

Register.com, Inc.  
575 8<sup>th</sup> Avenue  
New York, NY 10023

The DotOrg Foundation  
c/o Elizabeth Kingsley, Registered Agent  
1726 M St., NW  
Suite 600  
Washington, DC 20036


June 17, 2002

Re: Letter Agreement for Registry Services

This letter hereby confirms Register.com's agreement with the DotOrg Foundation that Register.com and the DotOrg Foundation will execute the attached Registry Services Agreement (the "Registry Agreement") immediately following execution of an agreement between the Internet Corporation of Assigned Names and Numbers ("ICANN") and the DotOrg Foundation (the "ICANN Agreement"). Notwithstanding the foregoing, in the event the technical service level requirements set forth in the ICANN Agreement are inconsistent with the technical service levels set forth in Exhibit C of the Registry Agreement, Provider shall agree to all terms necessary to make Exhibit C of the Registry Agreement consistent with the ICANN-mandated technical service level requirements; provided, however, that such terms shall be subject to any additional terms requested by Provider as agreed upon by the Parties.

This letter shall serve as documentary evidence for purposes of C14 of ICANN's RFP for the .org top level domain.

Register.com, Inc.

  
Richard D Fofman *cc*  
President & CEO

Agreed as of the 17 of June, 2002

The DotOrg Foundation

  
Marshall Strauss

Register.com, Inc.  
575 8<sup>th</sup> Avenue  
New York, NY 10023

The DotOrg Foundation  
c/o Elizabeth Kingsley, Registered Agent  
1726 M St., NW  
Suite 600  
Washington, DC 20036

June 17, 2002

Re: Letter Agreement for Registry Services

This letter hereby confirms Register.com's agreement with the DotOrg Foundation that Register.com and the DotOrg Foundation will execute the attached Registry Services Agreement (the "Registry Agreement") immediately following execution of an agreement between the Internet Corporation of Assigned Names and Numbers ("ICANN") and the DotOrg Foundation (the "ICANN Agreement"). Notwithstanding the foregoing, in the event the technical service level requirements set forth in the ICANN Agreement are inconsistent with the technical service levels set forth in Exhibit C of the Registry Agreement, Provider shall agree to all terms necessary to make Exhibit C of the Registry Agreement consistent with the ICANN-mandated technical service level requirements; provided, however, that such terms shall be subject to any additional terms requested by Provider as agreed upon by the Parties.

This letter shall serve as documentary evidence for purposes of C14 of ICANN's RFP for the .org top level domain.

Register.com, Inc.

---

Agreed as of the 17 of June, 2002

The DotOrg Foundation

---

Marshall Strauss

## **REGISTRY SERVICES AGREEMENT**

This Registry Services Agreement (the “Agreement”) is dated as of June 17, 2002 (“Effective Date”) by and between Register.com, Inc., a Delaware corporation, with its principal place of business located at 575 Eighth Avenue, New York, NY 10018 (“Provider”), and The DotOrg Foundation, a District of Columbia corporation (“Registry”). Provider and Registry may be referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Internet Corporation for Assigned Names and Numbers (“ICANN”) has granted to Registry the exclusive right to operate and maintain certain TLD servers and zone files for the .org TLD (the “Business”) pursuant to an agreement between ICANN and Registry (the “ICANN Agreement”);

WHEREAS, Provider wishes to provide Registry with certain technical and support services for the ongoing operation of the Business;

NOW, THEREFORE, for and in consideration of the mutual promises, benefits and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Provider and Registry, intending to be legally bound, hereby agree as follows:

### **1. DEFINITIONS**

- 1.1.** “Billing Information” shall mean any Registrar data collected by Provider for the purpose of invoicing and collecting Registration Fees from Registrars.
- 1.2.** “DNS” refers to the Internet domain name system.
- 1.3.** “End Customers” shall mean any person or entity who has requested the registration or renewal of a domain name in the TLD whether directly or indirectly through a Registrar or any registry.
- 1.4.** “IP” means Internet Protocol.
- 1.5.** “Launch Date” means the date on which the Registry commences registration of domain names in the TLD.
- 1.6.** The “Licensed Product” refers to the RRP, APIs, and the Software, collectively (as each term is defined below), as well as updates and redesigns thereof.
- 1.7.** “Registrar” shall mean any accredited registrar with whom Registry enters into an agreement that contains the terms set forth in Exhibit A and remains in good standing with respect to terms set forth in Exhibit A.
- 1.8.** “Registration” shall mean each one-year domain name registration, renewal or extension registered by Registry through the System.
- 1.9.** “Registry Database” shall mean any information received by Registrars through the RRP.

