

1 Jeffrey A. LeVee (State Bar No. 125863)
jlevee@jonesday.com
2 Samantha S. Eisner (State Bar No. 230344)
seisner@jonesday.com
3 JONES DAY
555 South Flower Street
4 Fiftieth Floor
Los Angeles, CA 90071-2300
5 Telephone: (213) 489-3939
Facsimile: (213) 243-2539
6

Attorneys for Plaintiff
7 The Internet Corporation for Assigned Names
and Numbers
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 The Internet Corporation for Assigned
Names and Numbers,

13 Plaintiff,

14 v.

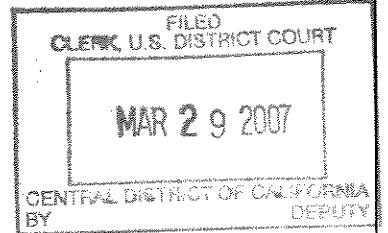
15 RegisterFly.Com, Inc., and
16 UnifiedNames, Inc.,

17 Defendants.
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Case No. CV 07-02089
MRP (LAX)

**DECLARATION OF KURT
PRITZ IN SUPPORT OF
ICANN'S APPLICATION FOR
TRO**

Date: [to be set]
Time: [to be set]
Judge: [to be set]



COPY

1 I, Kurt Pritz, declare:

2 1. I am the Senior Vice President, Services, for the Internet Corporation
3 for Assigned Names and Numbers ("ICANN"). I have been employed by ICANN
4 since 2003. I make this Declaration in support of ICANN's Application for a
5 Temporary Restraining Order against defendants RegisterFly.com, Inc. and
6 UnifiedNames, Inc. (collectively "RegisterFly"). I have personal knowledge of all
7 matters set forth herein and could testify to these matters if called as a witness.

8 2. ICANN is a not-for-profit public benefit corporation that was
9 organized under California law in 1998. ICANN's mission is to protect the stability
10 and security of the domain name system on behalf of the global Internet
11 community. A true and correct copy of the portion of ICANN's bylaws defining its
12 mission is attached hereto as Exhibit A.

13 3. ICANN operates under a series of agreements with the United States
14 Department of Commerce ("DOC"), generic top-level domain name ("gTLD")
15 registries and registrars, ccTLD registries, regional internet registries, and other
16 Internet organizations such as the Internet Engineering Task Force. Qualified
17 companies operate what are known as gTLD registries pursuant to contractual
18 agreements with ICANN. A registry maintains a definitive list of all second-level
19 domain names (*i.e.*, the names with which consumers are mostly familiar such as
20 google.com or ebay.com) within that registry. Some examples of gTLD registries
21 are ".com", ".net" and ".org".

22 4. In order for a consumer to register a second-level domain name in a
23 gTLD registry, he or she must do so through an ICANN-accredited registrar.
24 ICANN requires every company seeking to become a registrar to complete a
25 published accreditation process. Through the accreditation process, each registrar
26 provides assurances that it has certain financial and technical capabilities and that it
27 will follow contractual requirements and consensus-based policies (regarding,
28 among other things the collection and maintenance of certain data for all second-

1 level domain name registrations (the "Data"). These obligations are recorded in
2 the Registrar Accreditation Agreement ("RAA") between ICANN and, separately,
3 each registrar, as well as ICANN Board approved consensus policies such as the
4 Inter-Registrar Transfer Policy ("Transfer Policy") that are incorporated as an
5 obligation of each registrar under the RAA. A true and correct copy of the RAA
6 signed by defendant's predecessor company is attached hereto as Exhibit B. A true
7 and correct copy of the Transfer Policy is attached hereto as Exhibit C. All
8 accredited registrars sign an RAA with the same language. A true and correct copy
9 of the model RAA is attached hereto as Exhibit D.

