



## Privacy & Proxy Service Provider Accreditation Agreement

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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 that, directly or indirectly, through one or more intermediaries, Controls, is controlled by, or is under common control with, the Person specified.

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

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

1.6 “Consensus Policies and Temporary Policies Specification” means the Consensus Policies and Temporary Policies Specification attached hereto as Specification 2, as updated from time to time in accordance with this Agreement.

1.7 “Consensus Policy” has the meaning set forth in the Consensus Policies and Temporary Policies Specification.

1.8 “Consent” of a data subject means any freely given, specific, informed and unambiguous indication of the data subject’s wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of Personal Data relating to him or her.

~~1.89~~ “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, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

~~1.910~~ “Customer” means a Person for whom Provider provides the Services.

~~1.4011~~ “Customer Data Accuracy Program Specification” means the Customer Data Accuracy Program Specification attached hereto as Specification 1, as updated from time to time in accordance with this Agreement.

~~1.4112~~ “Data Retention Specification” means the Customer Data Accuracy Program Specification attached hereto as Specification 5, as updated from time to time in accordance with this Agreement.

~~1.4213~~ “Disclosure” means the revealing of a Customer’s identity or contact details to a third-party Requester without Publication in the Registration Data Directory Service.

~~1.4314~~ “DNS” refers to the Internet domain-name system.

~~1.4415~~ “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.

~~1.4516~~ “gTLD Zone-File Data” means all data contained in a DNS zone file for the registry of a gTLD or for any domain of a gTLD for which Registry Services are provided and that contains Registered Names, as provided to nameservers on the Internet.

~~1.4617~~ “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.

~~1.4718~~ “Intellectual Property Disclosure Framework Specification” means the Intellectual Property Disclosure Framework Specification attached hereto as Specification 4, as updated from time to time in accordance with this Agreement.

1.1819 “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 established or maintains a physical office.<sup>1</sup>

1.2019 “Law Enforcement Authority Disclosure Framework Specification” means the Law Enforcement Authority Disclosure Framework Specification attached hereto as Specification 3, as updated from time to time in accordance with this Agreement.

1.2021 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.

1.2122 “Person” means an individual, corporation, limited liability company, partnership, association, trust, joint venture, unincorporated organization, other entity or group.

1.2223 “Personal Data” refers to data about any identified or identifiable natural person.

1.2324 “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 Provider for display in the Registration Data Directory Service rather than the Customer’s contact information in the Registration Data Directory Service.

1.2425 “Provider Approval” means the receipt of the affirmative approval of at least 50.01% of the Voting Eligible Service Providers.

1.2526 “Proxy Service” means a service through which Provider, as the Registered Name Holder, licenses use of a Registered Name to a Customer in order to provide the Customer use of such Registered Name, and Provider’s contact information is displayed in the Registration Data Directory Service rather than the Customer’s contact information.

1.2627 “Publication” means the reveal (i.e. displaying) of a Customer’s identity or contact information in the Registration Data Directory Service rather than the Provider’s identity and contact information.

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<sup>1</sup> Note to IRT: ICANN org is not opposed to inserting “legally organized” in place of “established”, as proposed by a member of the IRT, but doing so would vary from the term in the RAA. As a result, proposing to keep as-is.

1.2728 “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 the gTLD Zone-File Data (e.g., a registered but inactive name).

1.2829 “Registered Name Holder” means the holder of a Registered Name.

1.2930 “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.

1.3031 “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.

1.3132 “Registration Data Directory Service” means the current globally accessible gTLD Registration Data Directory Service (WHOIS), and any successors or replacements thereto.

1.3233 “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.

1.3334 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.

1.3435 “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.

1.3536 “Relay” when used in the context of a request to Provider from a Requester, means to forward the request to, or otherwise notify, the Customer that a Requester is attempting to contact the Customer.

1.3637 “Reporting Specification” means the Reporting Specification attached hereto as Specification 6, as updated from time to time in accordance with this Agreement.

1.3738 A “Reseller” is a 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.

1.3839 “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.

1.3940 “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 Provider either a Relay, Disclosure or Publication of the identity or contact details of a Customer, as the case may be.

1.4041 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 Specifications and/or Policies.

1.4142 “Service Provider” means a Person that provides Privacy Services or Proxy Services that has been Accredited and entered into an agreement with ICANN substantially similar to this Agreement, including Provider.

1.4243 “Services” means, individually and collectively, Privacy Services and Proxy Services.

1.4344 “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.

1.4445 “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.

1.4546 “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.

1.4647 “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.

1.4748 “Working Group” means a standing working group appointed by the Generic Names Supporting Organization (“GNSO”) comprised of representatives of Service Providers and other interested individuals for purposes of this Agreement. 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).

## 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. ICANN shall reasonably 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 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:

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 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

**Commented [AB1]:** Recommended Edit, Volker Greimann: or the maximum duration allowed by applicable law, if shorter,

**Commented [AB2R1]:** Comment (Steve Metalitz): No objection to this change.

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 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 Registration Data Directory Service) providing interactive, query-based public access.

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. During the Term of this Agreement, on a schedule, under the terms, and in the format specified by ICANN, Provider shall submit an electronic copy of the data described in Sections [3.3.1 through 3.3.4] to ICANN or, at Provider's election and at its expense, to a reputable escrow agent mutually approved by Provider and ICANN, such approval also not to be unreasonably withheld by either party. The data shall be held under an agreement among Provider, ICANN, and the escrow agent (if any) providing that (1) the data shall be received and held in escrow, with no use other than verification that the deposited data is complete, consistent, and in proper format, until released to ICANN; (2) the data shall be released from escrow upon expiration without renewal or termination of this Agreement; and (3) ICANN's rights under the escrow agreement shall be assigned with any assignment of this Agreement. [The escrow shall provide that in the event the escrow is released under this Section 3.4, ICANN (or its assignee) shall have a non-exclusive, irrevocable, royalty-free license to exercise (only for

**Commented [AB3]: Proposed Edit (Volker Greimann):** Remove this section in its entirety. we never proposed a public access RDS system by privacy services in the WG. It is also unclear whom the license is supposed to be granted to.

**Commented [AB4R3]: Comment (Steve Metalitz):** I don't fully agree with Volker here. While some change to the provision might be needed, this is still useful as a statement of the subset of the data collected by Provider that would be subject to Disclosure, either under one of the Frameworks or otherwise. The reference to interactive, query-based access should be retained to make it clear that those registrars/registries not redacting the data of non-EU registrations have a license to display it. Perhaps we should also add a reference to the items listed as being subject to Disclosure in accordance with this agreement.

**Commented [AB5R3]: Comment (Volker Greimann):** The RDS is a registrar/registry obligation, PP services never had such an obligation and we also never proposed that. This does not affect the Relay or Disclosure obligations. Happy with replacing it with such a reference, as proposed.

**Commented [AB6]: Recommended Edit (Volker Greimann):** This requirement is void if the data described in Sections [3.3.1 through 3.3.4] is already being escrowed by the sponsoring registrar.

**Commented [AB7R6]: Comment (Steve Metalitz):** OK with this in principle but as I recall this was going to be spelled out in the "terms ... specified by ICANN."



transitional purposes) or have exercised all rights necessary to provide the Services.]<sup>2</sup>

3.5 Business Dealings, Including with Customers.

3.5.1 Provider shall abide by applicable laws and governmental regulations.

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 Sections 3.5.3.1 through 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 Sections 3.5.3.1 through 3.5.3.17 or any Consensus Policy.

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 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 Provider, and the consequences for failure to comply with Provider's requests related thereto.~~

3.5.3.1 A Customer's (a) willful provision of inaccurate or unreliable information, (b) willful failure to update information provided to Provider within seven (7) days of any change, or (c) failure to respond 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 provides Services shall constitute a material breach of the Terms of Service, following which Provider shall (i) promptly either terminate or suspend the Services for the Registered Name and (ii) notify the sponsoring Registrar of the termination or suspension of the Services.

3.5.3.2 Subject to the restrictions set forth in Section 3.22, any Customer that intends to license use of a domain name for which Provider is 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

**Commented [AB8]: Recommended Edit (Volker Greimann):**  
3.5.3 Move information requirements to 3.8, unless a specific notice is absolutely required.

**Commented [AB9R8]: Comment (Steve Metalitz):** *The data accuracy provisions need to be part of the accreditation agreement (and thus enforceable by ICANN) and not just part of the Terms of Service enforceable by the Provider (though they certainly could be there as well). But I might be missing what Volker is driving at here.*

**Commented [AB10R8]: Comment (Volker Greimann):** *My main point is that ensuring data accuracy never is a responsibility of a contracted party, it is the responsibility of the registrant. The contracted party may have an obligation to verify upon receipt of a complaint and to conduct certain operations regarding verification and validation, but ultimately the responsibility lies with the registrant and the contracted party may be required to enforce this obligation against the registrant. Therefore the correct place for such notices is the terms of service or the provider. Note that this obligation to provide notice is still enforceable by ICANN.*

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.

