

Registrar Data Escrow Agreement

This Registrar Data Escrow Agreement (this “Agreement”) among 【】 (“Registrar”), a 【】 Company, China Organizational Name Administration Center, a Beijing, China nonprofit organization (“Escrow Agent”), and the Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”) is effective on _____ (the “Effective Date”).

1. Background.

1.1 ICANN is charged with oversight of the security and stability of the Internet’s domain name system. As a function of this responsibility, ICANN accredits domain name registrars who facilitate the registration of Internet domain names. Registrar, within its Registrar Accreditation Agreement (“RAA”) with ICANN, has agreed to deposit with ICANN, or a designated agent, certain enumerated registration records pursuant to a schedule, format, and terms specified by ICANN and incorporated in the RAA. Upon expiration without renewal or termination of Registrar’s RAA, the deposited registration records may be utilized by ICANN to provide transitional registrar services prior to transferring management of the domain name registrations to another registrar.

1.2 As established in the RAA and described herein, Registrar will send to Escrow Agent domain name registration records for each registered domain name with a generic top-level domain (“gTLD”) under Registrar's sponsorship, in accordance with the RDE Specifications, as may be amended by ICANN from time to time.

1.3 Escrow Agent will receive, verify, and store Registrar's deposited data and release such data upon the conditions and under the circumstances set out in this Agreement, in accordance with the RDE Specifications, as they may be amended by ICANN from time to time.

The parties hereto, intending to be legally bound hereby, agree as follows:

2. Definitions. Capitalized terms in this Agreement shall have the meanings ascribed to them in this Section 2 unless otherwise defined.

2.1 “Section” refers to any numbered paragraph, section, or subsection of this Agreement unless otherwise specified.

2.2 The “RDE Specifications” are the schedule, format, and terms specified by ICANN, applicable to Registrar's data escrow requirements under the RAA, as it may be amended or modified by ICANN from time to time, and incorporated in the RAA. Registrar and Escrow Agent will be notified of any amendment or modification of the RDE Specifications by email to Registrar and Escrow Agent at the electronic mail address provided for in Section 11 and by posting the most current version of the RDE Specifications on ICANN's website. Amendments and modifications of the RDE Specifications will be effective sixty (60) days following such notification.

2.3 A “Deposit” is all data transmitted from Registrar to Escrow Agent

pursuant to this Agreement in any contiguous 24 hour period of time.

2.4 An “Electronic Deposit” is a Deposit transmitted to Escrow Agent by electronic means (e.g., SFTP, SCP, or HTTPS) as permitted by the RDE Specifications and as specified in the Escrow Agent's data escrow implementation instructions to Registrar.

2.5 A “Physical Deposit” is a Deposit transmitted on a physical medium (e.g., CD ROM, DVD, or hard drive) by courier or post, as permitted by the RDE Specifications and as specified in the Escrow Agent's data escrow implementation instructions to Registrar. Physical Deposits will not be considered delivered to Escrow Agent until they are physically delivered to Escrow Agent. Risk of loss of Deposit in transit is on Registrar.

2.6 “Online” refers to data that is stored on a live, operational server using redundant re-writable media (i.e., RAID).

2.7 “Offline” refers to data that is stored on DVD, CD ROM, tape, or another medium mutually approved by ICANN and Escrow Agent.

2.8 A “Release” is the retrieval and delivery of Deposits by Escrow Agent to ICANN or its designee pursuant to this Agreement.

2.9 A “Transaction” is a one-year gTLD registration increment consisting of a successful add, renewal, or transfer of a domain name by Registrar. Where a domain name is deleted by Registrar within its “add” or “auto-renew” grace period (as defined in the functional specifications for each respective registry) or transferred to another registrar during the “auto- renew” grace period, the underlying “add” or “renewal” shall not be considered a Transaction.

3. Obligations of Registrar with Respect to Deposits.

3.1 Deposits in Accordance with RDE Specifications. Registrar shall deposit with Escrow Agent the domain registration records enumerated in the RDE Specifications, on the schedule, in the format, and under the terms described in the RDE Specifications. Registrar shall ensure that Deposits and their transmission conform to the implementation instructions provided by Escrow Agent, which may be more specific than the RDE Specifications, provided that such implementation instructions shall not contradict the RDE Specifications.