10 5. The Data collection and maintenance requirements are found primarily
11 at Sections 3.2, 3.3, and 3.4 of the RAA. These provisions specifically obligate
12 each registrar to maintain an electronic database containing the following
13 information for each domain name under the registrar's sponsorship: (1) the
14 Registered Name; (2) the names of the primary nameserver and secondary
15 nameserver(s) for the Registered Name; (3) the identity of the registrar (which may
16 be provided through registrar's website); (4) the original creation date of the
17 registration; (5) the expiration date of the registration; (6) the name and postal
18 address of the Registered Name Holder; (7) the name, postal address, e-mail
19 address, voice telephone number, and (where available) fax number of the technical
20 contact for the Registered Name; (8) the name, postal address, e-mail address, voice
21 telephone number, and (where available) fax number of the administrative contact
22 for the Registered Name; (9) the name and (where available) postal address, e-mail
23 address, voice telephone number, and fax number of the billing contact; (10) any
24 other Registry Data that the registrar has submitted to the registry operator or
25 placed in the registry database. In addition, each registrar must maintain: (a) the
26 submission date and time, and the content, of all registration data (including
27 updates) submitted in electronic form to the registry operator(s); (b) all written
28 communications constituting registration applications, confirmations,

1 modifications, or terminations and related correspondence with Registered Name
2 Holders, including registration contracts; and (c) records of the accounts of all
3 Registered Name Holders with the registrar, including dates and amounts of all
4 payments and refunds.

5 6. In addition, Section 3.6 of the RAA provides that the registrar “shall
6 submit an electronic copy of the database described in Subsection 3.4.1 to ICANN
7 or, at Registrar’s election and at its expense, to a reputable escrow agent”

8 7. Section 3.4.3 of the RAA requires that “[d]uring the Term of this
9 Agreement and for three years thereafter, Registrar shall make [the] records
10 [described in this paragraph] available for inspection and copying by ICANN upon
11 reasonable notice.”

12 8. In order to register gTLD names, accredited registrars must also enter
13 into agreements with each gTLD registry in which they wish to register names. For
14 each registry, each registrar maintains an account with the registry from which a
15 per-name fee is deducted upon completion of registration. If these accounts are not
16 funded, some registries will not allow a domain name to be registered or renewed.

17 9. The basic process for registering a domain name is as follows. A
18 potential registrant first contacts a registrar or consults a publicly available “Whois”
19 service to determine whether a desired domain name is available for registration. If
20 the domain name is available, the registrant provides required information to the
21 registrar (including the registrant's name and contact information) and pays a fee.
22 The registrar then submits the registration to the registry, then the registry deducts a
23 fee from the registrar’s account and completes the registration of the domain name.
24 At that point, the consumer can use the domain name on the Internet for a web site,
25 email, or to otherwise interact with the online public.

26 10. Some consumers retain the services of third party “proxy” registration
27 companies (which are usually affiliated in ownership with the registrar or a reseller
28 of the registrar's services) in order to prevent their personal contact data from being

1 displayed publicly through Whois services. Proxy companies generally request and
2 maintain the consumer's contact information in the same way the registrar would,
3 but the proxy company becomes the public registrant of record for the domain name
4 so that the consumer's information is kept private.

5 11. Domain names may generally only be registered for fixed terms of 1 to
6 10 years, and the registration must be renewed if the registrant wishes to continue
7 use of the name after the end of the initial registration term. At the time of renewal,
8 the registry again deducts a fee from the registrar's account. If a domain name is
9 not renewed, the registration expires and, after a grace period where the name can
10 generally be redeemed for a fee, is deleted from the registry. It then becomes part
11 of a pool of unregistered names available to any registrar to offer to a new
12 registrant.

13 12. There are times when a domain name holder may wish to transfer its
14 registration to a different registrar. The "losing" registrar in such a transfer has
15 specific obligations under the Transfer Policy to comply with the request and to
16 provide an authorization code to the domain name holder. The authorization code
17 is required to process the transfer.

18 13. Defendant RegisterFly is currently an ICANN-accredited registrar. On
19 September 13, 2004, ICANN entered into a registrar accreditation agreement with
20 "Top Class Names, Inc." On or around November 22, 2004, Top Class Names, Inc.
21 filed a Certificate of Amendment of Certificate of Incorporation with the State of
22 Delaware, changing its name to RegisterFly.Com, Inc.

23 14. As set forth in greater detail below, ICANN notified RegisterFly on
24 March 16, 2007 that RegisterFly's RAA would be terminated pursuant to
25 Section 5.3 of the RAA, effective March 31, 2007. A true and correct copy of the
26 Notice of Termination of Registrar Accreditation Agreement for Top Class Names,
27 Inc. ("RegisterFly") is attached hereto as Exhibit E.