3.5.3.3 **Provider** shall provide notice to a Customer upon each initial agreement to provide Services and each renewal or extension of such agreement of a Registered Name for which Provider is providing the Services stating:

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

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);

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

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

3.5.3.3.1. The specific purposes for which any Personal Data will be Processed by the Provider;

3.5.3.3.2. The intended recipients or categories of recipients of the Personal Data (including the Registrar and Registry Operator and others who will receive the Personal Data);

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

3.5.3.3.4. **How** the Customer or data subject can access and, if necessary, rectify Personal Data held about them;

3.5.3.3.5. The identity and the contact details of the Provider (as controller) and, where applicable, of the Provider's representative in the European Economic Area;

3.5.3.3.6. The contact details of Provider's data protection officer, where applicable;

**Commented [AB11]: Proposed Edit (Volker Greimann):**  
3.5.3.3 Replace by: Provider shall provide appropriate notice to a Customer upon each initial agreement regarding a Registered Name for which Provider is providing the Services. Such a notice should provide all legally required information in accordance with applicable data privacy laws (optional: which may include: 3.5.3.3.1, 3.5.3.3.2, 3.5.3.3.3, 3.5.3.3.4, 3.5.3.3.5, 3.5.3.3.6, 3.5.3.3.9, 3.5.3.3.10, 3.5.3.3.11, 3.5.3.3.13 (add: if applicable), 3.5.3.3.14.)

**Commented [AB12R11]: Comment (Steve Metalitz):** *Support this in principle, this is an example of where it would be inappropriate to import the Temp Spec into implementation of a consensus policy. Furthermore, some of these elements make little sense outside of the EU context, and there will continue to be Providers not subject to the GDPR, at least as to certain non-EU Customers.*

**Commented [AB13R11]: Comment (Volker Greimann):**  
*Agreed. Non-EU registrars with non-EU customers will not be bound by GDPR (but may be bound by the incoming Californian privacy laws, or other such laws elsewhere). Hmm, come to think of it, ICANN is based in California :-)*

**Commented [AB14]: Proposed Edit (Volker Greimann):**  
3.5.3.4: Remove completely, as this is invalid forced consent.

**Commented [AB15R14]: Comment (Steve Metalitz):** *I disagree. I am afraid Volker may be committing the error he has often warned us against of conflating a domain name registration service with the service provided by a P/P provider. In the latter case, the only subject matter of the contract itself involves the collection, processing and disclosure of data, not the provision of any other service, so it may be perfectly acceptable to rely upon consent for the processing activities, even if this legal basis is of less value in the case of a domain name registration service where the processing of e.g. contact data of the registrant is arguably more ancillary to the main point of the contract.*

**Commented [AB16R14]: Comment (Volker Greimann):** *Hate to disagree, but forced consent is a no-go under the GDPR. Better base such processing by the provider on the need of processing for providing the service and to conclude a valid agreement.*

- 3.5.3.3.7. The specified legitimate interest for Processing under Article 6(1)(f) of the GDPR;
- 3.5.3.3.8. The recipients or categories of recipients of the Personal Data, if any;
- 3.5.3.3.9. Where applicable, the fact that the Provider intends to transfer Personal Data: (i) to a third country or international organization and the existence or absence of an adequacy decision by the Commission; or (ii) in the case of transfers referred to in Articles 46 or 47 of the GDPR, or the second subparagraph of Article 49(1) of the GDPR, reference to the appropriate or suitable safeguards and how to obtain a copy of them or where they have been made available.
- 3.5.3.3.10. The period for which the Personal Data will be stored, or if it is not possible to indicate the period, the criteria that will be used to determine that period;
- 3.5.3.3.11. The existence of the right to request from the Provider access to, and rectification or erasure of Personal Data, or restriction of Processing of Personal Data concerning the Customer or data subject, or to object to Processing, as well as the right to data portability;
- 3.5.3.3.12. Compliance with Article 6(1)(a) and Article 9(2)(a) of the GDPR, where the Provider relies on consent of the Registered Name Holder for Processing;
- 3.5.3.3.13. The right of the Customer or data subject to lodge a complaint with a relevant supervisory authority;
- 3.5.3.3.14. Whether the provision of Personal Data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the Customer is obliged to provide the Personal Data, and the possible consequences of failure to provide such Personal Data; and
- 3.5.3.3.15. The existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) of the GDPR and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such Processing for the data subject.

**Commented [AB17]: Proposed Edit (Volker Greimann):**  
3.5.3.8 Remove: Unnecessary as already included in registration agreements. No need for duplication of representation.

**Commented [AB18R17]: Comment (Steve Metalitz):**  
*Disagree, breach of this representation should be a basis for terminating the p/p service even if the registrar is not enforcing the obligation. In addition, as this provision has been in the draft PPAA since the beginning, and is not impacted by GDPR as far as I can tell, I question why it is being challenged at this point. Surely we should not be reopening issues that has already come to rest over the previous years....*

**Commented [AB19R17]: Comment (Volker Greimann):** So basically you want the registrant to make the same (implicit) representation twice? Once to the registrar when requesting the registration and once to the privacy service provider? What is the added benefit here?

3.5.3.4 The Customer shall consent to the data processing referred to in Section 3.5.3.3.

3.5.3.5 The Customer shall represent that notice has been provided equivalent to that described in Section 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 Section 3.5.3.3 of any such third-party individuals.

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 Section 3.5.3.3 above.

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.

3.5.3.8 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.

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

3.5.3.10 The Customer shall agree that the registration of the Registered Name for which Provider is providing the Services shall be subject to suspension, cancellation, or transfer pursuant to any Specifications and/or Policies, or pursuant to any Provider, Registrar or registry procedure not inconsistent with any 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.

3.5.3.11 Providers shall clearly identify and describe all 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:

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

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 Registered Name; and (b) how requests for transfers of a Registered Name will be reviewed, processed and effected; and

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 to a Registered Name.

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).

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

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 Registered Name.

3.5.3.15 Provider shall include a link or other direction to the ICANN website (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.

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

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

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

3.5.3.17 If Provider permits its Customers to cancel the Services for a Registered Name, in the event a Customer notifies Provider of the Customer's desire to cancel the Services for a Registered Name prior to and in lieu of Publication, Provider shall notify the Customer that the Services may be cancelled but the registration of the Registered Name related thereto cannot be cancelled if such Registered Name is the subject of a pending proceeding under either the Uniform Domain Name Dispute Resolution Policy ("UDRP") (as such policy is identified on ICANN's website [www.icann.org/general/consensus-policies.htm](http://www.icann.org/general/consensus-policies.htm))

or ICANN's Uniform Rapid Suspension System ("URS") (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.

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

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.

3.5.6 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 fee to ICANN.

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. As of the Effective Date, the yearly Accreditation fee is \$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 following the date of the invoice provided by ICANN.

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 7.7 of this Agreement.

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.

**Commented [AB20]: Proposed Edit (Peter Roman):** 3.5.7 Provider shall not provide Services for Customers whose data is non-public.

Or

3.5.7 Provider shall not provide Services for Customers whose data is only accessible through gated access in the RDDS system and is not publicly available through WHOIS.

**Commented [AB21R20]: Comment (Greg DiBiase):** This seems like a substantive policy change that was not envisioned or included in the original policy. Accordingly, I don't think the IRT is empowered to make this change.

**Commented [AB22R20]: Comment (Volker Greimann):** This seems highly impractical, as a service provider would suddenly have to monitor what happens to a domain name whois after the fact. And why shouldn't there be an additional layer of privacy for those that legitimately need or want it? Maybe the data just is not public because the registry is redacting it, but the registrant does not trust the registry operator with his data? Aside from the fact that this is a policy question that does not belong into the IRT but into the PDP proper, I do not support the proposed addition on its merits either.

**Commented [AB23]: Proposed Edit (Volker Greimann):** 3.6.1 change \$4,000 to \$400

**Commented [AB24R23]: Note:** Please note that ICANN org has considered IRT feedback on this topic, but is of the opinion that the fees proposed are appropriate, considering the three considerations outlined in the fees proposal document. This topic will be specifically flagged in the call for public comments, along with IRT feedback on this topic.

3.7 Provider Training. Provider’s primary contact as identified in Section 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 7.7) shall complete a training course covering Provider’s obligations under ICANN policies and agreements. Provider shall at all times employ at least one individual 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.

3.8 Terms of Service; Website Publication; and Description of Procedures.

3.8.1 Provider shall publish on its website its terms of service for the Services (the “Terms of Service”).

3.8.2 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 Provider requires in order to determine whether or not to comply with third-party requests, such as for the Disclosure or Publication of Customer identity or contact details.

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

3.8.4 Provider shall publish on its website all pricing information for all Services offered by Provider.<sup>3</sup>

3.8.5 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 Provider’s decision:

3.8.5.1 To notify its Customer of such Requestor’s request for Publication or Disclosure; and

3.8.5.2 Whether or not Provider agrees to comply with such Requestor’s request for Publication or Disclosure.

3.8.6 Provider shall publish on its website a copy of Provider’s service agreement and description of Provider’s procedures for handling the

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<sup>3</sup> Note to IRT: Some IRT members noted that this requirement could be challenging for resellers who may not have information about registrar fees. We considered this input but are not proposing changes here as this requirement is limited to pricing information for Services (as defined in this Agreement) offered by Provider only.

following, in each case of a domain name registration for which Provider is the Registered Name Holder or for which Provider provides Services:

- 3.8.6.1 The process or facilities to report Abuse;
- 3.8.6.2 The process or facilities to report infringement of trademarks or other rights of third parties;
- 3.8.6.3 The circumstances under which Provider will Relay communications from third parties to the Customer;
- 3.8.6.4 The circumstances under which Provider will terminate the Services provided to the Customer;
- 3.8.6.5 The circumstances under which the Customer's identity or contact data will be published in the RDDS; and
- 3.8.6.6 A description of the support services offered by Provider to its Customers, and how to access these services.

