates and times relevant to this Agreement or its performance shall be computed based on the date and time observed in Los Angeles, California, USA.

7.87.9 Language. All notices, designations, and Specifications and/or Policies made under this Agreement shall be in the English language.

[7.9](#)[7.10](#) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[7.10](#)[7.11](#) Entire Agreement. Except to the extent (a) expressly provided in a written agreement executed by both parties concurrently herewith or (b) of written assurances provided by Registrar to ICANN in connection with its Accreditation, this Agreement (including the Specifications, which form part of it) constitutes the entire agreement of the parties pertaining to the Accreditation of Provider and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

[7.11](#)[7.12](#) Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement; (b) the balance of this Agreement shall be interpreted as if such provision were so excluded; and (c) the balance of this Agreement shall be enforceable in accordance with its terms.

[7.12](#)[7.13](#) Interpretation. In this Agreement, except to the extent otherwise provided or that the context otherwise requires: (a) references made in this Agreement to an Article, Section, Exhibit or Schedule are references to an Article, Section, Exhibit, or Schedule of this Agreement; (b) all Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein; (c) the headings in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement; (d) whenever the words “include,” “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation”; (e) the words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement; (f) the singular number will include the plural, and vice versa; (g) references to a Person are also to its successors and permitted assigns; and (h) the use of “or” is not intended to be exclusive unless expressly indicated otherwise.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives.

ICANN

[Provider]

By: _____

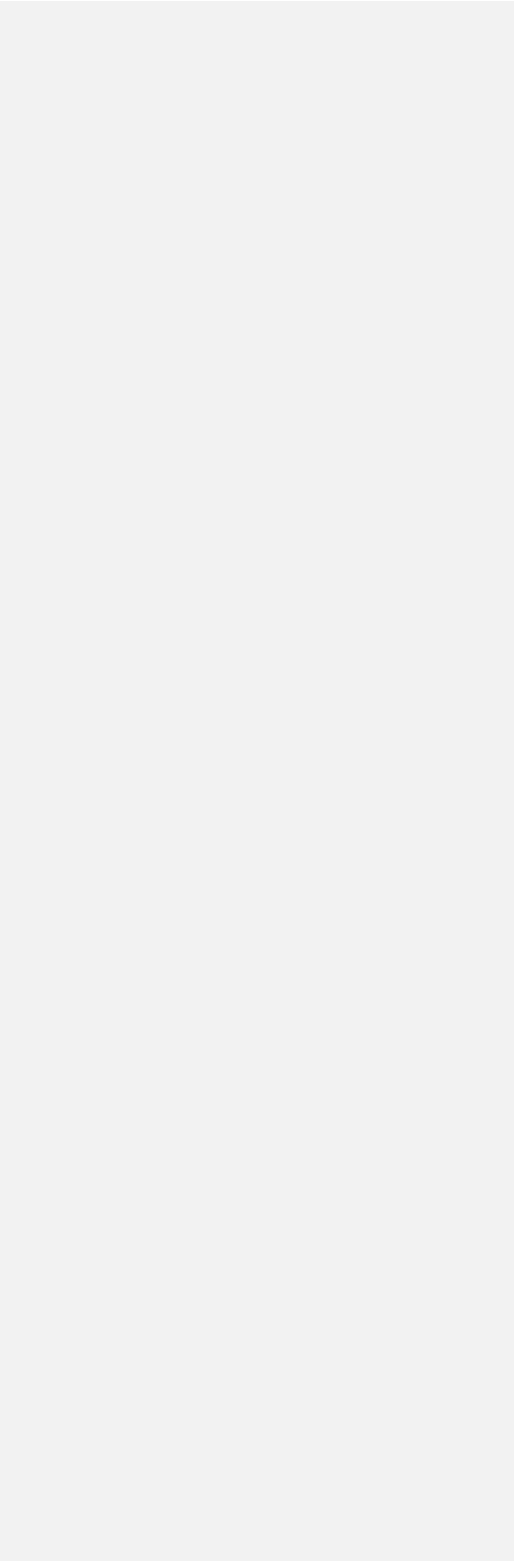
By: _____

Name: _____

Name: _____

Title: _____

Title: _____



SPECIFICATION 1: CUSTOMER DATA ACCURACY PROGRAM SPECIFICATION

Provider shall implement and comply with the requirements set forth in this Specification, as well as any commercially practical updates to this Specification that are developed by ICANN and the Working Group during the Term of this Agreement. ~~If a provision in this Specification that appears in analogous form in the WHOIS Accuracy Program of the Registrar Accreditation Agreement is revised pursuant to Section 6 of the 2013 Registrar Accreditation Agreement, or any successor to such provision in any successor Registrar Accreditation Agreement, then this Specification shall be deemed automatically and without any further action from ICANN or Provider to be amended to conform to such revision, except to the extent necessary to refer to Provider rather than Registrar and such other non-substantive modifications as determined by ICANN.~~

1. Except as provided for in Section 3 below, within fifteen (15) days of (i) the registration of a Registered Name for which Provider is providing the Services, (ii) the transfer of the sponsorship of a Registered Name for which Provider is providing the Services, or (iii) any change in the Customer information associated with a Registered Name for which Provider is providing the Services, Provider will, with respect to the Customer account holder contact information related to such Registered Name:
 - a. Validate the presence of data for all fields required under Subsection 3.2.1 of the Agreement in a proper format for the applicable country or territory.
 - b. Validate that all email addresses are in the proper format according to RFC 5322 (or its successors).
 - c. Validate that telephone numbers are in the proper format according to the ITU-T E.164 notation for international telephone numbers (or its equivalents or successors).
 - d. Validate that postal addresses are in a proper format for the applicable country or territory as defined in UPU Postal addressing format templates, the S42 address templates (as they may be updated) or other standard formats.
 - e. Validate that all postal address fields are consistent across fields (for example: street exists in city, city exists in state/province, city matches postal code) where such information is technically and commercially feasible for the applicable country or territory.
 - f. Verify:
 - i. the email address of the Customer by sending an email requiring an affirmative response through a tool-based authentication method such as providing a unique code that must be returned in a manner designated by Provider; or
 - ii. the telephone number of the Customer by either (A) calling or sending an

Comment [CT74]: Sara Bockey: We need to revisit PPAA, Spec 2: Customer Data Accuracy. This entire Spec needs to be revisited and made clearer since the entire spec is dependent on whether or not the Service Provider is affiliated or non-affiliated. It's very disjointed, it starts out Section 1, this is what you need to do, then in Section 3, it says you don't need to do this if you are an affiliated Provider, and then in Section 4 it goes back to this is what you need to do and forgets about section 3. It seems to me that this entire section is dependent on if there is an Affiliated Registrar.

So at a minimum, it needs to state at the very beginning who this is applicable to. Or, if we go with 2 PPAA's, it would apply in the Non-Aff PPAA, but the language would still need to be cleaned up.

Deleted: SPECIFICATION 1: DATA ESCROW SPECIFICATION

... [2]

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Comment [CT75]: Eric Rokobauer: Service Providers do not control transfers so this should be removed.

SMS to the Customer's telephone number providing a unique code that must be returned in a manner designated by Provider, or (B) calling the Customer's telephone number and requiring the Customer to provide a unique code that was sent to the Customer via web, email or postal mail.

In either case, if Provider does not receive an affirmative response from the Customer, Provider shall either verify the applicable contact information manually or promptly inform the Registrar sponsoring the applicable Registered Name and request that such Registrar suspend the registration, until such time as Provider has verified the applicable contact information.