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1 15. I am informed and believe that RegisterFly is a registrar with
2 approximately 900,000 domain names under its sponsorship. For the past several
3 months, ICANN has received (by far) more complaints from RegisterFly's
4 customers than any other registrar, and ICANN has devoted an enormous amount of
5 attention trying to assist RegisterFly in solving its problems. Nevertheless,
6 RegisterFly has not been able to resolve many of the complaints made, and the
7 company appears at this point to be insolvent and on the brink of bankruptcy. For
8 example, ICANN has been informed that the majority of RegisterFly's registry
9 accounts are unfunded (or have negative balances) and, therefore, names are not
10 being registered or renewed.

11 16. Over the past several weeks, I estimate that ICANN has received an
12 average in excess of 100 complaints *each and every day* from RegisterFly's
13 customers regarding a variety of different issues. This has forced ICANN literally
14 to create a customer service department that is dedicated almost entirely to
15 RegisterFly; ICANN has had over 10 people at times spending most of their day
16 attempting to assist RegisterFly's customers. (ICANN has less than 80 employees,
17 three of whom are generally assigned to registrar liaison functions – to meet the
18 need of 865 registrars.)

19 17. The nature of the complaints from RegisterFly's customers varies, but
20 there are two recurring themes. First, domain names are expiring and customers
21 cannot use their domain names, despite paying RegisterFly for those names (and
22 sometimes paying RegisterFly multiple times). In these situations, the customers
23 need to renew domain names that are about to expire, but the customers have been
24 unable to do so and, thus, are threatened with the possibility that their domain
25 names will become "deleted" and taken over by a different consumer, even though
26 the current registrant already has paid RegisterFly for the renewal. Second,
27 registrants in large numbers are attempting to transfer their domain names to a new
28 registrar and cannot obtain the authorization codes or release of the names from

1 RegisterFly necessary to effect the transfer. Those two steps are required by
2 ICANN's Transfer Policy that RegisterFly is required to follow.

3 18. Each day more RegisterFly customer names expire, registry accounts
4 remain unfunded and transfers are not being completed as required under the
5 Transfer Policy, which is incorporated into the RAA. Without the Data, ICANN
6 has no way to attempt to protect these customers. Without the Data, if RegisterFly
7 goes out of business, ICANN may not even be able to determine who these
8 customers are.

9 19. ICANN has requested – on multiple occasions – that RegisterFly turn
10 over to ICANN an electronic copy of all current and complete Data (as required in
11 RAA section 3.6), but RegisterFly has failed to do so. On March 5, 2007,
12 RegisterFly turned over some amount of Data, but the Data (dated on or about 27
13 February 2007) turned out to be incomplete and inaccurate. Some of the prime
14 deficiencies in that submission were: (1) 15,000 of the registrations contained only
15 the proxy registration Data through RegisterFly's "ProtectFly" service, and did not
16 reveal the actual customer Data; and (2) in a comparison to a statistically-
17 significant sampling of information provided by the .net and .com registries, out of
18 the sample of 1000 RegisterFly-sponsored domain names within these registries, 94
19 of those names were *not* found in RegisterFly's submission. I expected all of these
20 names to appear within RegisterFly's Data. Based on this sample, ICANN does not
21 have Data for 9.4% of RegisterFly-sponsored domain names within the two most
22 common Internet registries.

23 20. On March 8, 2007, I sent RegisterFly a letter detailing some of the
24 deficiencies with the March 5 data submission. A true and correct copy of my
25 redacted March 8, 2007 letter to RegisterFly is attached hereto as Exhibit F.

26 21. RegisterFly has not submitted any supplemental data to address the
27 deficiencies discussed above. Rather, in response to a further demand for Data as
28 set forth in a letter from Amy A. Stathos, ICANN's Senior Counsel, RegisterFly

1 simply sent to ICANN a DVD with the exact same data it previously provided, that
2 was dated on or about February 27, 2007.

3 22. As a result, ICANN is seeking a temporary restraining order to require
4 RegisterFly escrow with ICANN – and update every 48 hours – the Data to which
5 ICANN is entitled under the RAA. Only by having current and complete Data can
6 ICANN attempt to protect RegisterFly’s customers. The reason that ICANN is
7 requesting that the Data be updated every 48 hours is that ICANN is concerned that
8 RegisterFly will be making changes to the Data, and ICANN needs to continue to
9 verify that the data is complete, consistent and in proper format. This will also
10 allow ICANN to monitor the recent requests that RegisterFly’s customers have
11 made and whether RegisterFly is honoring those requests.