3.2 Transmission of Deposits. Registrar shall transmit all Deposits to Escrow Agent as Electronic Deposits unless Registrar has obtained prior written consent from both ICANN and Escrow Agent to submit Deposits as Physical Deposits and such consent has not been withdrawn by either ICANN or Escrow Agent. Consent to submit Deposits as Physical Deposits will only be granted in extraordinary circumstances.

3.3 Transmission of Physical Deposits. In transmitting any Physical Deposit, Registrar shall include with such Deposit a completed copy of the Physical Deposit Transmittal Form provided in Appendix 1.

3.4 Registrant Notice of Data Escrow. Registrar's registration agreement(s) entered into with registrants shall include notice to the registrant of the obligations of

Registrar to escrow data hereunder, as specified in the RAA.

4. Obligations of Escrow Agent with Respect to Deposits.

4.1 Acceptance and Storage of Deposits: Escrow Agent shall:

- 4.1.1. receive Electronic Deposits or Physical Deposits from Registrar;
- 4.1.2. receive and process Electronic Deposits in one of three geographically separated, secure, locked and environmentally safe facilities, which are accessible only to authorized representatives;
- 4.1.3. copy Physical Deposits into one of three, geographically separated, secure, locked and environmentally safe facilities, which are accessible only to authorized representatives, for processing and storage;
- 4.1.4. store two copies of all Deposits in electronic format, each copy in geographically separated, secure, locked and environmentally safe facilities which are accessible only to authorized representatives.
- 4.1.5. in the event Registrar misses a scheduled Deposit or a Deposit fails a validation or verification test, contact Registrar within three days to remedy the failure;
- 4.1.6. provide ICANN with monthly statistical summaries of reported issues in a mutually agreed upon format and as requested by ICANN;
- 4.1.7. prepare Deposits for verification testing by decrypting Deposits using PGP encryption technology and uncompressing Deposits to original size;
- 4.1.8. perform checksum validation of uncompressed Deposits and automated inspection of uncompressed Deposits;
- 4.1.9. report all uncorrected, missed Deposits and failed validation and verification test results electronically to Registrar within five days of the scheduled, but missed Deposit or failed verification test;
- 4.1.10. perform manual review of uncompressed Deposits as necessary when verification scripts indicate failed automated inspection or upon request by ICANN for the purpose of verification that the Deposits are complete, consistent, and in proper format;
- 4.1.11. securely store all Deposits for no less than three hundred and sixty-five days unless otherwise agreed by the parties in writing or as required by the RDE Specifications;
 - 4.1.11.1 Escrow Agent shall store all Deposits Online for at

least 30 days following receipt.

4.1.11.2 Escrow Agent shall store Deposits Online for a period longer than 30 days if reasonably requested by ICANN.

4.1.11.3 Escrow Agent shall store all Deposits Offline that are less than 366 days aged and are not stored Online.

4.1.12. use commercially reasonable efforts and industry standard safeguards to protect the integrity and confidentiality of Deposits, including the use of PGP encryption technology, customized scripts to verify data validity and confirm authenticity of the sender, and enterprise class software to store data both online and offline;

4.1.13. destroy or permanently erase any and all Deposits 12 or more months old;

4.1.14. administer the receipt, verification, storage, and release (as applicable) of the Deposits using reasonable and appropriate administrative, physical and technical safeguards to protect the privacy and security of the Deposits; and

4.1.15. comply with privacy and data protection regulations applicable to the receipt, verification and storage of Deposits by a third party provider of escrow services under applicable law, in accordance with the terms of this Agreement. Neither ICANN nor Escrow Agent makes any representation or warranty to any other party regarding compliance with applicable privacy and data protection laws and regulations in connection with the transmittal of data to Escrow Agent.

4.2 Confidential Information. Escrow Agent shall use commercially reasonable efforts and industry standard safeguards to protect the confidentiality of the Deposits. Except as provided in this Agreement, Escrow Agent shall not review, disclose, transfer, make available or use the Deposits or any other Registrar data obtained in performance of the Agreement. If Escrow Agent should receive a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent shall promptly provide ICANN and Registrar notice of such order, unless such notice is prohibited by law or regulation. Unless impracticable, Escrow Agent shall provide such notice within two business days after receipt. It shall be the responsibility of Registrar to challenge any such order if desired; 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 Registrar or ICANN, as applicable, to support efforts to quash or limit any subpoena, at Registrar's or ICANN's expense, as applicable.