**1.10.** The “System” refers to the registration system developed by Provider for registration of domain names in the TLD, as described in the specifications attached as Exhibit B.

**1.11.** “TLD” shall mean the top-level domain of .org in the DNS or any second-level domain in the top-level domain .org in the DNS.

**1.12.** “ICANN Proposal” shall mean the proposal submitted by Registry to ICANN pursuant to which the ICANN Agreement was entered into.

## **2. OBLIGATIONS OF THE PARTIES**

**2.1. System Operation and Access.** Throughout the Term of this Agreement, Provider shall operate the System and provide any Registrar with access to the System enabling such Registrar to transmit domain name registration information for the TLD to the System according to a protocol developed by Provider and referred to as the Registry Registrar Protocol (“RRP”).

**2.2. Delivery of RRP, APIs and Software.** Within 60 days after the Effective Date, Provider shall provide to Registry (i) full documentation of the RRP, (ii) application program interfaces (“APIs”) to the RRP with documentation as specified by the functional specifications in Exhibit B, and (iii) reference client software (“Software”) that will enable Registrars to develop their respective systems to submit registrations of domain names through the System for the TLD.

**2.3. Data Submission Requirements.** As part of its registration of domain names in the TLD during the Term, Registry shall ensure that all End Customers submit the data elements required by the functional specifications in Exhibit B using the RRP concerning domain name registrations processed through the System (“Data Elements”).

**2.4. License.** Registry grants Provider a non-exclusive license to the Data Elements for:

**2.4.1** Propagation of and the provision of authorized access to the TLD zone files;

**2.4.2** Propagation of such elements into the DNS;

**2.4.3** Display of the WHOIS record for any domain name;

**2.4.4** Licensing such data elements to third parties in accordance with any license requirements that may arise from time to time;

**2.4.5** Providing the services set forth in this Agreement; and

**2.4.6** Providing to third-party service providers of Registry or Provider.

**2.5. Registry’s Agreement with Registrars.** As a condition of Provider providing any Registrar with access to the System, Registry shall require each Registrar with whom it conducts business to agree to the terms set forth in Exhibit A. Registry shall include terms in its Agreement with Registrars that are consistent with Registry’s obligations to Provider hereunder. In the event any Registrar violates the terms of Exhibit A or is otherwise compromising the integrity of the System, Provider shall provide notice of the same to Registry and Provider shall have the right to suspend access to the System for such Registrar until such violation is cured.

**2.6. Additional Services.** Provider shall provide Registry with such other services in addition to the obligations specified in this Agreement as will be agreed by the Parties (“Additional Services”). Provider shall provide Registry with the following Additional Services, at no additional cost:

**2.6.1 Billing.** Invoicing Registrars on behalf of Registry for Registrar Registration Fees (as set by Registry), including collecting Registration Fees from Registrars, remitting such Registration Fees to Registry, maintaining complete and accurate billing and payment records, tracking accounts to monitor credit status of Registrars, and discontinuing access to any Registrar as instructed by Registry.

**2.6.2 DotOrg Directory.** Provider will use commercially reasonable efforts to further refine, with input from Registry, and implement the DotOrg Directory as currently defined in the ICANN Proposal (Section C27, and specifically excluding Validation), each party acting reasonably and in good faith. Provider shall launch the DotOrg Directory by September 30, 2003, unless (i) the date upon which Provider begins allowing social data to be associated with domain names within the Registry is later than stated in the ICANN Proposal (April 15, 2003) in which case the deadline for launch shall be extended by an equivalent time, or (ii) the DotOrg Directory is substantively changed in the ICANN agreement from its definition in the ICANN Proposal, in which case the parties shall mutually agree on a revised date for the launch of the DotOrg Directory. The hardware and software used to supply this function will be provided by Provider, or a subcontractor of Provider, and will be exclusively owned by the entity providing the service.

**2.6.3 DotOrg Directory Data.** For purposes of this section, “DotOrg Directory Data Record” shall mean the information that one registrant has elected to place in the DotOrg Directory, and “DotOrg Directory Data” shall mean all of the DotOrg Directory Data Records. Registry grants Provider a non-exclusive license to the DotOrg Directory Data for:

- Placement into the DotOrg Directory;
- Display of the DotOrg Directory Data Record from a registrant’s website (emblem or seal);
- Display of the DotOrg Directory Data Record from a secured connection (https, or digital certificate);
- Display of the DotOrg Directory Data Record for any domain name; and
- Providing the services set forth in this Agreement; and
- Any other purposes associated with Provider’s business services, subject to the ownership rights as outlined below, except that this use of the license and any sublicense shall terminate in the event that the DotOrg Directory is not launched by the date described in Section 2.6.2. Upon subsequent launch of the DotOrg Directory, this use of the license and any sublicense shall be reinstated.