12 23. The situation truly is urgent. Any delay in furnishing complete and
13 accurate Data to ICANN places all RegisterFly’s customers at further risk of losing
14 access to their domain names. RegisterFly has already caused an unknown number
15 of customers to lose domain name registrations due to its ongoing failures to fund
16 registry accounts. If those registries refuse to honor RegisterFly’s requests with
17 respect to these domain names (because RegisterFly has not paid these registries),
18 the registries might wind up re-registering these names to different consumers.
19 Moreover, the security of RegisterFly’s website is questionable, as there have been
20 repeated instances of outages of RegisterFly’s website and its “Whois” service (also
21 a breach of the RAA). Obtaining the Data is the only way that ICANN can attempt
22 to provide any assurance of continued service to RegisterFly customers.

23 24. Importantly, if the Data is lost, it *can never be recreated*. Over a
24 period of time, the loss of Data would potentially cause hundreds of thousands of
25 the domain names under RegisterFly’s sponsorship to become inoperable for the
26 consumers who registered those names. With the Data, in the event that anything
27 happens to RegisterFly, or if its servers or the Data are in any way compromised,
28 ICANN will be able to restore functionality.

1 25. ICANN's rights to obtain a copy of the Data under sections 3.4 and 3.6
2 of the RAA are unrestricted. Further, as explained above, given the potential
3 business failure and termination of RegisterFly, ICANN believes that it needs to
4 receive updates to the Data at least every 48 hours so that ICANN can monitor the
5 status of RegisterFly's actions and, if necessary, request further relief from the
6 Court should it appear that even more urgent relief – i.e., the appointment of a
7 receiver for RegisterFly– is required.

8 26. ICANN's sole interest in obtaining access to the Data is to protect
9 domain name holders, RegisterFly's customers who clearly need such protection
10 from RegisterFly's failure to register and transfer names in accordance with their
11 agreement with ICANN. Providing a copy of the Data will not affect RegisterFly's
12 ability to attempt to service its customers. It will not affect RegisterFly's ability to
13 conduct business or to sell its registration portfolio while it is still entitled to do so
14 (if that is what RegisterFly is attempting to do). Providing a copy of the Data (and
15 providing updates) will only fulfill RegisterFly's obligation to ICANN to provide
16 the Data, and it will serve as a means for ICANN to attempt to protect RegisterFly's
17 customers in the event RegisterFly is terminated or cannot sustain its business.

18 27. Over the past year, ICANN has had frequent communication with
19 RegisterFly regarding its customer service and contractual compliance problems.
20 For purposes of ICANN's request for a temporary restraining order, as set forth in
21 the next several paragraphs, I am attaching only the most recent correspondence,
22 which demonstrates ICANN's requests for the Data and ICANN's decision to
23 terminate RegisterFly as an accredited registrar.

24 28. On February 21, 2007, I sent a Notice of Breach letter to RegisterFly
25 describing several breaches of the RAA, and demanding that RegisterFly
26 immediately cure its breaches. A true and correct copy of my February 21, 2007
27 letter to RegisterFly ("First Breach Letter") is attached hereto as Exhibit G. I have
28 redacted the letter in order to protect the identification of RegisterFly's customers.

1 29. On February 21, 2007, I also sent RegisterFly a Notice of Audit,
2 notifying RegisterFly that, in accordance with Sections 3.4.3 and 3.6 of the RAA, it
3 was obligated to make its records available to ICANN for inspection and copying
4 and to also provide ICANN with a complete copy of all Data for all domain names
5 under its sponsorship as Registrar. A true and correct copy of this February 21
6 Notice of Audit is attached hereto as Exhibit H.

7 30. On February 28, 2007, I sent a second audit letter to RegisterFly,
8 noting its failure to comply with the February 21, 2007 Notice of Audit, and
9 demanding access to the requested information on March 1, 2007. A true and
10 correct copy of my February 28, 2007 letter to RegisterFly is attached hereto as
11 Exhibit I.