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 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 3.9 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.

3.10 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 Providers](#), update the content or URL for this website.

3.11 Provider Contact, Business Organization and Officer Information. Provider shall provide to ICANN the information specified in Section 3.11.1 through Section 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 3.11.1 through Section 3.11.9. 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.

3.11.1 Full legal name of Provider.

3.11.2 Correspondence address for Provider.

3.11.3 Address of Provider’s principal place of business (no P.O. boxes).

3.11.4 Provider’s telephone number.

3.11.5 Provider’s email address ([which can be a generic email address](#)).

~~3.11.6 Full name, contact information and position of all officers of Provider.~~

3.11.~~6~~7 Provider’s abuse contact information.

3.11.~~7~~8 Ultimate parent entity of Provider, if applicable.

3.11.~~8~~9 The names and ICANN IDs of all Affiliated Providers and Affiliated Registrars of Provider.

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

3.12.1 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 ensure that its Abuse contact is capable and authorized to investigate and handle Abuse reports and related information requests.<sup>4</sup> 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). Provider shall take reasonable and prompt steps to investigate and respond appropriately to any reports of Abuse

3.12.2 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.

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

3.14 Intellectual Property Disclosure Framework Specification. Provider shall comply with the Intellectual Property Disclosure Framework Specification attached hereto.

3.15 Labeling. 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 for Provider's contact information [*unique address to be created for and provided to Provider upon accreditation*].

3.16 Relay Requirements.

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

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<sup>4</sup> Note to IRT: Edit made to match Final Recommendation upon final check of recommendations against PPAA draft.

3.16.2 For all other electronic communications received by Provider from a third party for Relay to a Customer, including any Registered Name for which Provider is providing Services to a Customer, Provider shall either:

3.16.2.1 Relay all electronic communications received (including those received via emails and web forms) by Provider to such Customer, but Provider may implement commercially reasonable safeguards to filter out spam and other forms of abusive communications; or

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).

3.16.3 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.

3.16.4 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.

3.16.5 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 Provider shall have the discretion to select the most appropriate means of Relaying such a request to the Customer.

3.16.6 Notwithstanding anything to the contrary in this Section 3.16, 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.

3.16.7 The requirements set forth in this Section 3.16 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.

3.17 Reveal Requirements (Publication and Disclosure).

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.

**Commented [AB25]: Recommended Edit (Volker Greimann):** 3.17. add at the end: ...and to the extent permitted under applicable law.

**Commented [AB26R25]: Comment (Steve Metalitz):** I don't object to this in principle (and as applicable to Disclosures outside the context of the Disclosure Frameworks) but would defer until we get to discussing the proposed edits to these Disclosure Frameworks.

**Commented [AB27R25]: Comment (Volker Greimann):** I'd prefer to settle this now and not push issues ahead for later to avoid further delay, but I could live with it.

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.

3.17.3 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.

### 3.18 Transfer of Registered Names Requirements.<sup>5</sup>

3.18.1 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.

3.18.2 Provider should facilitate and not hinder (a) a Customer's request to transfer, renew or restore a 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.

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

### 3.19 Record Keeping.

3.19.1 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.

3.19.2 Providers shall provide these statistics in aggregate form to ICANN for periodic publication, utilizing ICANN's reporting interface, as specified in the Reporting Specification.

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 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

**Commented [AB28]: Recommended Edit (Volker Greimann):** 3.18.2 Add: Provider shall not be required to allow transfers to registrars it has no agreement with as long as its data remains in the RDS at the time the transfer is requested.

**Commented [AB29R28]: Comment (Steve Metalitz):** *Would like to hear more about why this addition is needed and what relationship if any it bears to GDPR and its impact on RDS. (See above as to re-opening settled issues.)*

**Commented [AB30R28]: Comment (Volker Greimann):** *No relation to RDS, but immense business and liability impact. If registration is move to registrar with privacy data intact and the privacy service has no agreement with that registrar, provider loses control over registration where it still formally is registered name holder.*

<sup>5</sup> Note to IRT: Subject to review following further Transfer Policy work.

required pursuant to Section 3.20(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.

3.21 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 Affiliated 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).

3.22 Obligations Related to Provision of the Services by Third Parties. Notwithstanding any other provision in this Agreement (including Section 3.5.3.2), Provider shall not use, allow or permit any Person to, directly or indirectly, offer, distribute or sell any of the Services on behalf of, or for the benefit of, Provider, including collecting registration or other data about Customers, submitting that data to Provider, or facilitating the entry or acknowledgment of the Terms of Service between Provider and the Customer.

#### **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 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.<sup>6</sup> 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 advance 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:

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<sup>6</sup> Note to IRT: There was some discussion about whether this Section should be edited to require adoption of an updated agreement, but, upon further review, this matches the Global Amendment provisions in other ICANN contracts so ICANN is proposing to keep as-is.

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 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 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 law 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"),<sup>7</sup> 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;

5.6 Termination Procedures. This Agreement may be terminated in circumstances described in Sections 5.5.1 through 5.5.6 above only upon fifteen (15) days written notice to Provider (in the case of Section 5.5.4 occurring after

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<sup>7</sup> Note to IRT: IRT recommended that this be at ICANN's option, depending on the circumstances and that termination should not be automatic. Upon review, the beginning of Section 5.5 makes all termination rights optional, so additional language is not needed.



Provider's failure to cure), with Provider being given an opportunity during that time to initiate arbitration under Section 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 Sections 5.5.7, 5.5.8 and 5.5.9.

#### 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 Section 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 Sections 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 Section 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; provided, that, Provider may continue to provide the Services for existing 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 Section 7.1 or its invocation of Section 5.5.7. Suspension of the Agreement under this Section 5.7.4 may, at ICANN's sole discretion, preclude Provider from providing the Services. Provider must also post the statement specified in Section 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 Section 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 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 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 Section 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 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 7.7. 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 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, re-approve 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, Section 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.

### 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.

**Commented [AB31]: Recommended Edit (Volker Greimann):** 7.2. Please add data processing equivalency language. Also remove the reference to the "specification in effect".

**Commented [AB32R31]: Comment (Steve Metalitz):** *Not sure what is being proposed here by Volker.*

**Commented [AB33R31]: Comment (Volker Greimann):** *Basically, a reference to chapter 5 GDPR without spelling that out, indicating that for disclosure to happen, requester should evidence or represent that requester uses similar/equivalent data protection measures when processing the data, indicating the duration of expected processing, indicating whom the data would be provided to, etc. Required due to corresponding responsibility of provider bound by GDPR to ensure this. And for the specification in effect thing, we could change it to "any specification in effect binding upon providers" or similar. Current wording is too broad.*

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 Group ("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 ~~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 ~~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 7.7. 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.

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.<sup>8</sup>

7.4.4.4 If an agreement is reached during the mediation, ICANN shall post the mutually agreed Proposed Revisions on its website for

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<sup>8</sup> **Note to IRT:** As this requirement is a key provision in the RAA text, from which this Section is adapted, ICANN believes this should remain consistent with the RAA.

the Posting Period and provide notice to all Service Providers in accordance with Section 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 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, 3.1, 3.2, 3.3, 3.5, 3.6, 3.8, 3.9, 3.10, 3.11, 3.12, 3.15, 3.16, 3.17, 3.21, 4, 5.1, 5.2, 5.3 and 6; and the Consensus Policies and Temporary Policies Specification, Data Retention Specification, 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.<sup>9</sup>

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

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<sup>9</sup> Note to IRT: There was some IRT discussion about whether this should be edited, such as by adding that synchronization changes proposed by ICANN would take effect unless objected to by the Working Group within 30 days. No edits are proposed because the current structure is for ICANN to post for public comment and discuss public comments in good faith with the Working Group, and then the Board must approve, which would become effective 60 days after ICANN provides notice of Board approval. As this provides more safeguards than discussed (e.g. 30 days) it does not appear that changes are needed based on IRT discussion.

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.

7.6 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.

7.7 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]

7.8 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.

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

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.

7.11 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.

7.12 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.