2. Except as provided in Section 3 below, within fifteen (15) calendar days after receiving any changes to the Customer's account contact information related to any Registered Name for which Provider is providing the Services (whether or not Provider was previously required to perform the validation and verification requirements set forth in this Specification in respect of such Registered Name), Provider will validate and, to the extent required by Section 1, verify the changed fields in the manner specified in Section 1 above. If Provider does not receive an affirmative response from the Customer providing the required verification, Provider shall either verify the applicable contact information manually or promptly inform the Registrar sponsoring the applicable Register Name and request that such Registrar suspend the registration, until such time as Provider has verified the applicable contact information.
3. Except as set forth in paragraph 4 below, Provider is not required to perform the above validation and verification procedures in Section 1(a) through 1(f) above, if Provider or [an Affiliated Registrar](#) ~~that is Affiliated with Provider~~ has already successfully completed the validation and verification procedures on the identical contact information and neither Provider or such Registrar is in possession of facts or knowledge of circumstances that suggest that the information is no longer valid.
4. If (i) Provider has any information suggesting that the contact information specified in Section 1(a) through 1(f) above is incorrect (such as Provider receiving a bounced email notification or non-delivery notification message in connection with compliance with ICANN's WHOIS Data Reminder Policy or otherwise) or (ii) a Persistent Delivery Failure has occurred, in each case, for any Registered Name for which Provider is providing the Services (whether or not Provider was previously required to perform the validation and verification requirements set forth in this Specification in respect of such Registered Name), Provider must verify or re-verify, as applicable, the email address(es) as described in Section 1.f (for example by requiring an affirmative response to a WHOIS Data Reminder Policy notice). If, within fifteen (15) calendar days after receiving any such information or failure, Provider does not receive an affirmative response from the Customer providing the required verification, Provider shall either verify the applicable contact information manually or promptly inform the Registrar sponsoring the applicable Register Name and request that such Registrar suspend the registration, until such time as Provider has verified the applicable contact information.

5. Upon the occurrence of a Customer's willful provision of inaccurate or unreliable WHOIS or customer contact information, its willful failure promptly to update information provided to Provider, or its failure to respond ~~for over fifteen (15) calendar days~~ to inquiries by Provider within the time frame required by Provider's terms of service (which time frame shall not exceed fifteen (15) days) concerning the accuracy of contact details associated with the Registered Name for which Provider is ~~providing the Services, Provider shall promptly notify the Registrar sponsoring the applicable Register Name and the Registered Name Holder for the account or benefit of such Customer or provides the Services shall constitute a material breach of the terms of service between such Customer and Provider, following which Provider shall (i) promptly either terminate or suspend the Services for the Registered Name, (ii) notify the sponsoring Registrar of the termination or suspension of the Services, and (iii)~~ request that such Registrar either terminate or suspend ~~the~~ such Registered Name or place such registration on clientHold and clientTransferProhibited, until such time as Provider has validated the information provided by the Customer.
6. Following Provider's verification or validation (as applicable) of the applicable contact information following the applicable Registered Name being suspended, placed on clientHold or placed on clientTransferProhibited ~~by Registrar~~ pursuant to Sections 3 ~~though~~through 5 of this Specification, Provider shall promptly notify the Registrar sponsoring the applicable Register Name of such verification or validation (as applicable) and request that such Registered Name be released from suspension, clientHold or clientTransferProhibited by Registrar (as applicable).
- ~~7. The terms and conditions of this Specification shall be reviewed by ICANN in consultation with the Working Group on or about the first anniversary of the date that the form of this Agreement is first executed by a Provider.~~
- ~~8. Nothing within this Specification shall be deemed to require Provider to perform verification or validation of any customer~~Customer account holder information where Provider is not providing any Services to the Customer.

Comment [CT76]: Eric Rokobauer: Requests to Registrars to terminate or suspend (at least terminate) should be removed. Registrars not bound to this.

Comment [CT77]: Steve Metalitz: in paragraph 6, after "clientTransferProhibited," insert "by Registrar." I think this would also address the point Theo raises in his sticky note.

Sara Bockey: Third party providers are not able to comply with the above requirements ie client hold, transfer prohibited.

Comment [CT78]: Theo Geurts: I think this says, if it is not your customer you do not have validate or verify?

SPECIFICATION 2: REGISTRATION DATA DIRECTORY SERVICE LABELING
SPECIFICATION

1. Provider shall maintain the following contact details and other data for each Customer associated with a Registered Name for which Provider is providing the Services.

Domain Name Data:

• Query format: [whois EXAMPLE.TLD](#)

• Response format:

[Domain Name: EXAMPLE.TLD](#)

[Registry Domain ID: D1234567-EXAMPLE](#)

[Registrar WHOIS Server: whois.example-registrar.tld](#)

[Registrar URL: http://www.example-registrar.tld](#)

[Updated Date: 2009-05-29T20:13:00Z](#)

[Creation Date: 2000-10-08T00:45:00Z](#)

[Registry Expiry Date: 2010-10-08T00:44:59Z](#)

[Registrar Registration Expiration Date: 2010-10-08T00:44:59Z](#)

[Registrar: EXAMPLE REGISTRAR LLC](#)

[Registrar IANA ID: 5555555](#)

[Registrar Abuse Contact Email: email@registrar.tld](#)

[Registrar Abuse Contact Phone: +1.1235551234](#)

[Reseller: EXAMPLE RESELLER1](#)

[Domain Status:](#)

[clientDeleteProhibited https://icann.org/epp#clientDeleteProhibited](#)

[Domain Status:](#)

[clientRenewProhibited https://icann.org/epp#clientRenewProhibited](#)

[Domain Status:](#)

[clientTransferProhibited https://icann.org/epp#clientTransferProhibited](#)

[Registry Registrant ID: 5372808-EXAMPLE](#)

Registrant Name: EXAMPLE REGISTRANT

Registrant Organization: EXAMPLE ORGANIZATION

Registrant Street: 123 EXAMPLE STREET

Registrant City: ANYTOWN

Registrant State/Province: AP

Registrant Postal Code: A1A1A116

Registrant Country: AA

Registrant Phone: +1.5555551212

Registrant Phone Ext: 123412347

Registrant Fax: +1.5555551213

Registrant Fax Ext: 4321

Registrant Email: ~~EMAIL@EXAMPLE.TLD~~EMAIL@EXAMPLE.TLD

Registry Admin ID: 5372809-ERLEXAMPLE

Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE

Admin Organization: EXAMPLE REGISTRANT ORGANIZATION

Admin Street: 123 EXAMPLE STREET

Admin City: ANYTOWN

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Comment [CT79]: Steve Metalitz: Some of section 1 may have been carried over a bit too glibly from the corresponding RAA provision. Many of the elements added in the staff's redline (after Domain Name) are the "thin Whois" data elements related to the underlying registration, not to provision of the Services. Would an unaffiliated Provider necessarily know all this information (other than by getting it from the registrar or registry Whois)? Additionally, shouldn't the next group of data elements refer to Customer Name, Customer Organization, etc. rather than Registrant Name, etc.? For a proxy service, all (and for a privacy service, almost all) of this data pertaining to the Registrant is the Provider's contact data. What we want here is the obligation of Provider to collect a full set of Customer data so that (among other things) this data can be conveniently loaded into Whois if the p/p Services are terminated (i.e., if Publication occurs), or can be communicated to a requester under appropriate circumstances.

Eric Rokobauer: "P/P Customer" is defined in RAA along with "beneficial user." Why are we not using that defined term here?

Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: AA
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext: 1234
Admin Email: EMAIL@EXAMPLE.TLDEMAIL@EXAMPLE.TLD
Registry Tech ID: 5372811-~~ERL~~[EXAMPLE](#)
Tech Name: EXAMPLE REGISTRANT TECHNICAL
Tech Organization: EXAMPLE REGISTRANT LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: AA
Tech Phone: +1.1235551234
Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLDEMAIL@EXAMPLE.TLD
[Name Server: NS01.EXAMPLE-REGISTRAR.TLD](#)
[Name Server: NS02.EXAMPLE-REGISTRAR.TLD](#)
[DNSSEC: signedDelegation](#)
[URL of the ICANN Whois Inaccuracy Complaint Form: https://www.icann.org/wicf/](#)
[>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<](#)

- ~~1.12.~~ The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times must conform to the mappings specified in EPP RFCs 5730-5734 (or its successors), and IPv6 addresses format should conform to RFC 5952 (or its successor), so that the display of this information (or values returned in WHOIS responses) can be uniformly processed and understood.
- ~~1.23.~~ Provider shall ensure that Provider's full legal name, ICANN identifier and the URL for the ICANN-managed webpage containing Provider's contact information are displayed in the Registration Data Directory Service records for all registrations utilizing Provider's Services, at a minimum, in the Registrant Organization field, in the following format: Registrant Organization: Provider Name, ICANN ID, ICANN URL ~~{to be designated before contract is finalized}~~[for Provider's contact information \[unique address to be created for and provided to Provider upon accreditation\]](#).
- ~~1.34.~~ If any additional information is required in the Registrant Organization field, this information should appear after the required output noted in Section 1.2 of this Specification.