12 31. On March 2, 2007, at my request, ICANN's counsel, Jeffrey LeVee of
13 Jones Day, sent a second Notice of Breach letter to RegisterFly. In this letter,
14 ICANN detailed RegisterFly's additional breaches of the RAA including
15 RegisterFly's failure to continually maintain public access to Whois data relating to
16 registered names (via its website and Whois service) as required under Section 3.3
17 of the RAA, RegisterFly's continued refusal to provide ICANN with a copy of all
18 Data as required by Section 3.6 of the RAA, and RegisterFly's refusal to comply
19 with ICANN's audit demand under Section 3.4 of the RAA. A true and correct
20 copy of the March 2, 2007 letter to RegisterFly is attached hereto as Exhibit J.

21 32. On March 15, 2007, I sent a further demand letter seeking a complete
22 copy of all RegisterFly registration data ("March 15 Demand Letter"). In the
23 March 15 Demand Letter, I reminded RegisterFly of its continuing breach of
24 section 3.6 of the RAA. A true and correct copy of the March 15 Demand Letter is
25 attached hereto as Exhibit K.

26 33. On March 16, 2007, at the expiration of its 15-working day period to
27 cure, John Jeffrey, ICANN's General Counsel and Secretary, sent RegisterFly the
28 Notice of Termination (Exhibit G hereto). The Notice of Termination specifies that

1 the RAA will terminate on March 31, 2007, and that as of that time, RegisterFly
2 will no longer be able to serve as an ICANN-accredited registrar. In addition, the
3 letter demanded that RegisterFly immediately cease use of all ICANN trademarked
4 logos on its website and business materials (another demand that RegisterFly
5 ignored until March 28, 2007). Further, the Notice of Termination requires
6 RegisterFly to assist in facilitating a bulk transfer of domains registered through
7 RegisterFly.

8 34. On March 20, 2007, at my request, Amy Stathos, Senior Counsel in
9 the Office of the General Counsel of ICANN, sent a letter to RegisterFly addressing
10 the continuing breaches of the RAA. In that letter, Ms. Stathos described
11 RegisterFly's continued failure to respond to ICANN's data demands and provide a
12 complete copy of all Data, as well as RegisterFly's failure to respond to ICANN's
13 audit demands. Ms. Stathos also pointed out in that letter RegisterFly's failure to
14 remove the ICANN trademarked logos from its website. A true and correct copy of
15 Ms. Stathos' March 20, 2007 Letter is attached hereto as Exhibit L.

16 35. On March 23, 2007, ICANN received from RegisterFly a second copy
17 of the "data" that was responsive to Ms. Stathos' request of March 20, 2007.
18 However, this "data" precisely matched the data RegisterFly had sent to ICANN on
19 March 5; apparently, the "data" had not been updated at all. ICANN technical staff
20 performing a "checksum" operation verified that the data set received earlier (on
21 March 5) matched the data received on March 23. Since some names had expired
22 and had transferred from RegisterFly since the data set was received on March 5,
23 the March 23 data set cannot match the March 5 set AND be accurate. In addition
24 to being nearly a month old, the "data" naturally suffered from all of the same
25 deficiencies as the "data" detailed in Paragraph 19. In the March 22, 2007
26 transmittal email from Kevin Medina to Amy Stathos, Mr. Medina failed to inform
27 ICANN that he was sending an exact duplicate of RegisterFly's earlier "data"
28 submission. As a result of this unfair dealing, ICANN staff spent many hours

1 attempting to analyze the data only to determine that it was a duplicate of what
2 ICANN had already received. Mr. Medina once again demonstrated that he has no
3 intention of complying with ICANN's required processes. A true and correct copy
4 of Kevin Medina's March 22, 2007 email to Amy A. Stathos is attached hereto as
5 Exhibit M. Exhibit M has been redacted to remove attorney-client privileged
6 communications.

7 36. On March 27, 2007, before 9:00 a.m. EDT, Mr. Jeffrey sent a final
8 letter demanding that current, correct and complete RegisterFly Data be
9 immediately sent via electronic means to ICANN ("Final Demand Letter"). A true
10 and correct copy of the Final Demand Letter is attached hereto as Exhibit N.