5. Covenants of Escrow Agent. Throughout the term of this Agreement, Escrow Agent covenants as follows:

5.1 Notice of Material Changes. Escrow Agent shall inform ICANN and Registrar of any and all material changes that could reasonably be expected to have a negative effect on the security or stability of Escrow Agent's infrastructure, software, hardware, or premises, or material changes to practices, policies, or procedures related to security or separation of business practices and operations.

5.2 Separation of Conflicting Businesses. Escrow Agent shall adhere to strict separation of business practices with respect to its registrar data escrow and domain name businesses. Services provided under this Agreement shall be performed through password-access only networks, protected by internal and external firewalls, which share no common hardware, software or users with those systems used by Escrow Agent's domain name businesses. All Deposits by Registrar will initially be encrypted. Escrow Agent shall ensure that all personnel with access to Deposits in an unencrypted form, if applicable, are provided with strict guidance on conflict of interest avoidance with respect to Escrow Agent's domain name businesses and the confidentiality obligations set forth in Section 4.2. Escrow Agent shall ensure that no employees providing services to customers in its domain name businesses have access to Deposits (encrypted or unencrypted) or hardware, software or systems used in Escrow Agent's registrar data escrow business. Escrow Agent shall ensure that no employees providing services to customers in its registrar data escrow business have access to hardware, software or systems used in Escrow Agent's domain name business. In addition, the service delivery teams for Escrow Agent's registrar data escrow business and Escrow Agent's domain businesses shall not be located in the same facility.

5.3 Staffing. Escrow Agent shall at all times maintain sufficient and commercially reasonable staffing to perform its obligations hereunder. A representative of ICANN will be identified as a resource for Escrow Agent to assist in Escrow Agent communications with Registrar.

5.4 Business Continuity. Escrow Agent shall use commercially reasonable efforts to maintain network and business continuity.

6. Fees and Payments.

6.1 Fees. Subject to Section 6.2, Registrar shall pay to Escrow Agent the applicable fees and charges listed in Appendix 2 for Escrow Agent's services under this Agreement.

The prices in Appendix 2 are exclusive of any value added tax, sales tax and similar taxes and official charges.

The Registrar agree that all the taxes and fees which relate to the execution of the Registrar Data Escrow Agreement shall be borne by Registrar, including but not limited to any remittance fees, cross-border remittance fees, sales tax, value added tax, additional tax (if applicable) and any other taxes and official charges, other than any "income" or similar taxes payable by Escrow Agent on its revenue and/or profits. If there are taxes and fees which are borne by Registrar, Registrar shall deliver a copy of the corresponding payment voucher to Escrow Agent.

6.2 Payments by a Third Party. Registrar may designate a third party to assume

responsibility for payment of Escrow Agent's applicable charges under this Agreement (a "Third Party Paying Agent") by submitting a third party payment agreement in the form attached as Appendix 3 signed among Registrar, Escrow Agent and Third Party Paying Agent (the "Third Party Paying Agreement"). Upon receipt of a duly signed Third Party Paying Agreement, Escrow Agent shall invoice the Third Party Paying Agent for all of Escrow Agent's applicable charges under this Agreement. If the Third Party Paying Agreement terminates, Registrar shall be liable to pay Escrow Agent's applicable fees and charges payable under this Agreement with effect from the date of termination of such Third Party Paying Agreement. Escrow Agent shall inform Registrar in writing of the fees and charges payable and Escrow Agent warrants that such fees will not be greater than Escrow Agent's standard list price for registrar data escrow services in force at the date of termination of the Third Party Paying Agreement (subject to Escrow Agent's right to review fees in accordance with Section 6.3).

6.3 Change of Fees. Escrow Agent may change its fees and charges no more than once per year, provided, however, that if Escrow Agent decides to change its fees or charges, it must send a written notice to Registrar at least 30 days prior to the date that such changes are to take effect and Registrar must provide its written consent to such change for such change to be effective, provided, however, that in no event will any change in fees or costs increase by more than 20% in any year.

6.4 Payment. Invoices are payable within 30 days from the date of the relevant Escrow Agent invoice. All payments due under this Agreement are non-refundable and shall be made without any deduction by way of set off, counterclaim, discount or abatement or otherwise except where a party is expressly permitted to do so by law or order of a court of competent jurisdiction.