This license is granted for the purpose of permitting Provider to grant a sublicense to Kintera, Inc., a Delaware corporation with whom the parties agree that Provider will sub-contract to provide certain services under this Agreement.

Except as limited by rights of third parties, including Registrars, to the DotOrg Directory Data, or as may be required by the ICANN Agreement, all information collected under this Agreement in the DotOrg Directory shall be jointly owned by Registry and Provider and/or Kintera, Inc. Upon termination of this Agreement, or at such earlier time as the parties may agree to discontinue operation of the DotOrg Directory under this Agreement, Provider shall provide Registry with a full and complete copy of the database containing the DotOrg Directory database within 30 days.

**2.6.4 Marketing.** Provider will consult with Registry to coordinate the marketing and business development of the Registry services to Registrars and to the .org community, and in preparation of a marketing plan for Registry ("Marketing Plan"). Provider agrees to submit a Marketing Plan to Registry no later than June 30, 2003. The Marketing Plan, as may be amended by mutual agreement, shall address issues of audience, message, delivery mechanisms, and level of effort. It shall be subject to mutual approval, with such approval not to be unreasonably withheld. If Provider does not submit an acceptable Marketing Plan by June 30, 2003, Provider will assist Registry to secure services from a reputable marketing firm, and will remain available to Registry and the selected marketing firm as the latter develops and implements Registry's marketing effort. Provider agrees not to conduct any marketing in the name of Registry without the express permission of Registry, who will retain creative control of all marketing efforts whether implemented before or after the acceptance by Registry of the Marketing Plan.

**2.7. Time.** Registry agrees that in the event of any dispute concerning the time of the entry of a domain name registration into the System, the time shown in Provider's records shall control.

**2.8. Compliance with Terms and Conditions.** Registry agrees to comply with all other reasonable terms or conditions established by Provider from time to time, in its sole discretion, to assure sound operation of the System.

**2.9. Communication with IANA.** In the event Provider elects to eliminate, replace or add nameservers to the System, Registry shall make every reasonable effort to submit such request to IANA within 24 hours of receipt from Provider. Provider shall not be liable for any damages in the event Registry fails to deliver such request in a timely basis or if IANA fails to comply with such request.

**2.10. Exclusive Provider.** Provider shall be the exclusive provider of registry services to Registry for the TLD during the Term. Nothing contained herein shall prevent Provider from offering similar services to any other third party.

**2.11. Reporting.** Provider will make available to Registry a web based account management tool that will allow Provider to run reports to determine the number of names registered, renewed or deleted during a given time frame.

### **3. LICENSES**

**3.1. License Grant by Provider.** Subject to the terms and conditions of this Agreement, Provider hereby grants Registry a non-exclusive, non-transferable, worldwide limited license to use for the Term and purposes of this Agreement the Licensed Product to provide domain name registration services in the TLD only and for no other purpose. Registry shall have the right to sub license the Licensed Product to any Registrar who has agreed to the terms set forth on Exhibit A, solely as required to submit registration requests. The Licensed Product will enable Registry and Registrars to submit registration requests through the System. Registry and Registrars, using the Licensed Product, will be able to invoke the operations on the System as set forth in Exhibit B hereto.

**3.2. Limitations on Use.** Notwithstanding any other provisions in this Agreement, except with the written consent of Provider, Registry shall not: (i) except as set forth in Section 3.1, sublicense the Licensed Product or otherwise permit any use of the Licensed Product by or for the benefit of any party other than Registry, (ii) publish, distribute or permit disclosure of the Licensed Product other than to employees, contractors, and agents of Registry for use in Registry's domain name registry business, or (iii) decompile, reverse engineer, copy or re-engineer the Licensed Product. In no event shall Registry use or permit use of the Licensed Product in violation of (a) Registry's agreement with ICANN with respect to the operation and maintenance of the TLD, or (b) any federal, state or local rule, regulation or law, or for any unlawful purpose.

**3.3. Changes to Licensed Materials.** Provider may from time to time make modifications to the Licensed Product licensed hereunder. Provider will, to the extent reasonably possible, provide Registry with at least thirty (30) days notice prior to the implementation of any material changes to the Licensed Product.