SPECIFICATION 3: CONSENSUS POLICIES AND TEMPORARY POLICIES
SPECIFICATION

Deleted: 34

1. Consensus Policies.

- 1.1 “Consensus Policies” are those policies established (1) pursuant to the procedure set forth in ICANN’s Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN’s Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2 Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including Service Providers. Consensus Policies shall relate to one or more of the following:
 - 1.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security or stability of the Internet, Registrar Services, Registry Services, the Services or the Domain Name System (“DNS”);
 - 1.2.2 functional and performance specifications for the provision of the Services;
 - 1.2.3 Service Providers policies reasonably necessary to implement Consensus Policies relating to a gTLD registry;
 - 1.2.4 resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, but including where such policies take into account use of the domain names); or
 - 1.2.5 restrictions on cross-ownership of registry operators and Registrars or Resellers and regulations and restrictions with respect to Registrar and registry operations and the use of registry and Registrar data in the event that a registry operator and a Registrar or Reseller are affiliated.
- 1.3 Such categories of issues referred to in Section 1.2 shall include, without limitation:
 - 1.3.1 principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
 - 1.3.2 prohibitions on warehousing of or speculation in domain names by registries or Registrars;
 - 1.3.3 reservation of registered names in a TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i)

Comment [CT80]: Theo Geurts: How does a privacy service endanger the security or stability of the internet?

avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);

1.3.4 maintenance of and access to accurate and up-to-date information concerning Registered Names and name servers;

1.3.5 procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a Registrar, including procedures for allocation of responsibility among continuing Registrars of the Registered Names sponsored in a TLD by a Registrar losing accreditation

1.3.6 principles and procedures for the Disclosure or Publication of Customer information; and

1.3.7 the transfer of registration data upon a change in Registrar sponsoring one or more Registered Names.

Comment [CT81]: Theo Geurts: I think we can delete all sections in 1.3 as they deal with domain name registrations in general rather than providing a privacy service. We could say privacy providers should not practice warehousing, but that is not what it currently says.

1.4 In addition to the other limitations on Consensus Policies, they shall not:

1.4.1 prescribe or limit the price of the Services;

1.4.2 modify the limitations on Temporary Policies (defined below) or Consensus Policies;

1.4.3 modify the provisions in the Privacy & Proxy Service Provider Accreditation Agreements regarding terms or conditions for the renewal, termination or amendment of the Privacy & Proxy Service Provider Accreditation Agreements or fees paid by Provider to ICANN; or

1.4.4 modify ICANN's obligations to not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and to not single out Provider for disparate treatment unless justified by substantial and reasonable cause, and exercise its responsibilities in an open and transparent manner.

2. **Temporary Policies.** Provider shall comply with and implement all specifications or policies established by the ICANN Board of Directors on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Privacy/Proxy, Registrar Services, Registry Services or the DNS or the Internet ("Temporary Policies").

2.1 Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall

immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.

- 2.2 ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
 - 2.3 If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Provider shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Provider shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between the Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict. For the avoidance of doubt, Consensus Policies that meet the requirements of this Specification may supplement or supersede provisions of the agreements between Provider and ICANN, but only to the extent that such Consensus Policies relate to the matters set forth in Section 1.2 and 1.3 of this Specification.

SPECIFICATION 4: LAW ENFORCEMENT AUTHORITY DISCLOSURE FRAMEWORK

SPECIFICATION

[Provider shall implement and comply with the requirements set forth in this Law Enforcement Authority Disclosure Framework Specification.](#)

1. Definition of Terms

- 1.1. The “LEA Requestor”: ~~Law~~A Requester that is a law enforcement, consumer protection, quasi-governmental or other similar ~~authorities~~authority designated from time to time by the national or territorial government of the jurisdiction in which ~~the privacy or proxy service provider~~Provider is established or maintains a physical office.
- 1.2. The “Requested Information”: The data asked for by the LEA Requestor. This must be detailed in the request submission.
- 1.3. The “Priority Level”: The urgency with which the disclosure request should be actioned. Disclosure requests may be categorized as “high priority” or “standard priority.” “High priority” requests are limited to circumstances that pose an imminent threat to life, serious bodily injury, critical infrastructure or child exploitation.

2. Minimum ~~Requirements~~Standards for Disclosure Request Submissions

- 2.1. As a minimum standard for acceptance, disclosure request submissions must contain:
 - 2.1.1. Domain name or URL involved;
 - 2.1.2. Deciding authority (e.g. prosecutor, judge, police authority) behind this request and source of legal authority for request;
 - 2.1.3. Details of Requested Information;
 - 2.1.4. Priority Level, including detail about threat type and justification for Priority Level, and/or suggested deadline for response;
 - 2.1.5. Instructions regarding timeline requirements for Customer notification;
 - 2.1.6. Requestor contact details, including instructions for identity verification;
 - 2.1.7. Any details otherwise required by ~~national~~or internationalapplicable law.

Deleted: 5

Comment [CT82]: Lindsay Hamilton-Reid: 36. All other specifications should be in line with what is already in existence in relation to a request from LEAs and IP rights holders, but specifying it here is not correct – each registrar or reseller will have their own processes for this in complying with applicable laws.

Eric Rokobauer: Is this framework the most up to date with our comments from prior meetings? Based on comments below for this Spec, it seems there are still open-ended questions that were in discussions IRT had had (including with PSWG)? We need to identify how the GDPR will affect this framework when it comes to Disclosure (or Publication) for EU resident registrants and address those issues in the framework.

- 2.1.8. A verification statement (e.g. all provided information is true and correct).
- 2.2. To assist the Provider, further additional information may include:
 - 2.2.1. Evidence of earlier contact (attempts), if any, and if deemed relevant by the Requestor;
 - 2.2.2. Requestor contact details for the Customer;
 - 2.2.3. Reference to applicable ~~national or international law(s)~~, [law or ICANN regulation\(s\)](#);
 - 2.2.4. Details of decision to order disclosure of information.

3. Receipt Process

- 3.1. ~~Pre-Request: Provider will establish and maintain a designated LEA Requestor point of contact for submitting disclosure requests. The Provider shall publish on its website the designated contact (e.g. email address, telephone number, form, or other means for LEA to obtain designated LEA contact information) will be published on Provider's website.~~
- 3.2. Receipt Process:
 - 3.2.1. ~~Within two business days (in Provider's jurisdiction)⁶ of the disclosure request ~~been being~~ submitted by a LEA Requestor, Provider will review the request, and confirm to the LEA Requestor it has been received and contains the relevant information required to meet the minimum standard for acceptance. If the request does not meet the minimum standard for acceptance, Provider will notify the LEA Requestor.~~
 - 3.2.2. Where the LEA Requestor is not known to Provider, Provider will verify the identity of the LEA Requestor.

Comment [CT83]: Peter Roman: This is the same issue as for 3.12.2 in the main bod of the agreement, if the point of contact is not required to be available 24/7, it defeats the purpose of the high priority requests.

Comment [CT84]: Peter Roman: This part of the receipt process combined with 4.1 creates a two-day window before providers have to even address whether a request is high priority, again defeating the purpose of having a high priority request.

4. Provider Response Actions ~~(Two-Tier Prioritization)~~

- 4.1. Prioritization:
 - 4.1.1. Upon completion of the Receipt Process [specified in Section 3 of this Specification](#), Provider will action, in accordance with Sections 4.2 and 4.3 of this Specification, the disclosure request in accordance with

⁶ Note to IRT: IRT to advise about changing this to 24 hours.

the Priority Level. ~~High Priority requests can include an imminent threat to life, serious bodily injury, critical infrastructure or child exploitation.~~⁷

Comment [CT85]: Peter Roman: By waiting to respond until after the Receipt Process is complete, which can take up to two days under 3.2.1, the agreement renders the high priority request provisions moot.

4.1.2. Where a disclosure request has been categorized as High Priority, this must be actioned within 24 hours. The LEA Requestor will detail the threat type and justification for a request with a Priority Level of High Priority.

Comment [CT86]: Peter Roman: Responding to high priority requests within 24 hours is not sufficient. A request that is answered within 24 hours, but 20 hours after the victim is dead, does not respect the importance of the request or the imminence of the danger. High priority requests need to be responded to more or less immediately.

4.1.3. For all other disclosure requests not identified as High Priority, Provider should seek to action these in accordance with the deadline identified in the request. If Provider cannot adhere to ~~this~~^{such} deadline, Provider should notify the LEA Requestor and provide a reasonable timeframe for response.