11 37. Later in the day on March 27, Mr. Medina called me and stated that he
12 would send an electronic version of updated RegisterFly Data that evening. He
13 claimed that RegisterFly had "inadvertently" sent the wrong version of the data
14 received by ICANN on March 23, 2007. I made arrangements with ICANN's Chief
15 Security Officer, Steve Conte, to work with ICANN's technical staff to set up the
16 proper secured method for receiving that updated Data and to communicate with
17 RegisterFly's representative, Robert O'Neill, to ensure he had all the necessary
18 information to electronically transmit to ICANN RegisterFly's Data. Mr. Conte has
19 informed me that Mr. O'Neill understood his instructions and indicated
20 RegisterFly's full intention to transmit the data as he and Mr. Conte had discussed.
21 Mr. O'Neill did inform Mr. Conte that RegisterFly's Data required some processing
22 before it could be transmitted. Mr. O'Neill then informed Mr. Conte that the Data
23 would be transmitted no later than 9:00 a.m. EDT on March 28, 2007. As of the
24 drafting of this Declaration, ICANN has received no such updated Data.

25 38. RegisterFly's sponsored portfolio is constantly changing, and I know
26 that significant changes have occurred since February 27, 2007. For example,
27 through the customer service work that ICANN has been performing as a result of
28 RegisterFly's neglect of its duties, I am informed and believe that *thousands* of

1 domain names that have been transferred out of RegisterFly's sponsorship since the
2 March 5, 2007 submission.

3 39. ICANN requires a *current, complete and correct* copy of all registrant
4 Data it is entitled to under Section 3.6 of the RAA. The fact that ICANN has *some*
5 stale "data" does not offer any protection to RegisterFly's customers. Without
6 current, complete and correct Data, in the event that ICANN needs to facilitate a
7 bulk transfer of RegisterFly's sponsored portfolio after the termination of the RAA,
8 any registrar that receives the Data would be unable to authenticate or determine the
9 identity of the true registrant for *any* of the domain names therein. Without the
10 ability to authenticate the true registrant, the new registrar could not make changes
11 or transfer the name out to another registrar, and the use of the domain name could
12 be suspended or frozen. The inability to authenticate or determine the true identity
13 of registrants also makes the opportunity for fraud rampant.

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I declare under penalty of perjury under the laws of the United States that the
foregoing is true and correct. This declaration was signed on March 29, 2007 in
Lisbon, Portugal.



Kurt Pritz

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BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

A California Nonprofit Public-Benefit Corporation
As amended effective 28 February 2006

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ARTICLE I: MISSION AND CORE VALUES

Section 1. MISSION

The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
 - a. Domain names (forming a system referred to as "DNS");
 - b. Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and
 - c. Protocol port and parameter numbers.
2. Coordinates the operation and evolution of the DNS root name server system.

3. Coordinates policy development reasonably and appropriately related to these technical functions.

Section 2. CORE VALUES

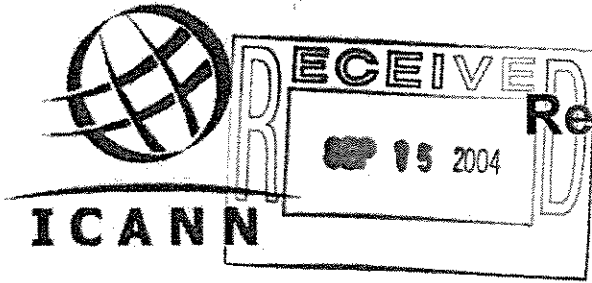
In performing its mission, the following core values should guide the decisions and actions of ICANN:

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.
2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.
3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.
4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.
5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.
6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.
9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.
10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.
11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

ARTICLE II: POWERS

Section 1. GENERAL POWERS



Registrar Accreditation Agreement

821

This REGISTRAR ACCREDITATION AGREEMENT ("Agreement") is by and between the Internet Corporation for Assigned Names and Numbers ("ICANN"), a California non-profit, public benefit corporation, and **Top Class Names, Inc.**, a Delaware Corporation ("Registrar"), and shall be deemed made on September 13, 2004, at Los Angeles, California, USA.