**3.4 Use of Registry Marks.** Registry hereby grants to Provider and Provider accepts a limited, non-exclusive, non-transferable right during the Term to use, display, transmit, distribute and reproduce Registry's graphical logo and trademark(s) ("Registry Marks") for the purpose of performing its obligations hereunder. Provider shall provide Registry with representative copies of all materials produced using the Registry Marks, including printed and electronic materials. If Registry in its reasonable discretion determines that Provider's use of the Registry Marks in any way jeopardizes the good will associated with the Registry Marks, Registry may require submission of samples of material for advance approval before public use or distribution. All other uses of the Registry Marks require the prior approval of Registry. All uses of the Registry Marks by Provider will inure to the benefit of Registry.

### **4. SUPPORT AND TECHNICAL SERVICES**

**4.1. Technical Support.** During the Term of this Agreement, Provider agrees to provide Registry and Registrars with reasonable technical telephone and e-mail support 24 hours per day, seven (7) days per week to address engineering issues arising in connection with the System.

**4.2. Customer Service Support.** During the Term of this Agreement, Provider agrees to provide Registry and Registrars with reasonable telephone and e-mail customer service support (Monday through Friday between the hours of 9 a.m. and 5 p.m. local New York

time excluding holidays), to address non-technical issues relating to the System and its operation.

**4.3. No Support for End Customers.** In no event shall Provider provide support for End Customers.

**4.4. Service Level Agreement.** Provider shall comply with the service levels set forth in Exhibit C hereto.

## **5. FEES**

### **5.1. Registration Fees.**

- (a) During the Term, Registry agrees to pay Provider the non-refundable amount as detailed below per year for every Registration (the “Registration Fee”):
  - (i) US\$5.25 for the initial 1,999,999 Registrations;
  - (ii) US\$5.20 for 2,000,000 – 2,999,999 Registrations; and
  - (iii) US\$5.15 for 3,000,000 or more Registrations.
- (b) In the event the DotOrg Directory is not launched by September 30, 2003, the Registration Fee for each Registration completed thereafter shall be reduced by \$1.25 per Registration and held in escrow by Registry. The funds held in escrow shall be payable to Provider upon launch of the DotOrg Directory, except that if the DotOrg Directory is not launched within one year of the date upon which Provider begins allowing social data to be associated with domain names within the registry (the “Final Directory Date”), the funds held in escrow shall be returned to Registry. If at any time thereafter Provider is able to launch the DotOrg Directory, the Registration Fee for each Registration completed thereafter shall be increased by \$1.25.
- (c) In the event a Marketing Plan acceptable to Registry is not submitted by June 30, 2003, which acceptance is not to be unreasonably withheld, the Registration Fee for each Registration completed after that date shall be reduced by \$0.21 per Registration. In the event that an acceptable Marketing Plan is not delivered by June 30, 2003, and the DotOrg Directory is not launched by the Final Directory Date described in Section 5.1(b), the Registration Fee for each Registration completed after a date that is six months after the Final Directory Date shall be reduced by a further \$.04 per Registration and Provider shall cease to provide any services related to marketing six months after the Final Directory Date.
- (d) Provider will invoice Registry monthly in arrears for each month’s Registration Fees. All Registration Fees are due immediately upon receipt of Provider’s invoice pursuant to a letter of credit, deposit account, or other acceptable credit terms agreed by the Parties.
- (e) The Parties agree that for multi-year Registrations, Provider shall invoice Registry and Registrars, as applicable, up front for all Registration years upon initial registration of a domain name. Provider shall obtain and at all times during the



Term maintain a surety bond naming Registry as its beneficiary in an amount equal to that portion of the fees collected by Provider for multi-year domain name registrations that correlates to each whole year remaining on such registrations at such time as this Agreement is terminated under the terms described in this Section 5.1(e). The parties acknowledge and agree that it may be difficult to calculate the foregoing amount on a prospective basis and therefore agree that for the first year of the Term, the amount of such bond shall be equal to \$5,000,000. Thereafter, the amount of the bond shall be determined on an annual basis upon the agreement of the parties. The terms of the surety bond shall state that the amount of the bond shall be paid to Registry in the event this Agreement is terminated prior to the expiration of its Term due to Provider's failure to perform all material obligations set forth under Section 2.1 of this Agreement if caused by Provider or any sub-contractor or service provider of Provider. Notwithstanding the foregoing, the bond shall not be paid in the event (a) of a termination of this Agreement as a result of any fault or act of Registry, (b) of any termination of the ICANN Agreement, (c) Registry files for bankruptcy, (d) Registry requests an adjustment to any fees charged by Provider hereunder, or (e) Registry requests that Provider loan or contribute resources or funding to Registry other than any outstanding loans or contributions that exist on the Effective Date.