4.2. Disclosure:

4.2.1. Within the ~~appropriate~~^{applicable} timeframe ~~consistent with the for a request's~~ Priority Level, Provider will disclose to the LEA Requestor, using a ~~secure mechanism~~, the Requested Information it holds ~~against~~^{associated with}⁸ the account.

Comment [CT87]: Theo Geurts: can we provide a footnote with an example of what a secure mechanism could be?

4.2.2. ~~Disclosure can be reasonably refused~~, by Provider for reasons consistent with the general policy stated herein, including ~~without limitation~~ any of the following:

Comment [CT88]: Eric Rokobauer: Change "Disclosure can be reasonably refused by Provider" to "Provider may reasonably refuse Disclosure"

4.2.2.1. The LEA Requestor failed to provide to Provider information to meet the minimum standard for acceptance as outlined in Section 2 of this Specification;

~~4.2.2.2.~~ If disclosure would lead to a contravention of national or international law; or

Comment [CT89]: Steve Metalitz: for most of this we need the input from PSWG, but pending that I'd suggest that the word "applicable" be inserted before "national" in 4.2.2.2.

4.2.2.3. Where the Customer has provided, or Provider has found, specific information, facts, or circumstances showing that disclosure will endanger the safety of the Customer.

Theo Geurts: or violation of applicable data protection laws

Eric Rokobauer: change "national or international law" to "applicable law"

4.2.3. If disclosure is refused by Provider, Provider must ~~state~~^{provide} written notice (which may be by electronic communication) to the LEA Requestor ~~in writing or by electronic communication its~~^{setting for} Provider's specific reasons for refusing to disclose. ~~This must be completed~~^{Such notice must be provided by Provider to the LEA}

⁷ Note to IRT: "High Priority" deleted from 4.1.1 as it is already defined in 1.3.

⁸ Note to IRT: Unclear what is meant by "against". Please advise as to whether the revised formulation reflects what was intended.

Requestor prior to any Customer notification by Provider, irrespective of the reason for refusal;⁷

4.2.4. In exceptional circumstances, if Provider requires additional time to respond to the LEA Requestor, Provider shall inform the LEA Requestor of the cause of the delay, and agree with the LEA Requestor on a new date by which it will provide its response under this Section. 4.2.

4.2.5. For all refusals made in accordance with the policy and requirements herein, Provider must accept and give due consideration to the LEA Requestor's requests for reconsideration of the refusal to disclose.

Comment [CT90]: Eric Rokobauer: What does "give due consideration" mean as this was only defined in the IP Framework in the Final Report?

4.3. Customer Notification:

4.3.1. Provider will notify the Customer of the disclosure request ("Customer Notification") in accordance with its published Terms~~terms~~ of Service~~service~~ and the timeframe identified by the LEA Requestor.

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4.3.2. Provider may voluntarily set a generic timeframe for Customer Notifications (e.g., 90 days), which can be extended at the behest of the LEA Requestor. Details of any generic timeframe must be published on Provider's website, and the LEA Requestor must always with a pending Request should be informed in advance of any time limit being implemented or changed.

Comment [CT91]: Peter Roman: The Provider should be required to disclose changes to the timeframe for notification of the Customer to LEA Requestors with current requests (i.e., "should" should be "must"). If the Customer is a target, notifying the Customer without alerting LEA can lead to the Customer destroying evidence, fleeing, or even threatening or killing informants who led law enforcement to the Customer's account in the first place.

4.3.3. Provider must notify the LEA Requestor at least three working~~business~~ days before a Customer Notification takes place.

Comment [CT92]: Eric Rokobauer: Is this a requirement of the Final Report? What was the discussion in prior meetings? This doesn't seem to be needed.

5. Issues of ~~Non-response~~Non-Response/Non-Compliance with LEA Requests

5.1. In cases of the LEA Requestor receiving no response from Provider, or non-compliance~~Provider fails to comply~~ with disclosure requests within contractually defined or mutually agreed timelines, the issue may be escalated (a) to ICANN in accordance with ICANN's existing compliance mechanisms, or (b) through other appropriate legal mechanisms available within the jurisdiction in which Provider is established or maintains a physical office.

Comment [CT93]: Peter Roman: I do not understand the purpose of this provision. LEA is not a party to this agreement and the agreement has no ability to bind LEA actions if the Provider fails to respond to a request.

6. Additional Guidance

6.1. Provider may voluntarily action disclosure requests from non-designated government authorities in accordance with the processes detailed within this ~~document, where~~Specification so long as such action does not conflict with ~~national or international law(s)~~applicable law.

Comment [CT94]: Peter Roman: I do not understand the purpose of this provision either. LEA is not a party to this agreement and the agreement has no ability to bind LEA use of the evidence provided by the Provider.

6.2. A LEA Requestor must comply with all applicable data protection laws and may only use any information disclosed to it solely for the purpose of determining whether further action on the issue is warranted, to contact the Customer, or in legal ~~proceeding~~proceedings concerning the issue for which the request was made.

6.3. [Customer ~~notification~~Notification should take place at the earliest opportunity, unless such disclosure would pose a risk to operational sensitivity; safety of individuals; or is prohibited by law or court order. Such circumstances must be detailed in the disclosure request.]⁹

Comment [CT95]: Eric Rokobauer: Does this exceed the provision in the Final Report? Something to review with PSWG?

⁹ Note to IRT: Section 6.3 appears to relate to the requirements outlined in Section 4.3, but seems to be inconsistent with the Section 4.3. Please clarify the intent of Section 6.3 and its relationship with Section 4.3. Also, the meaning of "operational sensitivity" is unclear. Please advise as to intended definition/scope of this undefined term.

SPECIFICATION

Provider shall implement and comply with the requirements set forth in this Intellectual Property Disclosure Framework Specification, ~~as well as any commercially practical updates to this Specification that are developed by ICANN and the Working Group during the Term of this Agreement.~~

1. Provider Process for Intake of Requests

- 1.1. Provider will establish and publish a point of contact for ~~submitting~~ Requesters to submit complaints that registration or use of a domain name for which ~~the~~ Provider provides ~~privacy/proxy services~~ Services infringes the copyright or trademark rights of the Requester. The point of contact shall enable all the information described in Section 2 of this Specification to be submitted electronically, whether via email, through a web submission form, or similar means. Telephonic point of contact may also be provided.
- 1.2. Nothing in this document prevents ~~a~~ Provider from implementing measures to optimize or manage access to the Request submission process. This could include:
 - 1.2.1. Requiring Requesters to register themselves ~~and~~/or their organizations with Provider.
 - 1.2.2. Authenticating complaint submissions as originating from a registered Requester (e.g., log- in, use of pre-identified e-mail address).
 - 1.2.3. Assessing a nominal cost-recovery fee for processing complaint submissions, or to maintain Requester account so long as this does not serve as an unreasonable barrier to access to the process.
 - 1.2.4. Qualifying Requesters meeting certain reliable criteria as “trusted Requesters” whose requests would be subject to a streamlined process.
 - 1.2.5. Revoking or blocking Requester access to the submission tool for egregious abuse of the tool or system, including submission of frivolous, vexatious, or harassing requests, or numerous Requests that are identical, [i.e., that concern the same domain name, the same intellectual property, and the same Requester].
- 1.3. Nothing in this document prevents ~~Providers~~ Provider from sharing information with one another regarding Requesters who have been revoked or blocked from their systems or who have engaged in misconduct under this Policy, including frivolous or harassing requests.
- 1.4. Nothing in this document prevents ~~a~~ Provider from adopting ~~and~~ or implementing policies to publish the contact details of Customers in WHOIS, or to terminate

privacy/proxy service Services to a Customer, for breach of Service Provider's published Terms of Service, service or on other grounds stated in the published Terms of Service, service, even if the criteria outlined in this document Specification for a Request have not been met.