7.13 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: \_\_\_\_\_

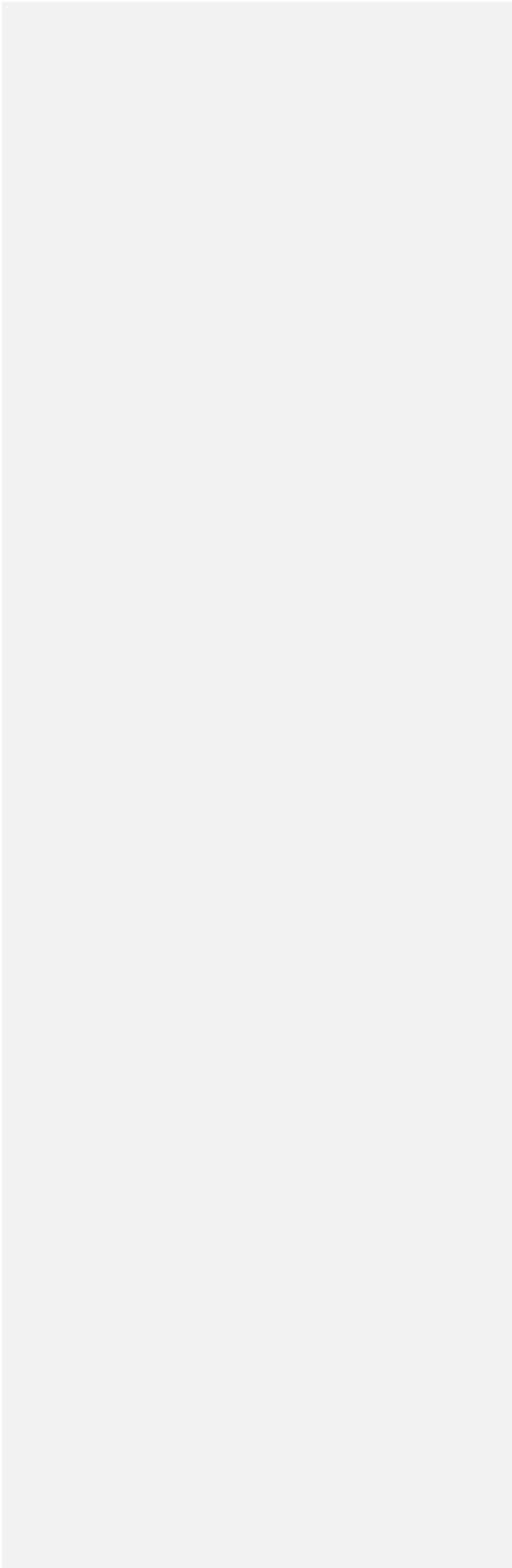
By: \_\_\_\_\_

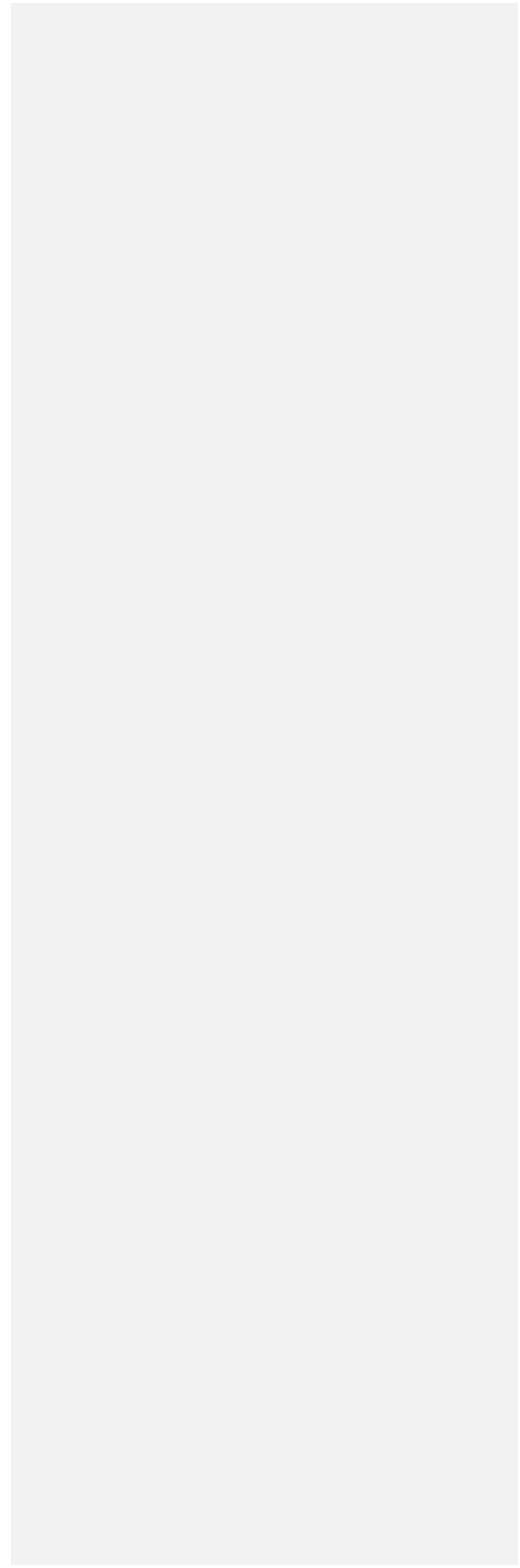
Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_





## **SPECIFICATION 1:<sup>10</sup> 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.

1. Except as provided for in Section 3 below<sup>11</sup>, within fifteen (15) days of any of (i) the date Provider begins providing any Services related to a Registered Name, (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 Section 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

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<sup>11</sup> **Note to IRT:** IRT members recommend that we consider how to clarify that Providers are not required to re-validate/verify if the Affiliated Registrar has already completed this obligation. We considered whether to move Section 3 up to accomplish this, but this seemed out of place (explaining who does not have to complete the requirement before stating what the requirement is). The inclusion of "Except as provided for in Section 3..." at the beginning of each Section is intended to clarify that this does not apply where an Affiliated registrar has already completed the task.

ii. the telephone number of the Customer by either (A) calling or sending an 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 Section 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 has already successfully completed the validation and verification procedures on the identical contact information for such Registered Name and neither Provider or such Affiliated Registrar is in possession of facts or knowledge of circumstances that suggest that the information is no longer accurate and reliable.
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. A Customer's (a) willful provision of inaccurate or unreliable WHOIS or customer contact information, (b) willful failure promptly to update information provided to Provider, or (c) failure to respond to inquiries by Provider within the time frame required by the 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 a Service shall constitute a material breach of the Terms of Service, following which Provider shall (i) promptly either terminate or suspend the Services for the Registered Name and (ii) notify the sponsoring Registrar of the termination or suspension of the Services.
6. Following Provider's verification or validation (as applicable) of the applicable contact information in response to the applicable Registered Name being suspended, placed on clientHold or placed on clientTransferProhibited by the Registrar sponsoring the applicable Registered Name pursuant to this Specification, Provider shall promptly notify the Registrar sponsoring the applicable Registered Name of such verification or validation (as applicable) and request that such Registered Name be released from suspension, clientHold or clientTransferProhibited by the Registrar sponsoring the applicable Register Name (as applicable).
7. Nothing within this Specification shall be deemed to require Provider to perform verification or validation of any Customer account holder information where Provider is not providing any Services to the Customer.
8. Notwithstanding the foregoing, if (i) an Affiliated Registrar has already successfully completed the validation and verification procedures on identical contact information for a Registered Name for which Provider is required to validate or verify (or revalidate or reverify) under this Specification and (ii) neither Provider nor such Affiliated Registrar is in possession of facts or knowledge of circumstances that suggest that the information is no longer accurate and reliable, then Provider shall not be required to perform such validation and verification procedures.

## SPECIFICATION 2: CONSENSUS POLICIES AND TEMPORARY POLICIES

### SPECIFICATION

#### 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)

**Commented [AB34]: Recommended Edit (Volker Greimann):** Spec 2, Remove Sections 1.2.5, 1.3.1, 1.3.2, 1.3.3, 1.3.5 - irrelevant for pp services.  
under Section 2 add: "...provided the Provider and the services provided by it are in scope of such a temporary policy."

**Commented [AB35R34]: Comment (Steve Metalitz):** *True but I assume this is simply the same boilerplate definition of Consensus Policies used in other contexts, and wouldn't tinkering with it here raise unnecessary questions about whether certain topics are no longer within ICANN's remit?*

**Commented [AB36R34]: Comment (Volker Greimann):** *I would prefer the agreement to be tailored to the services at hand. It is long enough as it is.*

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.

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 [Services](#), 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

**Commented [AB37]:** Comment (Volker Greimann): add: "...provided the Provider and the services provided by it are in scope of such a temporary policy."

**Commented [AB38R37]:** Comment (Steve Metalitz): *This would seem self-evident but hard to object on substance, other than that tinkering with such standard language could raise unnecessary questions, as noted above.*



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 3: 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”: A Requester that is a law enforcement, consumer protection, quasi-governmental or other similar authority designated from time to time by the national or territorial government of the jurisdiction in which 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~~Priority” requests are limited to circumstances that pose an imminent threat to life, serious bodily injury, critical infrastructure or child exploitation.

#### **2. Minimum 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 applicable law.
  - 2.1.8. A verification statement (e.g. all provided information is true and correct).

2.1.9. A clear statement that the domain name or URL involved is part of an official investigation.

2.1.10. Except in the case of High Priority requests, a clear statement that the Law Enforcement Authority has attempted to contact the relevant parties and has no other reasonably practicable<sup>12</sup> means of identifying them.

2.1.11. For High Priority requests, in addition to the requirements specified in Sections 2.1.1-2.1.9 of this Specification, the Requestor must provide specific information demonstrating that the request is High Priority due to an imminent threat to life, serious bodily injury, critical infrastructure or child exploitation.

2.2. To assist 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 law or ICANN ~~regulation~~ requirement(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. 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).

3.2. Receipt Process: [Standard Priority Request](#)

3.2.1. Within two business days (as observed in the location of ICANN's principal place of business) of the disclosure request 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.

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<sup>12</sup> "Reasonably practicable" added to edit proposed by Rr members of the IRT (otherwise, "has no other means of identifying" could mean that if there is some method, no matter how difficult, this wouldn't apply).