**5.2. Non-Payment of Registration Fees or Other Fees.** Timely payment of Registration Fees is a material condition of performance under this Agreement. In the event that Registry fails to pay the Registration Fees, within five (5) days of the date when due, Provider may stop accepting new registrations and/or delete the domain names associated with invoices not paid in full from the System database and give written notice of termination of this Agreement pursuant to Section 6.2 below.

**3.3 Audit Rights.** During any Term, Provider agrees to accurately keep all usual and proper records and books of account relating to its payment obligations under this Agreement. Registry reserves the right, upon reasonable prior written notice, to audit Provider's accounting records as is reasonable for the purpose of verifying Provider's compliance with the terms of this Agreement, provided that any such audits shall be conducted no more than once in any twelve consecutive month period. In the event the audit reveals any underpayment in excess of 5% by Provider, Provider shall pay reasonable costs for such audit in addition to the amount of the underpayment.

## **6. Term of Agreement and Termination.**

**1.1. Term of the Agreement.** The duties and obligations of the Parties under this Agreement shall apply for a period of six (6) years from the Launch Date (the "Initial Term"). Upon conclusion of the Initial Term, if the ICANN Agreement is renewed, all provisions of this Agreement will automatically renew for successive one (1) year renewal periods until this Agreement has been terminated as provided herein (the Initial Term together with any renewal periods shall be referred to as the "Term"), or unless either party provides notice of non-renewal 180 days before the end of the initial term or any renewal term. Notwithstanding the foregoing, in the event Registry desires not to renew this Agreement and desires to obtain services from another provider, Registry shall offer Provider a 30-day right of first refusal to

match any bona fide terms offered by such provider. In the event Provider matches such terms, this Agreement shall be extended for a one-year term as amended with such terms. Upon termination of the ICANN Agreement, any payments received by Registry per section 5.2.3 of the ICANN Agreement will be split equally between Registry and Provider and Registry shall immediately remit Provider's portion of such payment to Provider.

**1.2. Termination For Cause.** In the event that either Party materially breaches any term of this Agreement including any of its representations and warranties hereunder and such breach is not cured within thirty (30) calendar days after written notice thereof is given by the other Party, then the non-breaching Party may, by giving written notice thereof to the other Party, terminate this Agreement as of the date specified in such notice of termination. Such termination must occur within ninety (90) days of the breach. For purposes of this provision, failure to perform the obligations stated in Sections 2.6.2, 2.6.3, and 2.6.4 shall not be considered a material breach. The exclusive remedy for failure to provide the services described in Sections 2.6.2, 2.6.3 and 2.6.4 shall be the price reductions set out in Sections 5.1b and 5.1c.

**1.3. Termination Upon Loss of Registry's Authority.** This Agreement shall terminate in the event Registry's right to operate the TLD is terminated or significantly diminished by ICANN, or its successor, expires without renewal or is otherwise terminated.

**6.4. Termination in the Event of Bankruptcy.** Either Party may terminate this Agreement if the other Party is adjudged bankrupt, or if proceedings are instituted by or against a Party seeking relief, reorganization or arrangement under any laws relating to insolvency, or seeking any assignment for the benefit of creditors, or seeking the appointment of a receiver, liquidator or trustee of a Party's property or assets or the liquidation, dissolution or winding up of a Party's business.

**6.5. Termination for Registry or Registrar Conduct.** Provider may terminate this Agreement if any act or omission of Registry disrupts, diminishes or is otherwise detrimental to the System and is not cured within twenty-four (24) hours of notice of the same to Registry. Provider may terminate a Registrar's access to the System and the Licensed Product if any act or omission of the Registrar disrupts, diminishes or is otherwise detrimental to the System and is not cured within twenty-four (24) hours of notice of the same to Registry. Registry shall assume any and all liability to Registrar in the event Provider terminates a Registrar's access to the System and/or Licensed Product based upon Registry's instructions of the same to Provider.

**6.6. Registrar's Breach of Terms.** Provider may terminate Registrar's access to the System and the Licensed Product if any Registrar violates the terms set forth in Exhibit A and such violation is not cured within seven (7) days of notice to Registry and Registrar of such violation.