2. Request Templates for Disclosure

2.1. Where a **domain name allegedly infringes a trademark**. **Domain Name Allegedly Infringes a Trademark**. Provider shall not be required to comply with a Request unless the Requester provides to Provider verifiable evidence of wrongdoing, including:¹⁰

- 2.1.1. The domain name that allegedly infringes the trademark;
- 2.1.2. Evidence of previous use of a **relay** Relay function (compliant with the relevant section of accreditation standards regarding Relay) to attempt to contact the Customer regarding the subject matter of the request, if any, and of any responses thereto, if any;
- 2.1.3. Full name, physical address, email address, and telephone number of the trademark holder, and for legal entities, the country where the trademark holder is incorporated or organized;
- 2.1.4. Authorized legal contact for trademark holder and his/her name, title, law firm, (if outside counsel,) physical address, email address and telephone number for contact purposes;
- 2.1.5. The trademark, the trademark registration number (if applicable), links to the national trademark register where the mark is registered (or a representative sample of such registers in the case of an internationally registered mark), showing that the registration is currently in force (if applicable), and the date of first use **and/or** of application and registration of the mark; and
- 2.1.6. A good faith statement, either under penalty of perjury or notarized or accompanied by sworn statement, from either the trademark holder or an authorized representative of the trademark holder, that:
 - 2.1.6.1. Provides a reasonable basis for **reasonably believing** trademark holder's belief¹¹ that the use of the trademark in the domain name (i) allegedly infringes the trademark holder's rights and (ii) is not defensible;

¹⁰ Note to IRT: Provision revised to reflect that Provider is the party to this agreement, not Requestor.

¹¹ Note to IRT: Sections 2.1.6.1, 2.2.7.1 and 2.3.6.1 have been conformed for consistency to have the same formulation.

Comment [CT96]: Theo Geurts: What is verifiable evidence? I often get very legal like claims, stating tons of trademarks, is that verifiable evidence?

Sara Bockey: I need clarification as well. I note that Section 3.17.2 reads: Provider shall not mandate that a Requester first make a Relay request before Provider responds to or acts on a Disclosure or Publication request.

IP Spec, Section 2, states: Provider shall not be required to comply with a Request unless the Requester provides to Provider verifiable evidence of wrongdoing.

- 2.1.6.2. States that Requester [and the trademark holder](#) will comply with all applicable data protection laws while retaining Customer’s contact details and will use Customer’s contact details only (i) to determine where further action is warranted to resolve the issue, (ii) to attempt to contact Customer regarding the issue, or (iii) in a legal proceeding concerning the issue; and
- 2.1.6.3. Agrees that the Requester and trademark holder will submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (i) where ~~it~~[the Requester or trademark holder](#)¹² is incorporated [or organized](#) (or of its home address, if an individual), and (ii) where the Provider specifies on its request form, solely for disputes arising from alleged improper disclosures caused by knowingly false statements made by the Requester, or from Requester’s ~~and~~/or trademark holder’s knowing misuse of information disclosed to it in response to its request.
- 2.1.7. Where the [signatoryRequester](#) is not the [rightstrademark](#) holder, ~~he/she~~[the Requester](#) must attest that ~~he/she~~[the Requester](#) is an authorized representative of the [rightstrademark](#) holder, capable and qualified to evaluate and address the matters involved in [this](#)[such](#) request, and having the authority to make the representations and claims on behalf of the [rightstrademark](#) holder in the request, including the authority to bind the [rightstrademark](#) holder to the limitations on the use of Customer data once disclosed.
- 2.1.8. Where the [signatoryRequestor](#) is not the [rightstrademark](#) holder, an officer of the [rightstrademark](#) holder (if a corporate entity) or an attorney of the [rightstrademark](#) holder, and the Provider has a reasonable basis to believe that the Requester is unauthorized to act on behalf of the [rightstrademark](#) holder or seeks to verify a new or unknown Requester, the Provider may request, and the Requester shall provide, sufficient proof of authorization.
- 2.2. **Domain Name Resolves to Website Where Copyright Is Allegedly Infringed.** [Provider shall not be required to comply with a Request unless the](#) Requester provides to Provider [verifiable evidence](#) of wrongdoing, including:
- 2.2.1. The exact URL where the allegedly infringing work or infringing activity is located, or a representative sample of where such work or activity is located;
- 2.2.2. Evidence of previous use of a [relayRelay](#) function (compliant with the relevant section of accreditation standards regarding Relay) to attempt to contact the Customer with regard to the subject matter of the request, if any, and of any responses thereto, if any. Requesters are also encouraged (but not required under this Policy) to provide evidence of previous attempts to

Comment [CT97]: Theo Geurts: Again, what is verifiable evidence?

¹² [Note to IRT: Please confirm that revisions are acceptable.](#)

contact the web host or the domain name registrar with regard to the subject matter of the request, if any, and of any responses thereto, if any;

- 2.2.3. Full name, physical address, email address, and telephone number of the copyright holder; and for legal entities, the country where [the copyright holder is](#) incorporated or organized;
- 2.2.4. Authorized legal contact for the copyright holder and his/her name, law firm, (if outside counsel), physical address, email address and telephone number for contact purposes;
- 2.2.5. Information reasonably sufficient to identify the copyrighted work, which may include, where applicable, the copyright registration number; and the country where the copyright is registered;
- 2.2.6. If possible, the exact URL where the original content [that is alleged to being infringed upon](#) is located (if online content) or where the claim can be verified; and
- 2.2.7. A good faith statement, either under penalty of perjury or notarized or accompanied by sworn statement, from either the copyright holder or an authorized representative of the copyright holder, that:
 - 2.2.7.1. Provides a [reasonable](#) basis for ~~reasonably believing~~[copyright holder's belief](#) that the use of the copyright content on the website (i) infringes the copyright holder's rights and (ii) is not defensible.
 - 2.2.7.2. Provides a basis for ~~reasonably~~[copyright holder](#) believing that the copyright protection extends to the locale the website targets;
 - 2.2.7.3. States that Requester [and the copyright holder](#) will comply with all applicable data protection laws while retaining Customer's contact details and will use Customer's contact details only (i) to determine whether further action is warranted to resolve the issue, (ii) to attempt to contact Customer regarding the issue; or (iii) in a legal proceeding concerning the issue; and
 - 2.2.7.4. Agrees that the Requester and the copyright holder will submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) where ~~it~~[the Requester or trademark holder](#) is incorporated ~~or organized~~ (or of its home address, if an individual), and (2) where the Provider specifies on its request form, solely for disputes arising from alleged improper disclosures caused by knowingly false statements made by the Requester, or from Requester's ~~and~~/or copyright holder's knowing misuse of information disclosed to it in response to its request.

- 2.2.8. Where the signatory is not the [rights/copyright](#) holder, ~~he/she~~[the signatory](#) must attest that ~~he/she~~[the signatory](#) is an authorized representative of the [rights/copyright](#) holder, capable and qualified to evaluate and address the matters involved in this request, and having the authority to make the representations and claims on behalf of the [rights/copyright](#) holder in the request, including the authority to bind the [rights/copyright](#) holder to the limitations on the use of Customer data once disclosed.
- 2.2.9. Where the signatory is not the rights holder, an officer of the rights holder (if a corporate entity) or an attorney of the rights holder, and the Provider has a reasonable basis to believe that the Requester is unauthorized to act on behalf of the rights holder or seeks to verify a new or unknown Requester, the Provider may request, and the Requester shall provide, sufficient proof of authorization.
- 2.3. Domain Name Resolves to Website Where Trademark Is Allegedly Infringed.**
[Provider shall not be required to comply with a Request unless the](#) Requester provides to Provider verifiable evidence of wrongdoing, including:
- 2.3.1. The exact URL where the allegedly infringing content is located;
- 2.3.2. Evidence of previous use of a ~~relay~~[Relay](#) function (compliant with the relevant section of accreditation standards regarding Relay) to attempt to contact the Customer with regard to the subject matter of the request, if any, and of any responses thereto, if any. Requesters are also encouraged (but not required under this Policy) to provide evidence of previous attempts to contact the web host or the domain name registrar with regard to the subject matter of the request, if any, and of any responses thereto, if any;
- 2.3.3. Full name, physical address, email address, and telephone number of the trademark holder; and for legal entities, the country where [the trademark holder is](#) incorporated or organized;
- 2.3.4. Authorized legal contact for the trademark holder and his/her name, law firm, [\(if outside counsel\)](#), physical address, email address and telephone number for contact purposes;
- 2.3.5. The trademark, the trademark registration number (if applicable), links to the national trademark register where the mark is registered (or a representative sample of such registers in the case of an internationally registered mark), showing that the registration is currently in force (if applicable), and the date of first use ~~and~~/or of application and registration of the mark; and
- 2.3.6. A good faith statement, either under penalty of perjury or notarized or accompanied by sworn statement, from either the trademark holder or an authorized representative of the trademark holder, that:

- 2.3.6.1. Provides a reasonable basis for ~~believing~~[trademark holder's belief](#) that the use of the trademark on the website (i) infringes the trademark holder's rights and (ii) is not defensible.¹³
- 2.3.6.2. States that Requester [and the trademark holder](#) will comply with all applicable data protection laws while retaining Customer's contact details and will use Customer's contact details only (i) to determine whether further action is warranted to resolve the issue, (ii) to attempt to contact Customer regarding the issue or (iii) in a legal proceeding concerning the issue; and
- 2.3.6.3. Agrees that the Requester and the trademark holder will submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) where ~~it~~[the Requester or trademark holder](#) is incorporated ~~or organized~~ (or of its home address, if an individual), and (2) where the Provider specifies on its request form, solely for disputes arising from alleged improper disclosures caused by knowingly false statements made by the Requester, or from Requester's ~~and~~ or the trademark holder's knowing misuse of information disclosed to it in response to its request.
- 2.3.7. Where the [signatory Requester](#) is not the [rights trademark holder](#), ~~he/she~~[the Requester](#) must attest that ~~he/she~~[the Requester](#) is an authorized representative of the [rights trademark holder](#), capable and qualified to evaluate and address the matters involved in this request, and having the authority to make the representations and claims on behalf of the [rights trademark holder](#) in the request, including the authority to bind the [rights trademark holder](#) to the limitations on the use of Customer data once disclosed.
- 2.3.8. Where the [signatory Requester](#) is not the [rights trademark holder](#), an officer of the [rights trademark holder](#) (if a corporate entity) or an attorney of the [rights trademark holder](#), and the Provider has a reasonable basis to believe that the Requester is unauthorized to act on behalf of the [rights trademark holder](#) or seeks to verify a new or unknown Requester, the Provider may request, and the Requester shall provide, sufficient proof of authorization.

3. Provider Action on Request

- 3.1. Upon receipt of the verifiable evidence of wrongdoing set forth above in writing, Provider will take ~~reasonable and prompt steps to investigate and respond appropriately to the request for disclosure, as follows~~[the following steps](#):
 - 3.1.1. Promptly notify the Customer about the complaint and disclosure request and request that the Customer respond to Provider within 15 calendar days.

¹³ [Note to IRT: Revised for consistency to conform with formulation in 2.1.6.1.](#)

Provider shall advise the Customer that if the Customer believes there are legitimate reason(s) to object to disclosure, the Customer must disclose these reasons to ~~the~~ Provider and authorize the Provider to communicate such reason(s) to the Requester (so long as doing so will not endanger the safety of the Customer, as outlined in Section 3.3.6 of this Specification); and

3.1.2. Within 5 business days after receiving the Customer's response, or within 2 business days after the time for Customer's response has passed, Provider shall take one of the following actions:

- 3.1.2.1. Disclose to Requester using secure communication channels the contact information it has for Customer that would ordinarily appear in the publicly accessible WHOIS for nonproxy/privacy registration; or
- 3.1.2.2. State to Requester in writing or by electronic communication its specific reasons for refusing to disclose.

3.2. In exceptional circumstances, if Provider requires additional time to respond to the Requester, Provider shall inform the Requester of the cause of the delay, and state a new date by which it will provide its response under this ~~Section~~[Specification](#).

3.3. Disclosure can be reasonably refused [by Provider](#), for reasons consistent with the general policy stated herein, including ~~without limitation~~ any of the following:

3.3.1. ~~the Provider has already caused Customer contact details to be Published in RDDS as the result of termination of the Services;~~

3.3.2. the Customer has objected to the disclosure and has provided a basis for reasonably believing (i) that it is not infringing the Requester's claimed intellectual property rights, or (ii) that its use of the claimed intellectual property is defensible;

3.3.3. the Provider has a basis for reasonably believing (i) that the Customer is not infringing the Requester's claimed intellectual property rights, or (ii) that the Customer's use of the claimed intellectual property is defensible;

3.3.4. the Customer has surrendered its domain name registration in lieu of disclosure, if the Provider offers its Customers this option;

3.3.5. the Customer has provided, or the Provider has found, specific information, facts or circumstances showing that the Requester's trademark or copyright complaint is a pretext for obtaining the Customer's contact details by effecting removal of the Service for some other purpose unrelated to addressing the alleged infringement described in the Request;

Comment [CT98]: Theo Geurts: Note to IRT, perhaps we want to move to calendar days, business days are not universal.

Comment [CT99]: Theo Geurts: Note to IRT, perhaps we want to move to calendar days, business days are not universal.

Comment [CT100]: Steve Metalitz: Provider has already caused Customer contact details to be Published in RDDS as the result of termination of the Services;. The Provider is not actually the one who publishes Whois data, that is the Registrar (and Registry). I believe RDDS is the more future-proof term than Whois and this is reflected in the definition of Publication in 1.23.

Deleted: Provider has already published Customer contact details in WHOIS as the result of termination of privacy/proxy service

3.3.6. the Customer has provided, or the Provider has found, specific information, facts, or circumstances showing that disclosure to the Requester will endanger the safety of the Customer; or

3.3.7. the Requester failed to provide to the Provider the verifiable evidence of wrongdoing outlined in Section ~~#3.1 of this Specification~~.

3.4. Disclosure cannot be refused solely for lack of any of the following: (i) a court order; (ii) a subpoena; (iii) a pending civil action; or (iv) a UDRP or URS proceeding; nor can refusal to disclose be solely based on the fact that the Request is founded on alleged intellectual property infringement in content on a website associated with the domain name.

3.5. For all refusals made in accordance with the policy and requirements herein, Provider must accept and give due consideration to Requester's requests for reconsideration of the refusal to disclose.

3.6. A recommended mechanism for resolving disputes in which a Provider is alleged to have made a wrongful disclosure based on a Requester having provided false information is outlined in Section 4 of this Specification.

4. Resolving Disputes Arising From Disclosures Made as a Result of Allegedly Improper Requests

4.1. For the avoidance of doubt, this ~~option~~ [Section 4](#) is not intended to preclude any ~~party~~ [person](#) from seeking other available remedies at law. ~~Under these standards, disclosure~~ [For purposes of this Specification](#):

[4.1.1. Disclosure](#) is wrongful only when it is effected by the Requester having made knowingly false representations to ~~the~~ Provider;

[4.1.2.](#) Disclosure is not wrongful if the Requester had a good faith basis for seeking disclosure at the time the Request was submitted to ~~the~~ Provider; [and](#)

[4.1.3.](#) ~~Under these standards, misuse~~ [Misuse](#) occurs only when a Requester knowingly uses Customer contact information disclosed to it by a Service Provider for a purpose other than one of the specific purposes for which it had agreed to use such information (as listed in Sections 2.1.6, 2.2.7 and 2.3.6 of this Specification).¹⁴

~~5. Jurisdiction~~

~~5.1. In making a submission to request disclosure of a Customer's contact information, the Requester and the rights holder agrees to submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) where it is~~

¹⁴ ~~Note to IRT: Section 5 has been deleted because the subject of jurisdiction is covered above within each of the relevant sections. Please confirm or advise as to the intent/application of Section 5.~~

~~incorporated (or of its home address, if an individual), and) where the Provider specifies on its request form, solely for disputes arising from alleged improper disclosures caused by knowingly false statements made by the Requester, or from Requester's~~

SPECIFICATION 6: DATA RETENTION SPECIFICATION

1. During the Term of this Agreement, for Registered Name for which Provider is providing the Services, Provider shall collect and securely maintain in its own electronic database (as updated from time to time) the data specified below:
 - 1.1. Provider shall collect the following information from the Customer at the time of Provider's provides the Services for a Customer and shall maintain that information for the duration of Provider's provision of the Services for the Registration and for a period of one additional year thereafter:
 - 1.1.1. First and last name or full legal name of the Customer;
 - 1.1.2. First and last name or, in the event the Customer is a legal person, the title of the Customer's administrative contact, technical contact, and billing contact;
 - 1.1.3. Postal address of the Customer, administrative contact, technical contact, and billing contact;
 - 1.1.4. Email address of the Customer, administrative contact, technical contact, and billing contact;
 - 1.1.5. Telephone contact for the Customer, administrative contact, technical contact, and billing contact;
 - 1.1.6. WHOIS information, as set forth in the Labeling Specification;
 - 1.1.7. Fax number of the Customer, the administrative contact, technical contact, and billing contact;
 - 1.1.8. To the extent collected by Provider, "card on file," current period third party transaction number, or other recurring payment data;
 - 1.1.9. The name and Registry Object ID of the Registered Name; and
 - 1.1.10. The name and IANA ID of the sponsoring Registrar.
 - 1.2. Provider shall collect the following information and maintain that information for no less than one hundred and eighty (180) days following the relevant interaction:
 - 1.2.1. Information regarding the means and source of payment reasonably necessary for Provider to process the Service transaction, or a transaction number provided by a third party payment processor;
 - 1.2.2. Log files, billing records and, to the extent collection and maintenance of such records is commercially practicable or consistent with industry-wide generally accepted standard practices within the industries in which

Comment [CT101]: Theo Geurts: Broad collection of data is fine, if it does not violate applicable data protection laws.