6.5 Non-Payment. If Registrar or the Third Party Paying Agent (as the case may be) fails to pay any established fees or charges invoiced by Escrow Agent by the due date(s), Escrow Agent shall give written notice to Registrar and, if applicable, the Third Party Paying Agent of non-payment of any such past-due fees hereunder. Registrar and, if applicable, the Third Party Paying Agent shall have 15 calendar days after receipt of such notice from Escrow Agent to pay the past-due fee(s) (the "Grace Period"). If Registrar and, if applicable, the Third Party Paying Agent fails to pay in full all such past-due fees during the Grace Period, Escrow Agent shall give notice of non-payment of any past-due fees to ICANN and, in that event, ICANN shall have the option of paying the past-due fees within 15 calendar days of receipt of such notice from Escrow Agent. If Registrar fails to pay in full all such past-due fees during the Grace Period, Escrow Agent shall require an additional 0.5% of the past-due fees per day as the penalty for breach of contract. If neither Registrar, Third Party Paying Agent (if applicable) nor ICANN pays the past-due fee(s) within the applicable periods under this Section 6, Escrow Agent shall have the right to terminate this Agreement immediately by sending notice of termination to Registrar and ICANN. Upon payment by ICANN of any past-due fees owed by Registrar, ICANN shall have a claim for such amount against Registrar, which Registrar shall be required to submit to ICANN together with the next fee payment due under the Registrar Accreditation Agreement. For the avoidance of doubt, the appointment of a Third Party Paying Agent shall not relieve Registrar of its payment obligations under this Agreement in the event of Third Party Paying Agent's failure to make timely or complete payments due under this Agreement.

7. Term and Termination.

7.1 Term. The initial term of this Agreement shall be for a period of one year from the Effective Date. At the end of the initial term, this Agreement shall automatically renew for an additional one year period and upon each anniversary thereafter unless terminated according to the terms hereof.

7.2 Termination of Agreement upon Termination of Registrar's RAA. This Agreement shall be terminated upon termination of or expiration without renewal of Registrar's RAA, in which case ICANN shall notify Escrow Agent of such termination or expiration, provided, however, that such termination of Registrar's RAA shall not modify or relieve Escrow Agent of its responsibilities and duties hereunder to the extent provided herein. Thereupon Deposits shall be released to ICANN as provided in Section 8.

7.3 Termination by ICANN or Escrow Agent. This Agreement may be terminated by ICANN, with or without cause, by providing the other parties to this Agreement notice of termination at least 60 days in advance of the termination. This Agreement may be terminated by Escrow Agent by notifying other parties at least 60 days in advance of the termination. In the event of such termination of (i) this Agreement by ICANN for any reason, or (ii) termination of this Agreement by Escrow Agent, Escrow Agent and Registrar shall fully cooperate to allow the transfer of the Deposits and all responsibilities of the Escrow Agent to a successor escrow agent hereunder if requested by ICANN.

7.4 Termination by Registrar.

7.4.1. In the event Registrar is no longer obligated by its RAA to deposit registration data with ICANN or otherwise escrow its registration data, this Agreement shall be deemed terminated and ICANN will notify Escrow Agent.

7.4.2. In accordance with the RDE Specifications, Registrar may elect to use an alternate, approved Third Party Provider ("TPP") of escrow services in lieu of the services provided by Escrow Agent hereunder. Where Registrar makes such an election, Registrar's Deposit obligations under this Agreement shall continue until Registrar successfully makes its initial Deposit with a TPP, at which time, this Agreement shall be deemed terminated and ICANN will notify Escrow Agent accordingly.

7.4.2.1 Upon termination of this Agreement pursuant to Section 7.4.2, Escrow Agent shall continue to store and maintain Registrar's Deposits as described in Section 4, unless and until Registrar effects a transfer of all Deposits aged fewer than 366 days to the Registrar's approved TPP at Registrar's expense and effort, and ICANN confirms receipt and storage by TPP of same.

7.4.2.2 Following termination of this Agreement pursuant to Section 7.4.2, Registrar shall fulfill its data escrow

obligations under the RAA with an approved TPP for at least a term of 365 days or until Registrar is no longer obligated to escrow data under its RAA.