**6.7. Effect of Termination.**

**6.7.1.** Immediately upon any expiration or termination of this Agreement, Registry shall either return to Provider or certify to Provider the destruction of all Licensed

Products, data, software and documentation it and any Registrar has received under this Agreement. Provider will deliver the registry database to Registry in its entirety following any expiration or earlier termination of this Agreement. Provider will also either return to Registry or certify to Registry the destruction of all copies of the Registry Database and Billing Information.

**6.7.2.** Registry shall pay any outstanding amounts owed to Provider through the termination date. In addition, Provider shall retain any fees already paid by Registry under the terms of this Agreement.

**6.7.3.** If requested by Registry, Provider shall continue to operate the System for up to a thirty day period following the expiration or termination of this Agreement, and to the extent new Registrations are accepted by Registry the Registration Fee shall be payable to Provider and all the other terms of this Agreement shall apply notwithstanding such termination or expiry.

**6.8. Survival.** In the event of termination of this Agreement, the following Sections shall survive: 2.4, 2.5, 2.8, 5, 6, 7, 8, 9, 10, and 11. Neither Party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms but each Party shall be liable for any damage arising from any breach by it (and in the case of Registry, by any Registrar) of this Agreement.

## **7. Registry Database.**

Registry shall at all times be the sole and exclusive owner of the Registry Database. All files, papers, records, documents, and similar items and materials relating to the Billing Information shall at all times remain the exclusive property of Registry and shall be delivered to Registry upon its reasonable request. Provider shall have no property rights or interests in such materials except as set forth in this Agreement, and is granted the non-exclusive, non-transferable right to use such information and materials solely for the purposes of providing the services hereunder.

Provider shall maintain a back-up copy of the Registry Database subject to all terms and conditions of this Agreement.

## **8. LIMITATION OF LIABILITY.**

EXCEPT AS SET FORTH IN THIS AGREEMENT, REGISTRY AGREES THAT PROVIDER WILL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, FOR ANY (a) SUSPENSION, LOSS, OR MODIFICATION OF ANY DOMAIN NAMES IN THE TLD, (b) INTERRUPTION OF BUSINESS, (c) ACCESS DELAYS OR ACCESS INTERRUPTIONS TO THE SYSTEM, (d) DATA NON-DELIVERY, MIS-DELIVERY, CORRUPTION, DESTRUCTION OR OTHER MODIFICATION, (e) EVENTS BEYOND PROVIDER'S REASONABLE CONTROL. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL PROVIDER'S MAXIMUM AGGREGATE

LIABILITY EXCEED THE TOTAL AMOUNT PAID BY REGISTRY HEREUNDER DURING THE SIX (6) MONTH PERIOD THAT IMMEDIATELY PRECEDES THE ACT THAT GAVE RISE TO SUCH LIABILITY. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES, PROVIDER'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## **9. REPRESENTATIONS AND WARRANTIES**

**9.1. Registry.** Registry represents and warrants that: (1) it is a corporation duly incorporated, validly existing and in good standing under the laws of the District of Columbia, (2) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, (3) it is, and during the Term of this Agreement will continue to be, authorized by ICANN or its successor, pursuant to a registry agreement to exclusively operate and maintain the TLD, (4) it has, and during the Term of the Agreement will continue to have, all rights necessary to subcontract the Services to Provider hereunder, (5) the execution, performance and delivery of this Agreement has been duly authorized by Registry, and (6) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Registry in order for it to enter into and perform its obligations under this Agreement.

**9.2. Provider.** Provider represents and warrants that: (1) it is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, (2) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, (3) it has the technical, personnel and financial capacity to perform its obligations under this Agreement, (4) the execution, performance and delivery of this Agreement has been duly authorized by Provider, and (5) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Provider in order for it to enter into and perform its obligations under this Agreement.

**9.3. Disclaimer of Warranties.** PROVIDER EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. PROVIDER DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE RRP, APIs OR SOFTWARE WILL MEET REGISTRY'S REQUIREMENTS, OR THAT THE OPERATION OF THE RRP, APIs OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE RRP, APIs OR SOFTWARE WILL BE CORRECTED. FURTHERMORE, PROVIDER DOES NOT WARRANT NOR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE RRP, APIs, SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SHOULD THE RRP, APIs OR SOFTWARE PROVE DEFECTIVE, REGISTRY ASSUMES THE

ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF REGISTRY'S OWN SYSTEMS AND SOFTWARE.