3.2.2. Where the LEA Requestor is not known to Provider, Provider will verify the identity of the LEA Requestor.

#### **4- Provider Response Actions**

##### **4.1. Prioritization:**

~~4.1.1.3.2.3.~~ Upon completion of the ~~Receipt-Process~~receipt process specified in Section ~~3.3.2.1~~ of this Specification, Provider will seek to action, in accordance with Sections ~~4.1.2~~ and ~~4.2.3~~ of this Specification, ~~the disclosure~~Standard Disclosure request in accordance with the ~~Priority Level- deadline specified in the request. If Provider cannot adhere to such deadline, Provider should notify the LEA Requestor and provide a reasonable timeframe for response.~~

##### 3.3. Receipt and Processing: High Priority Request

~~4.1.2.~~ ~~Where a disclosure request has been categorized as High Priority, this must be actioned within 24 hours.~~3.3.1. The LEA Requestor will detail the threat type and justification for a request with a Priority Level of High Priority. Where a disclosure request has been categorized as High Priority, this must be actioned, in accordance with Section 4.1. and 4.2, within [TBD] of receipt by Provider.

~~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 such deadline, Provider should notify the LEA Requestor and provide a reasonable timeframe for response.~~

#### **4. Provider Response Actions**

##### ~~4.2.4.1.~~ Disclosure:

~~4.2.4.1.1.~~ Within the applicable timeframe for a request's Priority Level, Provider will disclose to the LEA Requestor, using a secure mechanism, the Requested Information it holds associated with the account.

~~4.2.2.4.1.2.~~ Disclosure can be reasonably refused by Provider for reasons consistent with the general policy stated herein, including any of the following:

~~4.2.2.4.1.2.1.~~ The LEA Requestor failed to provide to Provider information to meet the minimum standard for acceptance as outlined in Section 2 of this Specification;<sup>13</sup>

<sup>13</sup> Note to IRT: If the requirements set forth in Section 2 of this Specification are not met

~~4.2.2.2~~4.1.2.2. If disclosure would lead to a contravention of applicable law; ~~or~~

~~4.2.2.3~~4.1.2.3. Where the Customer has provided, or Provider has found, specific information, facts, or circumstances showing that disclosure will endanger the safety of the Customer; or:

4.1.2.4. Where Provider has not been able to verify the identity of the LEA Requestor pursuant to Section 3.2.2 of this Specification.<sup>14</sup>

~~4.2.3~~4.1.3. If disclosure is refused by Provider, Provider must provide written notice (which may be by electronic communication) to the LEA Requestor setting for Provider's specific reasons for refusing to disclose. Such notice must be provided by Provider to the LEA Requestor prior to any Customer notification by Provider, irrespective of the reason for refusal.

~~4.2.4~~4.1.4. 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: 4.2.4.1. Exceptional circumstances may include delays caused by acts of nature.

~~4.2.5~~4.1.5. 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.<sup>15</sup>

~~4.3~~4.2. Customer Notification:

~~4.3.1~~4.2.1. Provider will notify the Customer of the disclosure request ("Customer Notification") in accordance with its published Terms of Service and the timeframe identified by the LEA Requestor, subject to any additional requirements under applicable law or court order.<sup>16</sup>

<sup>14</sup> Note to IRT: For Sections 3.2.2 and 4.1.2.4, there needs to be some sort of standard or procedures that Provider must accomplish before it can refuse disclosure for failure to verify an identity (i.e., Provider has to use [commercially reasonable][reasonable best] efforts to identify and if, after using such [commercially reasonable][reasonable best] efforts to verify it cannot verify, then...).

<sup>15</sup> Note to IRT: Proposed new Section 4.1.6 (adding "due process" reason for refusal) not included, upon Legal review. Providers already must comply with applicable law (which due process is a part of, to the extent the concept exists in applicable law) under Section 3.5 of the Agreement as well as 4.1.2.2 of this Specification. Due process is traditionally a concept of protection from government action, which would likely not apply to a provider taking action under most laws.

<sup>16</sup> Note to IRT: Edit proposed and supported by registrar members of the IRT.

**Commented [AB39]:** Note to IRT: Should we also consider adding new reason, similar to the new proposed 3.3.7 of the IP Framework, which would allow the Provider to refrain from providing the Customer data if the Provider has a basis for reasonably believing that disclosure to the requester will violate applicable data protection laws?

~~4.3.2~~~~4.2.2~~. 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 with a pending Request should be informed in advance of any time limit being implemented or changed.

4.2.3. Customer 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.

~~4.3.3~~~~4.2.4~~. Provider must notify the LEA Requestor at least three business days (as observed in the location of ~~ICANN's~~Provider's principal place of business) before a Customer Notification takes place.

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

5.1. In cases of the LEA Requestor receiving no response from Provider, or 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 applicable legal mechanisms.

## 6. Additional Guidance

6.1. Provider may voluntarily action disclosure requests from non-designated government authorities in accordance with the processes detailed within this Specification so long as such action does not conflict with applicable law.

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 proceedings concerning the issue for which the request was made.

~~6.3. [Customer 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.]<sup>14</sup>~~

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<sup>14</sup>~~Note to IRT: Section 6.3 appears to relate to the requirements outlined in Section 4.3, but seems to be inconsistent with Section 4.3. Please clarify the intent of Section 6.3 and its relationship with Section 4.3.~~

**SPECIFICATION 4: INTELLECTUAL PROPERTY DISCLOSURE FRAMEWORK  
SPECIFICATION**

Provider shall implement and comply with the requirements set forth in this Intellectual Property Disclosure Framework Specification.

**1. Provider Process for Intake of Requests**

- 1.1. Provider will establish and publish a point of contact for Requesters to submit complaints that registration or use of a domain name for which Provider provides 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 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 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 Provider from sharing information with another Service Provider regarding Requesters who have been revoked or blocked from their systems or who have engaged in misconduct under this Specification, including frivolous or harassing requests.
- 1.4. Nothing in this document prevents Provider from adopting or implementing policies to publish the contact details of Customers in the Registry Data Directory Service, or to terminate Services to a Customer for breach of Provider’s Terms of Service or on other grounds stated in Provider’s Terms of Service, even if the criteria outlined in this Specification for a Request have not been met.

1.5. The use of 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 this Intellectual Property Disclosure Framework Specification shall create a rebuttable presumption of non-compliance with this Intellectual Property Disclosure Framework Specification.

## 2. Request Templates for Disclosure

2.1. **Where a 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:

- 2.1.1. The domain name that allegedly infringes the trademark;
- 2.1.2. Evidence of previous use of a 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 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 trademark holder's belief that the use of the trademark in the domain name (i) allegedly infringes the trademark holder's rights and (ii) is not defensible;
  - 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 the Requester or trademark holder is incorporated or organized (or of its home address, if an individual), and (ii) where 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 or trademark holder's knowing misuse of information disclosed to it in response to its request.

2.1.7. Where the Requester is not the trademark holder, the Requester must attest that the Requester is an authorized representative of the trademark holder, capable and qualified to evaluate and address the matters involved in such request, and having the authority to make the representations and claims on behalf of the trademark holder in the request, including the authority to bind the trademark holder to the limitations on the use of Customer data once disclosed.

2.1.8. Where the Requester is not the trademark holder, an officer of the trademark holder (if a corporate entity) or an attorney of the trademark holder, and Provider has a reasonable basis to believe that the Requester is unauthorized to act on behalf of the trademark holder or seeks to verify a new or unknown Requester, 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 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 Specification) 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;

2.2.3. 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 be infringing 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 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 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 the Requester or copyright holder is incorporated or organized (or of its home address, if an individual), and (2) where 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 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 copyright holder, the signatory must attest that the signatory is an authorized representative of the 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 copyright holder in the request, including the authority to bind the 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 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, 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 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 Specification) 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 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 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.
  - 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 the Requester or trademark holder is incorporated or organized (or of its home address, if an individual), and (2) where 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 or the trademark holder's knowing misuse of information disclosed to it in response to its request.

2.3.7. Where the Requester is not the trademark holder, the Requester must attest that the Requester is an authorized representative of the 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 trademark holder in the request, including the authority to bind the trademark holder to the limitations on the use of Customer data once disclosed.

2.3.8. Where the Requester is not the trademark holder, an officer of the trademark holder (if a corporate entity) or an attorney of the trademark holder, and Provider has a reasonable basis to believe that the Requester is unauthorized to act on behalf of the trademark holder or seeks to verify a new or unknown Requester, 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 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. 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 Provider and authorize 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 (as observed in the location of ICANN's principal place of business) 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 Registration Data Directory Service 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 Specification.
- 3.3. Disclosure can be reasonably refused by Provider, for reasons consistent with the general policy stated herein, including any of the following:
- 3.3.1. Provider has already caused Customer contact details to be Published in Registration Data Directory Service 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. 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 Provider offers its Customers this option;
  - 3.3.5. the Customer has provided, or 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;
  - 3.3.6. the Customer has provided, or 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. Provider has a basis for reasonably believing that disclosure to the Requester will violate applicable data protection laws; or](#)
  - ~~3.3.7.8.~~ the Requester failed to provide to 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 Section 4 is not intended to preclude any Person from seeking other available remedies at law. 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 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 Provider; and
  - 4.1.3. Misuse occurs only when a Requester knowingly uses Customer contact information disclosed to it by 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).