8. Release of Deposits.

8.1 Notice for Release of Deposits. Escrow Agent shall effect a Release within five business days following receipt of any of the following:

8.1.1. Written notice executed jointly by ICANN and Registrar requesting Escrow Agent effect such Release; or

8.1.2. Written notice by ICANN that Registrar's RAA has expired without renewal or been terminated, with confirmation by ICANN that such Release is in accordance with the RAA; or

8.1.3. Written notice by ICANN that such Release is otherwise permitted by the RAA, as it may be amended from time to time, and that ICANN has complied with the RAA's requirements (if any) to provide notice of the Release to Registrar; or

8.1.4. Written notice by ICANN that a court or arbitral tribunal or legislative or government agency that ICANN finds to be of competent jurisdiction has issued an order, rule, statute, regulation, or other requirement (a copy of which ICANN has provided to Registrar) that mandates the Release.

8.2 Notice from Escrow Agent to Registrar upon Release of Deposits. Upon any Release or within 24 hours of any Release, Escrow Agent shall provide Registrar with written notice of same.

9. Indemnification. Escrow Agent shall hold and save ICANN and Registrar (subject to the limitation set forth in Section 11 below) and their respective officers, directors, agents and employees harmless from liability, claims, suits, causes of action, fees, charges, costs, damages and any other expenses whatsoever of any nature or kind, for or on account of any or all suits or damages whatsoever resulting from injuries or damages sustained, arising or resulting from the negligence or willful misconduct of Escrow Agent, its parent, subsidiaries, officers, directors or employees.

10. Arbitration.

10.1 Disputes Between ICANN and Registrar. In the event of any dispute between ICANN and Registrar arising under Registrar's RAA, including without limitation the termination thereof and release of Deposits to ICANN hereunder, Section 5.8 of the RAA shall control the resolution of such dispute, or, as the case may be, any successor dispute resolution provision under the RAA as the same may be amended from time to time.

10.2 Disputes Involving Escrow Agent. Upon the occurrence of a dispute between the parties arising from alleged performance or non-performance of any

obligation under this Agreement or any obligation relating thereto that is not the subject of Section 10.1 above, the matter shall be finally settled by arbitration, held in Singapore. The arbitration shall be administered by Singapore International Arbitration Centre (“SIAC”) with the UNCITRAL Arbitration Rules for the time being in force (in accordance with its practice Note on the UNCITRAL case). There shall be three arbitrators, including one nominee of Registrar, one nominee of ICANN, and one nominee of Escrow Agent. A prevailing party or parties in the arbitration shall have the right to recover its costs and reasonable attorneys’ fees, which the arbitrators shall include in their awards. Any party that seeks to confirm or vacate an arbitration award issued under this Section 10 may do so only pursuant to the applicable arbitration statutes. In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation shall be in a court located in Los Angeles County, California subject to the laws of the State of California without regard to conflict of law principles, 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 and/or preserving the rights of the parties during the pendency of an arbitration, the parties shall have the right to seek a temporary stay or injunctive relief from the arbitration panel or a court, which shall not be a waiver of this agreement to arbitrate. ”

103 Specific Performance. ICANN, Escrow Agent and Registrar agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrators or court of competent jurisdiction specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

104 Time is of Essence. Prompt resolution of any dispute is important to all parties to this Agreement. The parties agree that the arbitration of any dispute shall be conducted expeditiously. The arbitrators shall be instructed and directed to assume case management initiative and control over the arbitration process (including scheduling of events, pre-hearing discovery and activities, and the conduct of the hearing), in order to complete the arbitration as expeditiously as is reasonably practical for obtaining a just resolution of the dispute.

11. Limitation of Liability and Consequential Damage Waiver.

11.1 Liability of ICANN. ICANN’s aggregate monetary liability to Registrar for any claims, suits, causes of action, fees, charges, costs, damages and any other expenses whatsoever of any nature or kind arising under, related to, or in connection with this Agreement, shall be determined under Section 5.9 of the RAA, or, as the case may be, any successor provision relating to monetary liabilities under the RAA as the same may be amended from time to time.

11.2 Liability of Escrow Agent.

11.2.1. Notwithstanding anything else in this Agreement (but subject to paragraph 11.2.2 below), all liability, if any, whether arising in contract, tort (including negligence) or otherwise, of Escrow Agent to Registrar shall be limited to an amount equal to the current annual fees paid or owed to Escrow Agent by Registrar

under this Agreement. Upon request by Registrar, Escrow Agent shall provide a statement as to the current liability limitation under this Section 11.2.1 to Registrar.