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

- 1.1 "Accredit" means to identify and set minimum standards for the performance of registration functions, to recognize persons or entities meeting those standards, and to enter into an accreditation agreement that sets forth the rules and procedures applicable to the provision of Registrar Services.
- 1.2 "DNS" refers to the Internet domain-name system.
- 1.3 The "Effective Date" is September 13 2004.
- 1.4 The "Expiration Date" is September 12 2009.
- 1.5 "ICANN" refers to the Internet Corporation for Assigned Names and Numbers, a party to this Agreement.
- 1.6 "Personal Data" refers to data about any identified or identifiable natural person.
- 1.7 "Registered Name" refers to a domain name within the domain of a TLD that is the subject of an appendix to this Agreement, whether consisting of two or more (e.g., john.smith.name) levels, about which a TLD Registry Operator (or an affiliate engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).
- 1.8 "Registered Name Holder" means the holder of a Registered Name.
- 1.9 The word "Registrar," when appearing with an initial capital letter, refers to Top Class Names, Inc., a party to this Agreement.
- 1.10 The word "registrar," when appearing without an initial capital letter, refers to a person or entity 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.
- 1.11 "Registrar Services" means services provided by a registrar in connection with a TLD as to which it has an agreement with the TLD's Registry Operator, and includes contracting with Registered Name Holders, collecting registration data

about the Registered Name Holders, and submitting registration information for entry in the Registry Database.

- 1.12 "Registry Data" means all Registry Database data maintained in electronic form, and shall include TLD Zone-File Data, all data used to provide Registry Services and submitted by registrars in electronic form, and all other data used to provide Registry Services concerning particular domain name registrations or nameservers maintained in electronic form in a Registry Database.
- 1.13 "Registry Database" means a database comprised of data about one or more DNS domain names within the domain of a registry 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.
- 1.14 A "Registry Operator" is the person or entity then responsible, in accordance with an agreement between ICANN (or its assignee) and that person or entity (those persons or entities) or, if that agreement is terminated or expires, in accordance with an agreement between the US Government and that person or entity (those persons or entities), for providing Registry Services for a specific TLD.
- 1.15 "Registry Services," with respect to a particular TLD, shall have the meaning defined in the agreement between ICANN and the Registry Operator for that TLD.
- 1.16 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 loses accreditation, in accordance with then-current ICANN specifications and policies.
- 1.17 "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.
- 1.18 A "TLD" is a top-level domain of the DNS.
- 1.19 "TLD Zone-File Data" means all data contained in a DNS zone file for the registry, or for any subdomain for which Registry Services are provided and that contains Registered Names, as provided to nameservers on the Internet.

2 ICANN OBLIGATIONS.

- 2.1 Accreditation. During the Term of this Agreement, Registrar is hereby accredited by ICANN to act as a registrar (including to insert and renew registration of Registered Names in the Registry Database) for the TLD(s) that are the subject of appendices to this Agreement according to Subsection 5.5.
- 2.2 Registrar Use of ICANN Name and Website. ICANN hereby grants to Registrar a non-exclusive, worldwide, royalty-free license during the Term of this Agreement (a) to state that it is accredited by ICANN as a registrar for each TLD that is the subject of an appendix to this Agreement and (b) to link to pages and documents within the ICANN web site. No other use of ICANN's name or

website is licensed hereby. This license may not be assigned or sublicensed by Registrar.

- 2.3 General Obligations of ICANN. With respect to all matters that impact the rights, obligations, or role of Registrar, 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 Registrar 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 Registrar, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

3 REGISTRAR OBLIGATIONS.

- 3.1 Obligations to Provide Registrar Services. During the Term of this Agreement, Registrar agrees that it will operate as a registrar for each TLD for which it is accredited by ICANN in accordance with this Agreement.
- 3.2 Submission of Registered Name Holder Data to Registry. During the Term of this Agreement:
- 3.2.1 As part of its registration of Registered Names in a TLD as to which it is accredited, Registrar shall submit to, or shall place in the Registry Database operated by, the Registry Operator for the TLD the following data elements:
 - 3.2.1.1 The name of the Registered Name being registered;
 - 3.2.1.2 The IP addresses of the primary nameserver and secondary nameserver(s) for the Registered Name;
 - 3.2.1.3 The corresponding names of those nameservers;
 - 3.2.1.4 Unless automatically generated by the registry system, the identity of the Registrar;
 - 3.2.1.5 Unless automatically generated by the registry system, the expiration date of the registration; and
 - 3.2.1.6 Any other data the Registry Operator requires be submitted to it.

The appendix to this Agreement for a particular TLD may state substitute language for Subsections 3.2.1.1 through 3.2.1.6 as applicable to that TLD; in that event the substitute language shall

replace and supersede Subsections 3.2.1.1 through 3.2.1.6 stated above for all purposes under this Agreement but only with respect to that particular TLD.