**Commented [AB40]:** Note to IRT: Should this section title be updated since it doesn't specifically address how to resolve disputes?

**Question:** Does the IRT wish to review the meaning and intent of this section in light of data subject rights in the GDPR, and its relevance to resolving disputes concerning data protection matters?

## **SPECIFICATION 5: 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. The information required to be collected and displayed in the Registration Data Directory Service pursuant to Section 3.15 of the Agreement;
    - 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 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 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



Provider 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.

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.
5. 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 6: REPORTING SPECIFICATION

Provider shall provide one quarterly report (using the API described in draft-icann-ppsp-interfaces, see Section 3, reference 1 of this Specification<sup>+617</sup>) with the following contents.

ICANN may request in the future that the report be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three (3) months after the end of the calendar quarter to which the reports relate. Any reference to a specific time refers to Coordinated Universal Time (UTC). Quarterly reports shall consist of data that reflects the state of Provider at the end of the quarter (UTC).

### 1) Per-Registrar Activity Report.

This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named "PPSP-registrars-yyyymm.csv", where "PPSP" is the identifier assigned by ICANN to the Provider; "yyyymm" is the year and the last month of the quarter being reported. The file shall contain the following fields per each registrar sponsoring at least 1 domain name using the Provider's services:

Field #	Field Name	Description
01	registrar-name	Registrar's full corporate name as registered with IANA.
02	registrar-iana-id	The sponsoring Registrar IANA id should be used as specified in <a href="http://www.iana.org/assignments/registrar-ids">http://www.iana.org/assignments/registrar-ids</a> .
03	total-domains	Total domain names under the Registrar's sponsorship for which the Services are being used.
04	publication-requests	Number of Publication requests received. A request must be reported in the quarter it was received.
05	publication-fulfilled	Number of fulfilled Publication requests. A request must be reported in the quarter it was fulfilled.
06	disclosure-requests-lea	Number of Disclosure requests received pursuant to the Law Enforcement Authority Disclosure Framework Specification of this Agreement ("LEA Specification"). A request must be reported in the quarter it was received.
07	disclosure-requests-ip	Number of Disclosure requests received pursuant to the Intellectual Property Disclosure Framework Specification of this Agreement ("IP Specification").

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<sup>+617</sup> This link will be live before this Agreement is finalized.

		A request must be reported in the quarter it was received.
08	disclosure-requests-other	Number of Disclosure requests received other than requests received pursuant to the LEA Specification or the IP Specification. A request must be reported in the quarter it was received.
09	disclosure-fulfilled-lea	Number of Disclosure requests fulfilled pursuant to the LEA Specification. A request must be reported in the quarter it was fulfilled.
10	disclosure-fulfilled-ip	Number of Disclosure requests fulfilled pursuant to the IP Specification. A request must be reported in the quarter it was fulfilled.
11	disclosure-fulfilled-other	Number of Disclosure requests fulfilled on any basis other than pursuant to the LEA Specification or the IP Specification. A request must be reported in the quarter it was fulfilled.
12	publication-declined	Number of Publication requests declined. A request must be reported in the quarter it was declined.
13	disclosure-declined-lea-contravention	Number of Disclosure requests received pursuant to the LEA Specification that were declined on the basis that Disclosure would lead to a contravention of applicable law. A request must be reported in the quarter it was declined.
14	disclosure-declined-lea-safety	Number of Disclosure requests received pursuant to the LEA Specification that were declined on the basis that the Customer provided, or the Provider found, specific information, facts, or circumstances showing that Disclosure would endanger the Customer's safety. A request must be reported in the quarter it was declined.
15	disclosure-declined-lea-other	Number of Disclosure requests received pursuant to the LEA Specification that were declined for reasons other than those identified in fields 13-15 above. A request must be reported in the quarter it was declined.
16	disclosure-declined-ip-public	Number of Disclosure requests received pursuant to the IP Specification that were declined on the basis that Provider has already caused the Customer's contact details to be Published in the RDDs as the result of the termination of the Services. A request must be reported in the quarter it was declined.

17	disclosure-declined-ip-customerbasis	Number of Disclosure requests received pursuant to the IP Specification that were declined on the basis that the Customer objected to the Disclosure and provided a basis for reasonably believing that (i) 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. A request must be reported in the quarter it was declined.
18	disclosure-declined-ip-providerbasis	Number of Disclosure requests received pursuant to the IP Specification that were declined on the basis that Provider has a basis (other than a basis provided by the Customer) 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. A request must be reported in the quarter it was declined.
19	disclosure-declined-ip-surrender	Number of Disclosure requests received pursuant to the IP Specification that were declined on the basis that the Customer has surrendered its domain name registration in lieu of Disclosure, if Provider offers its Customers this option. A request must be reported in the quarter it was declined.
20	disclosure-declined-ip-pretext	Number of Disclosure requests received pursuant to the IP Specification that were declined on the basis that the Customer has provided, or 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. A request must be reported in the quarter it was declined.
21	disclosure-declined-ip-safety	Number of Disclosure requests received pursuant to the IP Specification that were declined on the basis that the Customer has provided, or Provider has found, specific information, facts, or circumstances showing that disclosure to the Requester will endanger the safety of the Customer. A request must be reported in the quarter it was declined.
22	disclosure-declined-ip-noevidence	Number of Disclosure requests received pursuant to the IP Specification that were declined on the basis that the Requester failed to provide to Provider the

		verifiable evidence of wrongdoing outlined in Section 3.1 of the IP Specification. A request must be reported in the quarter it was declined.
23	disclosure-declined-ip-other	Number of Disclosure requests received pursuant to the IP Specification that were declined for reasons other than those identified in fields 17-23 above. A request must be reported in the quarter it was declined.
24	disclosure-declined-other	Number of Disclosure requests received other than pursuant to the LEA Specification or IP Specification that were declined. A request must be reported in the quarter it was declined.
25	publication-pending	Number of pending Publication requests.
26	disclosure-pending-lea	Number of pending Disclosure requests received pursuant to the LEA Specification.
27	disclosure-pending-ip	Number of pending Disclosure requests received pursuant to the IP Specification.
28	disclosure-pending-other	Number of pending Disclosure requests received other than pursuant to the LEA Specification or the IP Specification.
29	publication-reconsideration-received	Number of reconsideration requests received for previously declined Publication requests. A request must be reported in the quarter it was received.
30	disclosure-reconsideration-received-lea	Number of reconsideration requests received for previously declined Disclosure requests received pursuant to the LEA Specification. A request must be reported in the quarter it was received.
31	disclosure-reconsideration-received-ip	Number of reconsideration requests received for previously declined Disclosure requests received pursuant to the IP Specification. A request must be reported in the quarter it was received.
32	disclosure-reconsideration-received-other	Number of reconsideration requests received for previously declined Disclosure requests received other than pursuant to the LEA Specification or the IP Specification. A request must be reported in the quarter it was received.
33	publication-reconsideration-granted	Number of previously declined Publication requests received that were fulfilled upon reconsideration. A request must be reported in the quarter it was fulfilled.
34	disclosure-reconsideration-granted-lea	Number of previously declined Disclosure requests received pursuant to the LEA Specification that were

		fulfilled upon reconsideration. A request must be reported in the quarter it was fulfilled.
35	disclosure-reconsideration-granted-ip	Number of previously declined Disclosure requests received pursuant to the IP Specification that were fulfilled upon reconsideration. A request must be reported in the quarter it was fulfilled.
36	disclosure-reconsideration-granted-other	Number of previously declined Disclosure requests received other than pursuant to the LEA Specification or the IP Specification that were fulfilled upon reconsideration. A request must be reported in the quarter it was fulfilled.
37	publication-reconsideration-declined	Number of previously declined Publication requests that remained declined upon reconsideration. A request must be reported in the quarter it was declined.
38	disclosure-reconsideration-declined-lea	Number of previously declined Disclosure requests received pursuant to the LEA Specification that remained declined upon reconsideration. A request must be reported in the quarter it was declined.
39	disclosure-reconsideration-declined-ip	Number of previously declined Disclosure requests received pursuant to the IP Specification, that remained declined upon reconsideration. A request must be reported in the quarter it was declined.
40	disclosure-reconsideration-declined-other	Number of previously declined Disclosure requests received other than pursuant to the LEA Specification or the IP Specification that remained declined upon reconsideration. A request must be reported in the quarter it was declined.
41	publication-reconsideration-pending	Number of Publication reconsideration requests that are pending resolution.
42	disclosure-reconsideration-pending-lea	Number of Disclosure reconsideration requests received pursuant to the LEA Specification that are pending resolution.
43	disclosure-reconsideration-pending-ip	Number of Disclosure reconsideration requests received pursuant to the IP Specification that are pending resolution.
44	disclosure-reconsideration-pending-other	Number of Disclosure reconsideration requests received other than pursuant to the LEA Specification or the IP Specification that are pending resolution.