**10. INDEMNIFICATION.**

**10.1. Registry.** Registry, at its own expense will indemnify, defend and hold harmless Provider and its employees, directors, officers, representatives, agents and affiliates, against any claim, suit, action, or other proceeding brought against Provider or any affiliate of Provider based on or arising from any claim or alleged claim (i) relating to any product or service of Registry (except such services exclusively provided by Provider hereunder); (ii) relating to any agreement with a Registrar or End Customer; or (iii) relating to Registry's domain name registry business, including, but not limited to, Registry's advertising, domain name application process, verification of domain name restrictions process, systems and other processes, fees charged, billing practices and customer service; provided, however, that in any such case: (a) Provider provides Registry with prompt notice of any such claim, and (b) upon Registry's written request, Provider will provide to Registry all available information and assistance reasonably necessary for Registry to defend such claim, provided that Registry reimburses Provider for its actual and reasonable costs. Registry will not enter into any settlement or compromise of any such indemnifiable claim without Provider's prior written consent, which consent shall not be unreasonably withheld. Registry will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by Provider in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

**10.2. Provider.** Provider, at its own expense will indemnify, defend and hold harmless Registry and its employees, directors, officers, representatives, agents and affiliates, against any claim, suit, action, or other proceeding brought against Registry or any affiliate of Registry based on or arising from any claim or alleged claim (i) relating to any product or service of Provider; or (ii) relating to Provider's domain name registry business, including, but not limited to, Provider's advertising, domain name application process, verification of domain name restrictions process, systems and other processes, fees charged, billing practices and customer service; provided, however, that in any such case: (a) Registry provides Provider with prompt notice of any such claim, and (b) upon Provider's written request, Registry will provide to Provider all available information and assistance reasonably necessary for Provider to defend such claim, provided that Provider reimburses Registry for its actual and reasonable costs. Provider will not enter into any settlement or compromise of any such indemnifiable claim without Registry's prior written consent, which consent shall not be unreasonably withheld. Provider will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by Registry in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

**11. MISCELLANEOUS.**

**11.1. No Third Party Beneficiaries; Relationship of The Parties.** This Agreement does not provide and shall not be construed to provide third parties (i.e., non-parties to this Agree-

ment), other than Kintera, Inc. (with respect to 2.6.2, 2.6.3, and 2.6.4 only) including any Registrar or End Customer, with any remedy, claim, cause of action or privilege. Nothing in this Agreement shall be construed as creating an employer-employee or agency relationship, a partnership or a joint venture between the Parties.

**11.2. Force Majeure.** Neither Party shall be responsible for any failure to perform any obligation or provide service hereunder (except for any payment obligations) because of any Act of God, strike, work stoppage, governmental acts or directives, war, riot or civil commotion

**11.3. Further Assurances.** Each Party hereto shall execute and/or cause to be delivered to each other Party hereto such instruments and other documents, and shall take such other actions, as such other Party may reasonably request for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

**11.4. Amendment in Writing.** Any amendment or supplement to this Agreement shall be in writing and duly executed by both Parties.

**11.5. Dispute Resolution; Choice of Law; Venue.** This Agreement is to be construed in accordance with and governed by the internal laws of the State of New York, United States of America without giving effect to any choice of law rules. Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement that is brought by Provider shall be brought or otherwise commenced in any local or federal court located in Washington, D.C. Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement (a "Proceeding") that is brought by Registry shall be brought or otherwise commenced in any state or federal court located in New York County, New York. Each Party to this Agreement expressly and irrevocably consents and submits to the jurisdiction and venue of each local and federal court located in Washington, D.C., in the case of a Proceeding brought by Provider, and New York County, New York in the case of a Proceeding brought by Registry.

**11.6. Notices.** Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service, by e-mail or by telecopier during business hours) to the address or telecopier number set forth beneath the name of such Party below, unless party has given a notice of a change of address in writing:

if to Registry:

---

---

---

---

---

---

---

with a copy to:

---

---

---

---

---

---

---

if to Provider:

---

---

---

---

---

---

---

with a copy to:

---

---

---

---

---

---

---

**11.7. Assignment/Sublicense.** Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of and be binding upon, the successors and permitted assigns of the Parties hereto. Neither Party shall assign its rights or obligations under this Agreement to any third person without the prior written consent of the other Party, provided that no consent shall be required in the event of a sale of all or substantially all of the assets of a Party pursuant to a merger, stock sale, consolidation or otherwise.

**11.8. Use of Confidential Information.** The Parties' use and disclosure of Confidential Information disclosed hereunder are subject to the terms and conditions of the Parties' Confidentiality Agreement, entered into as of [to be provided]. Registry agrees that the Licensed Product is the Confidential Information of Provider.