11.2.2. Notwithstanding the foregoing, in the event Escrow Agent through negligence causes Registrar's information held in escrow to be delivered or made available to a person or entity other than a "Designated Party" (which shall be defined as ICANN or its designee, Registrar, or any named third-party pursuant to Registrar's written instructions), Escrow Agent's liability for damages suffered by Registrar in such circumstances shall not exceed (i) USD 15,000.00 (if Registrar completed 100,000 or more domain name Transactions during the preceding ICANN fiscal quarter) or (ii) USD 8,000.00 (if Registrar completed fewer than 100,000 domain name Transactions in the preceding ICANN fiscal quarter), provided, however, that notwithstanding the foregoing, Escrow Agent's liability shall be unlimited in any circumstances where there is: (i) gross negligence or willful misconduct (including for delivering or making available Registrar's information held in escrow to anyone other than a Designated Party); (ii) any claim of infringement of any patent, copyright, or trademark; (iii) liability for death or bodily injury; or (iv) proven theft.

11.3 Consequential Damages Waiver. In no event shall any party to this Agreement be liable to another party for any incidental, special, punitive or consequential damages, lost profits, any costs or expenses for the procurement of substitute services, or any other indirect damages, whether arising in contract, tort (including negligence) or otherwise even if the possibility thereof may be known in advance to one or more parties.

12. Notices. All notices, requests, demands, instructions, documents or other communications required or permitted to be given or made under this Agreement shall be in writing and shall be delivered by hand, by commercial overnight delivery service which provides for evidence of receipt, by certified mail, return receipt requested, postage prepaid, by facsimile or by e-mail (e-mail to be followed promptly, at receiver's request, by a copy delivered by one of the other means of delivery) to the person(s) listed in the space provided below. If delivered personally, by commercial overnight delivery service, by facsimile or by e-mail, the date on which the notice, request, instruction or document is delivered shall be the date on which delivery is deemed to be made, and if delivered by mail, the date on which such notice, request, instruction or document is received shall be the date on which delivery is deemed to be made. Any party may change its address for the purpose of this Agreement by notice in writing to the other party as provided herein. Any correctly addressed notice to the last known address of the other party that is relied on herein, that is refused, unclaimed, or undeliverable shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities, or through messenger or commercial express delivery service.

ICANN

Name: Internet Corporation for Assigned Names and Numbers

Attention: Registrar Data Escrow
Copy to: General Counsel
Address: 12025 Waterfront Drive, Suite 300
City, State, Zip: Los Angeles, California, CA 90094-2536
Telephone: +1 310 823 9358
Fax: +1 310 823 8649
Email: data-escrow@icann.org

Escrow Agent

Name: China Organizational Name Administration Center
Attention: Registrar Data Escrow
Address: Building 6, Compound 15, Xueyuan Nanlu, Haidian District
City, State, Country, Zip: Beijing, China, 100088
Telephone: +86-(10) 69001152
Fax: +86-(10) 69001153
Email: technical_cn@163.com

Registrar

Attention: 【 】
Address: 【 】
Telephone: 【 】
Fax: 【 】
Email: 【 】
IANA ID: 【 】

12.1 Any party may change its address for delivery of notices as set forth above by delivering notice of such change as provided herein.

13. Miscellaneous.

13.1 This Agreement and any and all Appendices hereto shall constitute the entire agreement by and among the parties hereto with regard to the subject matter hereof, provided, however, that with respect to matters determined under the RAA as set forth herein, the RAA (as the same may be modified, amended or superseded from time to time) shall control. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by each party, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

13.2 Each party, in performance of the obligations set forth in this Agreement, shall comply with all laws and regulations applicable to such party's duties and responsibilities under this Agreement.

13.3 Nothing contained in this Agreement shall be deemed to imply or constitute any party as the agent or representative of another party for any purpose other than as expressly set forth herein.

13.4 Each reference to "days" herein shall mean calendar days, unless otherwise specified herein.

13.5 The waiver by any party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of any party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such party.

13.6 This Agreement, and the rights and obligations hereunder, may not be assigned, in whole or in part by Escrow Agent without the prior written consent of Registrar and ICANN. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the parties hereto.