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read "Totals" while the second field shall be left empty in that line. No other lines besides the

ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

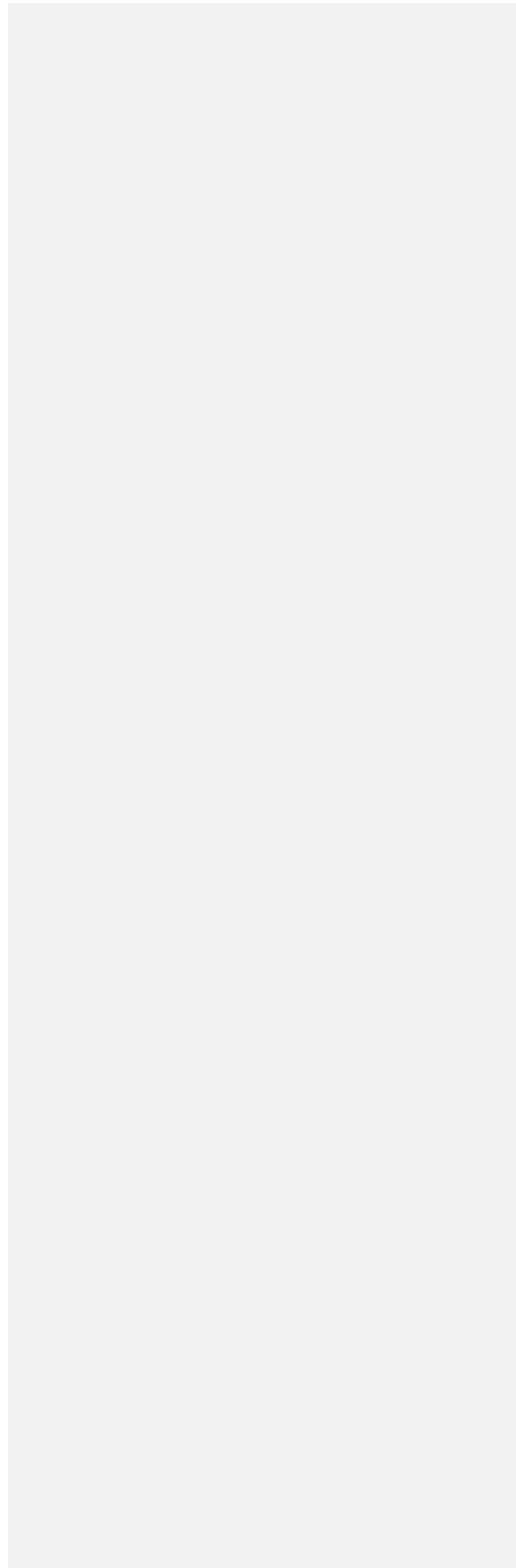
**2) Quarterly Reporting.**

Within twenty (20) calendar days following the end of each calendar quarter (March, June, September and December), commencing with the first calendar quarter in which Provider is accredited, Provider shall deliver to ICANN reports in the format set forth in this Specification.

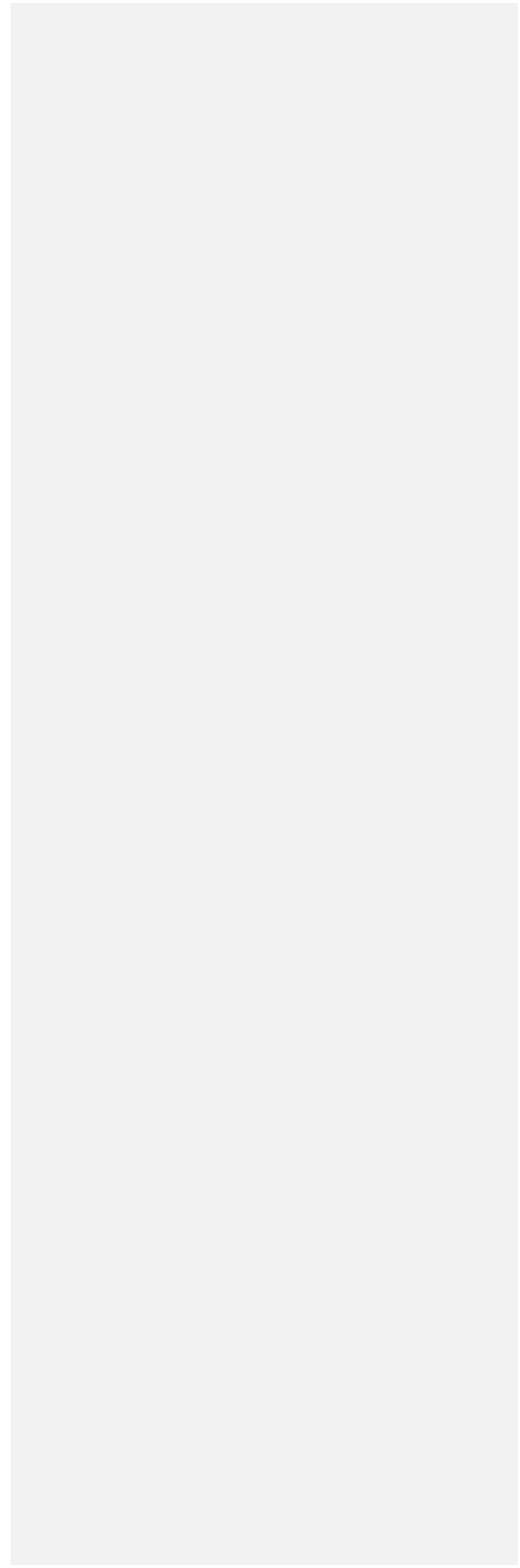
**3) References.**

(1) ICANN interfaces for privacy and proxy providers and their data escrow agents, <http://tools.ietf.org/html/draft-icann-ppsp-interfaces>

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**SPECIFICATION 7: COMPLIANCE CERTIFICATE**

\_\_\_\_\_, 20\_\_

Pursuant to Section 3.9 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 (CEO, COO, CFP, President or equivalent) of Provider ~~and not in his/her individual capacity, hereby certifies on behalf of Provider as follows~~ that Provider:

1. Remains in compliance with the terms and conditions of the Agreement; and has cured any periods of known non-compliance during the calendar year. The undersigned is the [Chief Executive Officer/President/Chief Operating Officer/Chief Financial Officer or functional equivalent thereof] of Provider.

2. Has in place processes and procedures intended to establish, maintain, review, test, and modify registrar policies and procedures reasonably designed to achieve compliance with the Agreement; and

3. 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 identified above. ~~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\_\_.~~

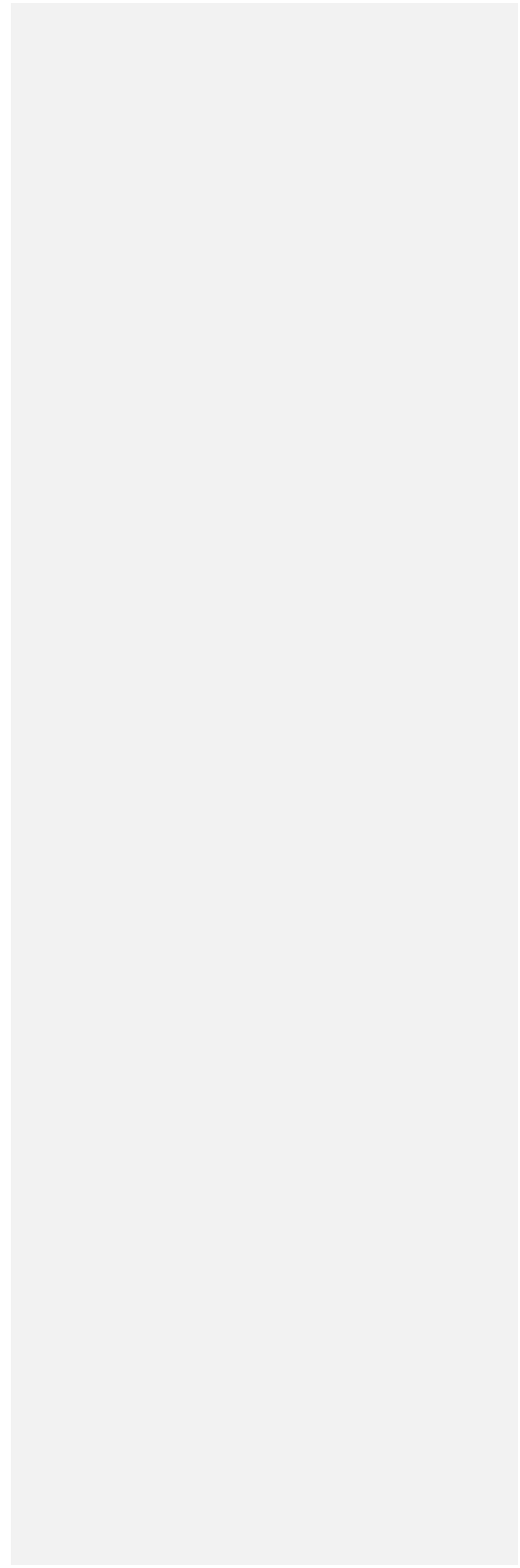
To the best of the undersigned's knowledge and belief, the representations made herein are true and accurate as of the date first signed below. The undersigned further represents and warrants that he/she has legal authorization and capacity to submit this Annual Certification on behalf of the Provider identified above. The undersigned signs this certificate as of the date indicated under the title.

[PROVIDER]

By:

Name:

Title:



## SPECIFICATION 8: DATA PROCESSING REQUIREMENTS

This Specification sets out the framework for the Processing and sharing of Registration Data and Customer data containing Personal Data between the parties as Independent Data Controllers, and defines the principles and procedures that the parties SHALL adhere to and the responsibilities the parties owe to each other.