**11.9. Press Releases; Public Statements; Disclosure of Terms.** Except for such disclosures as are required by law, no public announcements or other public statements (including in any press conference, trade publication, marketing materials or otherwise), and no disclosure to any third party with respect to the existence, subject matter and/or terms of this Agreement shall be made by either Party without the prior written approval of the other Party. For the purposes of this provision, the prior written approval of either Party may be obtained from Lisette Zarnowski, in the case of Provider, and [to be provided], in the case of Registry.

**11.10. Delays or Omissions; Waivers.** No failure on the part of either Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of either Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise or waiver of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

**11.11. Construction.** The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement.

**11.12. Intellectual Property; Use of Logos.**

**11.12.1.** Each Party will continue to independently own its intellectual property, including all patents, trademarks, trade names, service marks, copyrights, trade secrets, proprietary processes and all other forms of intellectual property. Registry specifically acknowledges that Provider owns all right, title and interest in the Licensed Products.

**11.12.2.** Neither Party shall use the other Party's name and/or logo in any manner whatsoever, including in advertising and promotional materials or in any communications with third parties, without the other Party's prior written permission.



**11.13. Entire Agreement; Severability.** This Agreement, including all exhibits, constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth in the first paragraph hereof.

Register.com,

Inc.By: \_\_\_\_\_ Name: \_\_\_\_\_ Title: \_\_\_\_\_

DotOrg

FoundationBy: \_\_\_\_\_ Name: \_\_\_\_\_ Title: \_\_\_\_\_

## **Exhibit A**

### **Registrar Required Terms**

**1.1. Secure Connection.** Registrar agrees to develop and employ in its domain name registration business all necessary technology and restrictions to ensure that its connection to the System is secure. All data exchanged between Registrar's system and the System shall be protected to avoid unintended disclosure of information. Each RRP session shall be authenticated and encrypted as specified by the functional specifications in Exhibit B. Registrar agrees that it shall disclose any password provided by Provider only to its employees with a need to know. Registrar agrees to notify Provider within four hours of learning that any such password has been compromised in any way or if the digital certificate or encryption key used for secure communication with Provider has been revoked by the issuing Certification Authority or compromised in any way.

**1.2. Domain Name Lookup Capability.** Registrar agrees to employ in its domain name registration business Provider's domain name lookup capability to determine if a requested domain name is available or currently unavailable for registration.

**1.3. Time.** Registrar agrees that in the event of any dispute concerning the time of the entry of a domain name registration into the System, the time shown in Provider's records shall control.

**1.4. Compliance with Terms and Conditions.** Registrar agrees to comply with all other reasonable terms or conditions established by Provider from time to time, to assure sound operation of the System, by Provider, upon Provider's notification to Registry of the establishment of those terms and conditions.

**1.5. Resolution of Technical Problems.** Registrar agrees to employ necessary employees, contractors, or agents with sufficient technical training and experience to respond to and fix all technical problems concerning the use of the RRP and the APIs in conjunction with Registrar's systems. Registrar agrees that in the event of significant degradation of the System or other emergency, Provider may, in its sole discretion, temporarily suspend access to the System.

**1.6. Indemnification Required of End Customers.** Registrar shall require each End Customer of a domain name in the TLD to indemnify, defend and hold harmless Provider, and its directors, officers, employees and agents from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses arising out of or relating to such End Customer's domain name registration and use thereof.

**1.7. Indemnification by Registrar.** Registrar shall indemnify, defend and hold harmless Provider, and its directors, officers, employees and agents from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses arising out of or relating to such Registrar's access or use of the System, including, without limitation, registration of any domain name in the TLD.

**1.8. Prohibited Conduct.** Registrar agrees to employ the necessary measures to prevent its access to the System granted hereunder from being used for (i) the transmission of unsolicited e-mail to entities other than Registrar's End Customers; (ii) high volume, automated,

electronic processes that apply to Provider for large numbers of domain names; or (iii) high volume, automated, electronic, repetitive queries for the purpose of extracting data.

**1.9. Suspension.** Registrar acknowledges that if it violates any of the foregoing terms, or otherwise comprises the integrity of the System, Provider shall have the right to suspend access to the System for Registrar until such violation is cured.

**Exhibit B**

**System Specifications**

PENDING ICANN AGREEMENT.

**Exhibit C**  
**Service Levels**

PENDING ICANN AGREEMENT.