13.7 This Agreement shall not be construed to create any obligation to any non-party to this Agreement, including any registered name holder. There shall not be any third-party intended beneficiaries under this Agreement.

13.8 The obligations of the parties intended to survive the termination of this Agreement are only those provisions of Sections 4.1.11, including subsections (storage of Deposits), 4.1.12 (protection of Deposits), 4.1.13 (destruction of aged Deposits), 4.1.15 (compliance with data privacy laws), 4.2 (confidentiality), 5 (covenants of Escrow Agent), 8 (Releases), 9 (indemnification), 10 (arbitration), 11 (limitation of liability and consequential damages waivers), 12 (notices), and 13 (miscellaneous), which shall survive the termination of this Agreement for any reason.

13.9 This Agreement shall be fairly interpreted in accordance with its terms and without any strict construction in favor of or against either of the parties. Captions and headings contained in this Agreement have been included for ease of reference and convenience and shall not be considered in interpreting or construing this Agreement.

13.10 This Agreement shall be governed by the laws of the State of California without regard to conflicts of law principles.

13.11 This Agreement may be executed in three counterparts, each of which is to be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Registrar

Signature: _____

Name: _____

Title: _____

Date: _____

Internet Corporation for Assigned Names and Numbers

Signature: _____

Name: _____

Title: _____

Date: _____

China Organizational Name Administration Center

Signature: _____

Name: _____

Title: _____

Date: _____

Appendix 1

Physical Deposit Transmittal Form

Date Deposit Sent: _____
Registrar Company Name: _____
Registrar Company IANA Number: _____

Deposit Media (Please Label All Media with Date Sent and IANA Number)

Media Type	Quantity	Media Type	Quantity
CD-ROM / DVD		Hard Drive / CPU	
DLT Tape			
DAT Tape			

Note: Please label all media with Company Name, IANA # and Date Mailed. Send all Deposit material with this form via commercial express carrier to the following address:

China Organizational Name Administration Center

Attention: Registrar Data Escrow

Address: Building 6, Compound 15, Xueyuan Nanlu, Haidian District, Beijing, 100088, China

City, State, Zip: Beijing, 100088

Tel: +86-1069001152

Fax: +86-1069001153

FOR CHINA ORGANIZATIONAL NAME ADMINISTRATION CENTER USE ONLY: (NOTED DISCREPANCIES ON VISUAL INSPECTION)	

Appendix 2: Price Clause

[Escrow Agent will provide fee table.]

Appendix 3: Third Party Paying Agreement

The undersigned parties:

- (1) [Third Party Paying Agent], with registered office at [Company Address], [Company Address] [Company Address], [Company Address] (hereinafter referred to as “Third Party Paying Agent”);
- (2) [Registrar Name], with registered office at [Company Address], [Company Address] (Company Address), (hereinafter referred to as “Registrar”);
- (3) China Organizational Name Administration Center, with registered office at Building 6, Compound 15, Xueyuan Nanlu, Haidian District, Beijing, 100088, China (hereinafter referred to as “CONAC”);

Whereas:

- (a) Registrar has entered into an Escrow Agreement with CONAC under CONAC agreement number XXXXXXXXX-XXX;
- (b) Paying Agent shall take care of payment of fees and charges deriving from the Escrow Agreement and its Modification Agreement;
- (c) Parties wish to formalize this third party paying arrangement in this Agreement.

It is agreed as follows:

1. Definitions

In this Agreement the following terms shall have the following meanings:

Agreement: this third party paying agreement;

Escrow Agreement: the data escrow agreement entered into between Registrar and CONAC pursuant to which CONAC agrees to provide the data escrow services;

Business Agreement(s): any and all agreement(s) entered into between Registrar and Third Party Paying Agent in relation to the gTLD;

ICANN: the Internet Corporation for Assigned Names and Numbers;

Services: CONAC’s registrar data escrow services;

2. Appointment of Third Party Paying Agent

2.1 This Agreement shall be effective once signed by all parties hereto.

2.2 Registrar has requested that CONAC permit the Third Party Paying Agent to assume the responsibility for payment of CONAC’s applicable fees and charges under the Escrow Agreement.