Or we figure out the purposes, but I think that is more suited for the RDS WG.

Eric Rokobauer: We need to identify how the GDPR will affect this framework when it comes to Disclosure (or Publication) for EU resident registrants and address those issues in the framework.

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Provider operates, other records containing communications source and destination information, including, depending on the method of transmission and without limitation: (1) Source IP address, HTTP headers, (2) the telephone, text, or fax number; and (3) email address, Skype handle, or instant messaging identifier, associated with communications between Provider and the registrant about the Registration; and

- 1.2.3. Log files and, to the extent collection and maintenance of such records is commercially practicable or consistent with industry-wide generally accepted standard practices within the industries in which Provider operates, other records associated with the Services containing dates, times, and time zones of communications and sessions, including initial registration.
2. If, based on the receipt of either (i) a written legal opinion from a nationally recognized law firm in the applicable jurisdiction that states that the collection or retention of any data element specified herein by Provider is reasonably likely to violate applicable law (the "Opinion") or (ii) a ruling of, or written guidance from, a governmental body of competent jurisdiction providing that compliance with the data collection or retention requirements of this Specification violates applicable law, Provider determines in good faith that the collection or retention of any data element specified in this Specification violates applicable law, Provider may provide written notice of such determination to ICANN and request a waiver from compliance with specific terms and conditions of this Specification (a "Waiver Request"). Such written notice shall: (i) specify the relevant applicable law, the allegedly offending data collection and retention elements, the manner in which the collection or retention of such data violates applicable law, and a reasonable description of such determination and any other facts and circumstances related thereto, (ii) be accompanied by a copy of the Opinion and governmental ruling or guidance, as applicable, and (iii) be accompanied by any documentation received by Provider from any governmental authority, in each case, related to such determination, and such other documentation reasonably requested by ICANN. Following receipt of such notice, ICANN and Provider shall discuss the matter in good faith in an effort to reach a mutually acceptable resolution of the matter. Until such time as ICANN's Procedure for Handling WHOIS Conflicts with Privacy Law is modified to include conflicts relating to the requirements of this Specification and if ICANN agrees with Provider's determination, ICANN's office of general counsel may temporarily or permanently suspend compliance and enforcement of the affected provisions of this Specification and grant the Waiver Request. Prior to granting any exemption hereunder, ICANN will post its determination on its website for a period of thirty (30) calendar days. Following such modification of ICANN's Procedure for Handling WHOIS Conflicts with Privacy Law, all ~~Waiver~~ Waiver Requests (whether granted or denied) shall be resolved pursuant to such modified procedures.
3. If (i) ICANN has previously waived compliance with the requirements of any requirement of this Data Retention Specification in response to a Waiver Request from a ~~provider~~ Service Provider that is located in the same jurisdiction as Provider and (ii)

Comment [CT102]: Theo Geurts: This procedure should be the other way around if ICANN ORG believes that applicable data protection laws do not apply.

Provider is subject to the same applicable law that gave rise to ICANN's agreement to grant such ~~wavier~~,waiver. Provider may request that ICANN grant a similar waiver, which request shall be approved by ICANN unless ICANN provides Provider with a reasonable justification for not approving such request, in which case Provider may thereafter make ~~an Wavier~~a Waiver Request pursuant to Section 2 of this Data Retention Specification.

4. If (i) ICANN has previously waived compliance with the requirements of any requirement of the data retention specification set forth in a Registrar Accreditation Agreement that is based on the 2013 Registrar Accreditation Agreement (or any successor to such agreement that is approved by ICANN's Board of Directors) in response to a waiver request from an Affiliated Registrar pursuant to such Affiliated Registrar's Registrar Accreditation Agreement that is located in the same jurisdiction as Provider and (ii) Provider is subject to the same applicable law that gave rise to ICANN's agreement to grant such waiver, Provider may request that ICANN grant a similar waiver, which request shall be approved by ICANN unless ICANN provides Provider with a reasonable justification for not approving such request, in which case Provider may thereafter make a Waiver Request pursuant to Section 2 of this Data Retention Specification.
45. Any modification of this Data Retention Specification to address violations of applicable law shall only apply during the period of time that the specific provisions of the applicable law giving rise to such violations remain in effect. If the applicable law is repealed or modified (or preempted) in a manner that would no longer prohibit the collection or retention of data and information as originally specified in this Data Retention Specification, Provider agrees that the original version of this Specification will apply to the maximum extent permitted by such modified applicable law.

SPECIFICATION 7: COMPLIANCE CERTIFICATE

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_____, 20__

Pursuant to Section 3.103.9 of the Privacy & Proxy Service Provider Accreditation Agreement (the "Agreement"), dated _____, 20__, by and between the Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Provider Name], a [Organization type and jurisdiction] ("Provider"), the undersigned certifies, in his/her capacity as an officer of Provider and not in his/her individual capacity, on behalf of Provider as follows:

1. The undersigned is the [Chief Executive Officer/President/Chief Operating Officer/Chief Financial Officer or functional equivalent thereof] of Provider.
2. Provider has in place processes and procedures intended to establish, maintain, review, test, and modify policies and procedures reasonably designed to achieve compliance with the Agreement.
3. To the best of the undersigned's knowledge and belief, Provider has performed and complied with all covenants, agreements, obligations and conditions contained in the Agreement that are required to be performed or complied with by it for the calendar year 20__.

The undersigned signs this certificate as of the date indicated under the title.

[PROVIDER]

By:

Name:

Title:

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... [3]

~~3.13.2~~

SPECIFICATION 1: DATA ESCROW SPECIFICATION

~~Provider will engage an independent entity to act as data escrow agent (“Escrow Agent”) for the provision of data escrow services related to the Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Provider and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.~~

~~[\[Under Development\]](#)~~

~~PART A—TECHNICAL SPECIFICATIONS~~

- ~~1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Provider objects to be considered for data escrow are those objects defined in section 3.2 of this Specification.
 - ~~1.1. “Full Deposit” will consist of data that reflects the state of the Provider objects as of 00:00:00 UTC (Coordinated Universal Time) on the day that such Full Deposit is submitted to Escrow Agent.~~
 - ~~1.2. “Differential Deposit” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., all additions, modifications or removals of data).~~~~
- ~~2. **Schedule for Deposits.** Provider will submit a set of escrow files on a daily basis as follows:
 - ~~2.1. Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.~~
 - ~~2.2. The other six (6) days of the week, a Full Deposit or the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.~~~~
- ~~3. **Escrow Format Specification.**
 - ~~3.1. **Deposit’s Format.** Provider objects will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see Part A, Section 9, reference 1 of this Specification, and draft-arias-noguchi-dnrd-objects-mapping, see Part A, Section 9, reference 2 of this Specification (collectively, the “DNDE Specification”). The DNDE Specification describes some elements as optional;~~~~

~~Provider will include those elements in the Deposits if they are available. If not already an RFC, Provider will use the most recent draft version of the DNDE Specification available at the Effective Date. Provider may at its election use newer versions of the DNDE Specification after the Effective Date. Once the DNDE Specification is published as an RFC, Provider will implement that version of the DNDE Specification, no later than one hundred eighty (180) calendar days after. UTF-8 character encoding will be used.~~

~~3.2. **Deposit's Contents.** Provider shall submit the following Customer private data in its deposit to an ICANN-approved escrow agent on a schedule, under the terms and in the format specified in this Specification:~~