Unless defined in this Specification, terms with initial capital letters have the meaning given under the GDPR.

In case of a Provider also acting as a Registrar, this Specification governs the Processing of Personal Data under this Agreement ~~This Specification will~~ and is to be regarded as *lex specialis* superseding the provisions of Appendix C of the Temporary Specification for gTLD Registration Data within the scope of application of this Agreement ~~Temporary Specification in case Providers act as registrars.~~

### 1. Principles for Processing

Each Controller will observe the following principles to govern its Processing of Personal Data contained in Registration Data and Customer data, except as required by applicable laws or regulations. Personal Data SHALL:

- 1.1. only be Processed lawfully, fairly, and in a transparent manner in relation to the Registered Name Holders and other data subjects (“lawfulness, fairness, and transparency”);
- 1.2. be obtained only for specified, explicit, and legitimate purposes, and SHALL NOT be further Processed in any manner incompatible with those purposes (“purpose limitation”);
- 1.3. be adequate, relevant, and not excessive in relation to the purposes for which they are Processed (“data minimization”);
- 1.4. be accurate and, if necessary, kept current, as appropriate to the purposes for which they are Processed (“accuracy”);
- 1.5. not be kept in a form that permits identification of the Registered Name Holder and other data subjects for longer than necessary for the permitted purposes (“storage limitation”); and
- 1.6. be Processed in a manner that ensures appropriate security of the Personal Data, including protection against unauthorized or unlawful Processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures (“integrity and confidentiality”).

**Commented [AB41]:** Recommended Edit (Volker Greimann): Spec 8: Strike then entire thing and replace it by general language that required provider to process data in accordance with any requirements of applicable law.

**Commented [AB42R41]:** Note: Please note that this feedback has been discussed with the Legal team, and ICANN org is of the opinion that specific processing requirements are necessary --the recommendation above is not adequate for this agreement. Specific edits to the proposed requirements are requested.

**Commented [AB43R41]:** Comment (Steve Metalitz): *Support Volker here in general, for the same reasons as noted above under 3.5.3.3: Temp Spec language should not be injected into implementation of a consensus policy. Additionally, what is proposed here is so EU-specific as to be irrelevant to Providers to the extent they are not subject to EU jurisdiction. I take it that staff will seek to explain in tomorrow's meeting why they think Volker's approach is unacceptable.*

Each ~~Provider~~ Controller SHALL be responsible for, and be able to demonstrate compliance with principles (1.1) to (1.6) (“accountability”). The ~~Provider~~- SHALL inform- ICANN -immediately if such ~~Provider~~ (i) cannot abide by the Processing principles outlined in Section 1 of this Appendix, or (ii) receives a complaint by a Registered Name Holder or other data subject that the ~~Provider~~ has failed to abide by such principles.

## **2. Lawfulness of Processing**

For Personal Data Processed in connection with the ~~Registration Data Directory Services~~, such Processing will take place on the basis of consent of the data subjects concerned or a legitimate interest~~s~~ of the Controller or of the third party or parties to whom the Personal Data are disclosed, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of Personal Data, in particular where the data subject is a child. For other Personal Data collected for other purposes, such Personal Data SHALL NOT be Processed unless a legal basis specified under Article 6(1) GDPR applies.

## **3. Controller Processing requirements**

In addition to the general principles and requirements for lawful Processing, each Controller SHALL comply with the following specific requirements:

**3.1. Implementing appropriate measures.** Implementing appropriate technical and organizational measures to ensure and to be able to demonstrate the Processing is performed in compliance with the GDPR, such as appropriate data protection policies, approved codes~~s~~ of conducts~~s~~ or approved certification mechanisms. Such measures SHALL be reviewed regularly and updated when necessary by the Controller. The parties acknowledge and agree that they are responsible for maintaining appropriate organizational and security measures to protect such Personal Data shared between the parties in accordance with applicable laws. Appropriate organizational and security measures are further enumerated in Section 3.8 of this Specification, and generally MUST include:

3.1.1. Measures to ensure that only authorized individuals for the purposes of this Specification can access the Personal Data;

3.1.2. The pseudonymization and encryption of the Personal Data, where necessary or appropriate;

3.1.3. The ability to ensure continued confidentiality, integrity, availability and resilience of its processing systems and services;

3.1.4. The ability to restore the availability and access to Personal Data in a timely manner;

3.1.5. A process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing of Personal Data; and

3.1.6. Measures to identify vulnerabilities with regard to the processing of Personal Data in its systems;

3.2. **Engaging only selected Processors.** Engaging only selected Processors and implementing a contract with each Processor that sets out the subject-matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and categories of data subjects and the obligations and rights of each Controller. The engagement of Processor must comply with Article 28 of the GDPR;

3.3. **Designating a Data Protection Officer.** Designating a “Data Protection Officer” where required by Article 37 of the GDPR or Member State national data protection law;

3.4. **Maintaining a record of Processing.** Maintaining a record of the Processing activities under the Controller’s responsibility in accordance with Article 30 of the GDPR;

3.5. **Providing transparent information.** Taking appropriate measures to provide any information referred to in Articles 13 and 14 of the GDPR and any communication under Articles 15 to 22 and 34 of the GDPR relating to Processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, which SHALL specifically include the following obligations:

3.5.1. The parties SHALL ensure that their privacy notices are clear and provide sufficient information to Data Subjects in order for them to understand what of their Personal Data the Parties are sharing, the circumstances in which it will be shared, the purposes for the data sharing and either the identity with whom the data is shared or a description of the type of organization that will receive the Personal Data;

3.5.2. The parties undertake to inform Data Subjects of the purposes for which it will process their Personal Data and provide all of the information that it must provide in accordance with applicable laws, to ensure that the Data Subjects understand how their Personal Data will be processed by each Controller.

3.6. **Facilitating of the exercise of data subject rights.** Facilitating the exercise of data subject rights under Articles 15 to 22 of the GDPR. In the cases referred to in Article 11(2) of the GDPR, each Controller SHALL NOT refuse to act on the request of the data subject for exercising his or her rights under Articles 15 to 22 of the GDPR, unless the Controller demonstrates that it is not in a position to identify the data subject;

3.7. **Implementing measures for data protection by design and by default.**

Implementing appropriate technical and organizational measures, both at the time of the determination of the means for Processing and at the time of the Processing itself, which are designed to implement data protection principles, in an effective manner and to integrate the necessary safeguards into the Processing in order to meet the requirements of the GDPR and to protect the rights of data subjects. Implementing appropriate technical and organizational measures for ensuring that, by default, only Personal Data which are necessary for each specific purpose of the Processing are Processed.

**3.8. Implementing appropriate security measures.** Implementing appropriate technical and organizational measures to ensure a level of security appropriate to the risk of data Processing, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons. Appropriate technical and organizational measures to protect the Personal Data shared against unauthorized or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, MAY include, but not limited to:

3.8.1. Ensuring IT equipment, including portable equipment is kept in lockable areas when unattended;

3.8.2. Not leaving portable equipment containing the Personal Data unattended;

3.8.3. Ensuring use of appropriate secure passwords for logging into systems or databases containing Personal Data shared between the parties;

3.8.4. Ensuring that all IT equipment is protected by antivirus software, firewalls, passwords and suitable encryption devices;

3.8.5. Using industry standard 256-bit AES encryption or suitable equivalent where necessary or appropriate;

3.8.6. Limiting access to relevant databases and systems to those of its officers, staff, agents, vendors and sub-contractors who need to have access to the Personal Data, and ensuring that passwords are changed and updated regularly to prevent inappropriate access when individuals are no longer engaged by the party;

3.8.7. Conducting regular threat assessment or penetration testing on systems; and

3.8.8. Ensuring all authorized individuals handling Personal Data have been made aware of their responsibilities with regards to handling of Personal Data.

**3.9. Developing procedures for breach notification.** Developing procedures for breach notification to ensure compliance with the obligations pursuant to Articles 33-34 of the GDPR. Any notifications provided by the Provider in connection with Articles 33-34 of the GDPR SHALL also be provided to ICANN.

**Commented [AB44]:** Comment (Theo Geurts): Something like the below (this section) is a no-go. The GDPR expects you to use 256-bit AES (but does not specify that), and if something comes along that is better and stronger you are supposed to use that if it becomes best practice. The GDPR does not state or mention you need to do a "pentest", But the ICO (British supervising authority), ruled recently that the lack of a pentest was a reason to issue higher fines. This was due to the scale of the breach and the size of the company (very large company). Does the above mean that every company has to do a "pentest" in Europe?  
No, this all matters on the amount of processing and size of the company and the data being processed and the means available.

**3.10. Observing conditions for international data transfers.** Observing conditions for international data transfers so that any transfer of Personal Data which are undergoing Processing or are intended for Processing after transfer to a third country or to an international organization SHALL take place only if the conditions laid down in Chapter V of the GDPR are complied with, including for onward transfers of Personal Data from the third country or an international organization to another third country or to another international organization. A party may only transfer ~~Registration Data~~ including Personal Data relating to EU individuals to outside of the EU (or if such Personal Data is already outside of the EU, to any third party also outside the EU), in compliance with the terms this Section 3.10, and the requirements of applicable laws.

**3.11. Cooperating with Supervisory Authorities.** Cooperating with Supervisory Authorities, on request, in the performance of their tasks.