The parties agree that all the taxes and fees which relate to the execution of the Registrar Data Escrow Agreement shall be borne by Registrar, including but not limited to any remittance fees, cross-border remittance fees, sales tax, value added tax, additional tax (if applicable) and any other taxes and official charges, other than any “income” or similar taxes payable by Escrow Agent on its revenue and/or profits. If there are taxes and fees which are borne by Registrar, Registrar shall deliver a copy of the corresponding payment voucher to Escrow Agent.

2.3 The parties hereby agree that CONAC shall invoice Registrar for all of CONAC’s applicable fees and charges payable under the Escrow Agreement and that the Third Party Paying Agent shall pay all such fees and charges in accordance with the terms of the Escrow Agreement.

2.4 The appointment of a Third Party Paying Agent shall not relieve Registrar of its payment obligations under the Escrow Agreement in the event of Third Party Paying Agent’s failure to make timely or complete payments due under the Escrow Agreement.

2.5 This Agreement may be terminated after unanimity among all the parties is reached through consultation. Upon such termination, Registrar shall be liable to pay all outstanding amounts due under the Escrow Agreement (to the extent not paid by the Third Party Paying Agent) and CONAC shall thereafter invoice Registrar for applicable fees and charges payable under the Escrow Agreement.

2.6 Termination of this Agreement will not affect any rights and obligations of the parties to the Escrow Agreement; the Escrow Agreement shall continue in accordance with its terms until validly terminated.

3. General

3.1 Any variation of this Agreement must be in writing and be signed by each party to the Agreement.

3.2 In the event of any conflict or inconsistency among any of the terms of the Escrow Agreement, this Agreement and the Business Agreement(s) the following order shall prevail:

(I) the Escrow Agreement; (II) this Agreement; (III) the Business Agreement(s).

3.3 Any notice sent under this Agreement shall be in writing addressed to other parties at their registered offices or principal places of business or such other addresses as may be notified by each party to other parties from time to time.

Each party shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing:

- (a) Personal delivery;
- (b) Recorded delivery or post;
- (c) Facsimile;

(d) Telex;

(e) E-mail.

A Notice is deemed to have been received as follows:

(a) Notices served by hand shall be deemed to have been received immediately if during business hours, and at the start of the next business hour if not.

(b) Notices sent by recorded delivery or post shall be deemed to have been received the second business day after posting.

(c) Notices served by facsimile shall be deemed to have been received upon receipt by the party giving the Notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the Addressee's facsimile number.

(d) Notices served by telex shall be deemed to have been received upon confirmed answerback.

(e) Notices served by e-mail shall be deemed to have been received upon notices first entering the recipient's system.

3.4 No failure or delay by any party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right. Clause 2 will survive termination of this Agreement for any reason.

3.5 If any provision or any part of a provision of this Agreement is held by any authority to be invalid and unenforceable, the validity of the other provisions and/or the remaining part of the provision shall not be affected.

3.6 This Agreement may be executed in three counterparts, each counterpart shall be deemed to be an original and all of which together shall constitute one and the same instrument.

3.7 This Agreement shall be construed and enforced in accordance with the People's Republic of China without regard to conflicts of laws principles. The parties consent and agree that jurisdiction and venue for any legal proceedings relating to this Agreement shall lie with the people's court of Haidian, Beijing in the People's Republic of China.

Signed for and on behalf of **[Third Party Paying Agent Name]**

Name: _____

Title: _____

Date: _____

Signed for and on behalf of **[Registrar Name]**

Name: _____

Title: _____

Date: _____

Signed for and on behalf of **China Organizational Name Administration Center**

Name: _____

Title: _____

Date: _____

**Certification of Usage of ICANN-Approved
Registrar Data Escrow Agreement Template**

By signing this Certification of Usage of ICANN-Approved Registrar Data Escrow Agreement Template (“Certification”), a duly authorized person (officer, owner, director, agent or representative) of the Escrow Agent with the requisite power and authority to act on its behalf, certifies that the ICANN-approved registrar data escrow agreement template (the “Template”) was used for the purposes of this Agreement. Additionally, the Template has not been edited or modified in any material respect from the Template posted here <https://www.icann.org/resources/pages/registrar-data-escrow-2015-12-01-en> at the time of execution of this certificate.

We hereby certify that the above contents of the Certification are correct.
Escrow Agent Signature

We hereby confirm that we have read and accepted the Certification.
Registrar Signature