~~3.2.1. A domain object, as defined in the "DNDE Specification", for all allocated domain names for which Privacy and/or Proxy services are provided. Elements in the domain object may be updated in the Registry database (e.g. EPP statuses) without notifying the Provider; those elements must reflect the latest known information to the Provider; the Provider is not required to constantly refresh these elements from the Registry.~~

~~3.2.2. Contact objects, as defined in the "DNDE Specification", related to the domain objects in section 3.2.1 containing the name, postal address, email address, voice telephone number and (where available) the organization and fax number of the Customer's registrant, administrative, technical and billing contact. Elements in the contact object may be updated in the Registry database (e.g. EPP statuses) without notifying the Provider; those elements MUST reflect the latest known information to the Provider; the Provider is not required to constantly refresh these elements from the Registry.~~

~~**3.3 Extensions.** If a Provider offers additional Services that require submission of additional data not included above, additional "extension schemas" shall be defined in a case by case basis to represent that data. These Data related to the "extensions schemas" will be included in the deposit file described in Part A, Section 3.1 of this Specification.~~

- ~~4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of Provider escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format—RFC 4880, see Part A, Section 9, reference 2 of this Specification. Acceptable algorithms for Public key cryptography, Symmetric key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see Part A, Section 9, reference 3 of this Specification, that are also royalty free. The process to follow for the data file in original text format is:~~
- ~~(1) The XML file of the deposit as described in Part A, Section 9, reference 1 of this Specification must be named as the containing file as specified in Section 5 but with the extension xml.~~
 - ~~(2) The data file(s) are aggregated in a tarball file named the same as (1) but with extension tar.~~

- (3) A compressed and encrypted OpenPGP Message is created using the tarball file as sole input. The suggested algorithm for compression is ZIP as per RFC 4880. The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public key encryption are Elgamal and RSA with a key size of at least 2048 bits as per RFC 4880. The suggested algorithms for Symmetric key encryption are AES192 and AES256 as per RFC 4880.
 - (4) The file may be split as necessary if, once compressed and encrypted, it is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if not split, will be called a processed file in this section.
 - (5) A digital signature file will be generated for every processed file using the Provider's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 Section 9, reference 2, and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
 - (6) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Provider. Non electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
 - (7) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in Part A, Section 8 of this Specification.
5. **File Naming Conventions.** Files will be named according to the following convention: {Provider ICANN ID}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:
- 5.1. {Provider ICANN ID} is replaced with the Provider's unique ID assigned by ICANN, in the format PP-####;
 - 5.2. {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
 - 5.3. {type} is replaced by:
 - 5.3.1. "full", if the data represents a Full Deposit;
 - 5.3.2. "diff", if the data represents a Differential Deposit;
 - 5.4. {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
 - 5.5. {rev} is replaced by the number of revision (or resend) of the file beginning with "0";
 - 5.6. {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".
6. **Distribution of Public Keys.** Each of Provider and Escrow Agent will distribute its public key to the other party (Provider or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's

public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Provider and ICANN will exchange public keys by the same procedure.

7. **Notification of Deposits.** Along with the delivery of each Deposit, Provider will deliver to Escrow Agent and to ICANN (using the API described in draft-lozano-icann-pp-interfaces, see Part A, Section 9, reference 5 of this Specification (the “Interface Specification”)) a written statement from Provider (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Provider and is complete and accurate. The preparation and submission of this statement must be performed by the Provider or its designee, provided that such designee may not be the Escrow Agent or any of Escrow Agent’s Affiliates. Provider will include the Deposit’s “id” and “resend” attributes in its statement. The attributes are explained in Part A, Section 9, reference 1 of this Specification.

If not already an RFC, Provider will use the most recent draft version of the Interface Specification at the Effective Date. Provider may at its election use newer versions of the Interface Specification after the Effective Date. Once the Interface Specification is published as an RFC, Provider will implement that version of the Interface Specification, no later than one hundred eighty (180) calendar days after such publishing.

8. **Verification Procedure.**

- (1) The signature file of each processed file is validated.
- (2) If processed files are pieces of a bigger file, the latter is put together.
- (3) Each file obtained in the previous step is then decrypted and uncompressed.
- (4) Each data file contained in the previous step is then validated against the format defined in Part A, Section 9, reference 1 of this Specification.
- (5) The data-escrow agent extended verification process, as defined below in reference 2 of Part A of this Specification 2, as well as any other data-escrow verification process contained in such reference.

If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.

9. **References.**

- (1) Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
- (2) Domain Name Registration Data (DNRD) Objects Mapping, <http://tools.ietf.org/html/draft-arias-noguchi-dnrd-objects-mapping>
- (3) OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
- (4) OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>
- (5) ICANN interfaces for registries and data-escrow agents, <http://tools.ietf.org/html/draft-lozano-icann-pp-interfaces>

Section Break (Next Page)

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, Provider must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendments thereto. In addition, prior to entering into an escrow agreement, Provider must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated as a third party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Provider must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Provider fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past due fee(s) within fifteen (15) calendar days after receipt of the written notice from Escrow Agent. Upon payment of the past due fees by ICANN, ICANN shall have a claim for such amount against Provider, which Provider shall be required to submit to ICANN together with the next fee payment due under the Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Agreement shall remain with Provider at all times. Thereafter, Provider shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Provider in the Deposits will automatically be licensed to ICANN or to a party designated in writing by ICANN on a non-exclusive, perpetual, irrevocable, royalty free, paid-up basis, for any use related to the providing of Services.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one (1) year. ICANN and Provider will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Provider and ICANN will be provided with the right to designate a third party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 1 from time to time.
If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify Provider and ICANN unless prohibited by law. After notifying Provider and ICANN, Escrow Agent shall allow sufficient time for Provider or ICANN to challenge any such order, which shall be the responsibility of Provider or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with Provider or ICANN to support efforts to quash or limit any

subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. ~~**Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.~~

6. ~~**Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty four (24) hours, at Provider's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Provider to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:~~

~~6.1. the Agreement has expired without renewal, or been terminated;~~

~~6.2. ICANN has not received a notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent within five (5) calendar days after the Deposit's scheduled delivery date; (a) ICANN gave notice to Escrow Agent and Provider of that failure; and (b) ICANN has not, within seven (7) calendar days after such notice, received the notification from Escrow Agent;~~

~~6.3. ICANN has received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of failed verification of the latest escrow deposit for a specific date or a notification of a missing deposit, and the notification is for a deposit that should have been made on Sunday (i.e., a Full Deposit); (a) ICANN gave notice to Provider of that receipt; and (b) ICANN has not, within seven (7) calendar days after such notice, received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of verification of a remediated version of such Full Deposit;~~

~~6.4. ICANN has received five notifications from Escrow Agent within the last thirty (30) calendar days notifying ICANN of either missing or failed escrow deposits that should have been made Monday through Saturday (i.e., a Differential Deposit), and (a) ICANN provided notice to Provider of the receipt of such notifications; and (b) ICANN has not, within seven (7) calendar days after delivery of such notice to Provider, received notification from Escrow Agent of verification of a remediated version of such Differential Deposit;~~

~~6.5. Provider has: (a) ceased to conduct its business in the ordinary course; or (b) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world;~~

~~6.6. a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN; or~~

~~6.7. pursuant to an audit under Section 3.10 of the Agreement.~~

Unless Escrow Agent has previously released Provider's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon expiration or termination of the Agreement or the Escrow Agreement.

7. **Verification of Deposits:**

7.1. ~~Within twenty four (24) hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a notification generated for each Deposit.~~

~~Reports will be delivered electronically using the API described in draft-lozano-icann-pp interfaces, see Part A, Section 9, reference 5 of this Specification.~~

7.2. ~~If Escrow Agent discovers that any Deposit fails the verification procedures or if Escrow Agent does not receive any scheduled Deposit, Escrow Agent must notify Provider either by email, fax or phone and ICANN (using the API described in draft-lozano-icann-pp interfaces, see Part A, Section 9, reference 5 of this Specification) of such nonconformity or non receipt within twenty four (24) hours after receiving the non-conformant Deposit or the deadline for such Deposit, as applicable. Upon notification of such verification or delivery failure, Provider must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to be delivered and pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.~~

8. ~~**Amendments.** Escrow Agent and Provider shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 1. In the event of a conflict between this Specification 1 and the Escrow Agreement, this Specification 1 shall control.~~

9. ~~**Indemnity.** Escrow Agent shall indemnify and hold harmless Provider and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders (“Indemnitees”) absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys’ fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.~~

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