3.2.2 Within five (5) business days after receiving any updates from the Registered Name Holder to the data elements listed in Subsections 3.2.1.2, 3.1.2.3, and 3.2.1.6 for any Registered Name Registrar sponsors, Registrar shall submit the updated data elements to, or shall place those elements in the Registry Database operated by the Registry Operator.

3.2.3 In order to allow reconstitution of the Registry Database in the event of an otherwise unrecoverable technical failure or a change in the designated Registry Operator, within ten days of any such request by ICANN, Registrar shall submit an electronic database containing the data elements listed in Subsections 3.2.1.1 through 3.2.1.6 for all active records in the registry sponsored by Registrar, in a format specified by ICANN, to the Registry Operator for the appropriate TLD.

3.3 Public Access to Data on Registered Names. During the Term of this Agreement:

3.3.1 At its expense, Registrar shall provide an interactive web page and a port 43 Whois service providing free public query-based access to up-to-date (i.e., updated at least daily) data concerning all active Registered Names sponsored by Registrar for each TLD for which it is accredited. The data accessible shall consist of elements that are designated from time to time according to an ICANN adopted specification or policy. Until ICANN otherwise specifies by means of an ICANN adopted specification or policy, this data shall consist of the following elements as contained in Registrar's database:

3.3.1.1 The name of the Registered Name;

3.3.1.2 The names of the primary nameserver and secondary nameserver(s) for the Registered Name;

3.3.1.3 The identity of Registrar (which may be provided through Registrar's website);

3.3.1.4 The original creation date of the registration;

3.3.1.5 The expiration date of the registration;

3.3.1.6 The name and postal address of the Registered Name Holder;

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

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

The appendix to this Agreement for a particular TLD may state substitute language for Subsections 3.3.1.1 through 3.3.1.8 as applicable to that TLD; in that event the substitute language shall replace and supersede Subsections 3.3.1.1 through 3.3.1.8 stated above for all purposes under this Agreement but only with respect to that particular TLD.

- 3.3.2 Upon receiving any updates to the data elements listed in Subsections 3.3.1.2, 3.3.1.3, and 3.3.1.5 through 3.3.1.8 from the Registered Name Holder, Registrar shall promptly update its database used to provide the public access described in Subsection 3.3.1.
- 3.3.3 Registrar may subcontract its obligation to provide the public access described in Subsection 3.3.1 and the updating described in Subsection 3.3.2, provided that Registrar shall remain fully responsible for the proper provision of the access and updating.
- 3.3.4 Registrar shall abide by any ICANN specification or policy established as a Consensus Policy according to Section 4 that requires registrars to cooperatively implement a distributed capability that provides query-based Whois search functionality across all registrars. If the Whois service implemented by registrars does not in a reasonable time provide reasonably robust, reliable, and convenient access to accurate and up-to-date data, the Registrar shall abide by any ICANN specification or policy established as a Consensus Policy according to Section 4 requiring Registrar, if reasonably determined by ICANN to be necessary (considering such possibilities as remedial action by specific registrars), to supply data from Registrar's database to facilitate the development of a centralized Whois database for the purpose of providing comprehensive Registrar Whois search capability.
- 3.3.5 In providing query-based public access to registration data as required by Subsections 3.3.1 and 3.3.4, Registrar shall not impose terms and conditions on use of the data provided, except as permitted by policy established by ICANN. Unless and until ICANN establishes a different policy according to Section 4, Registrar shall permit use of data it provides in response to queries for any lawful purposes except to: (a) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

- 3.3.6 In addition, Registrar shall provide third-party bulk access to the data subject to public access under Subsection 3.3.1 under the following terms and conditions:
- 3.3.6.1 Registrar shall make a complete electronic copy of the data available at least one time per week for download by third parties who have entered into a bulk access agreement with Registrar.
 - 3.3.6.2 Registrar may charge an annual fee, not to exceed US\$10,000, for such bulk access to the data.
 - 3.3.6.3 Registrar's access agreement shall require the third party to agree not to use the data to allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than such third party's own existing customers.
 - 3.3.6.4 Registrar's access agreement shall require the third party to agree not to use the data to enable high-volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.
 - 3.3.6.5 Registrar's access agreement may require the third party to agree not to sell or redistribute the data except insofar as it has been incorporated by the third party into a value-added product or service that does not permit the extraction of a substantial portion of the bulk data from the value-added product or service for use by other parties.
 - 3.3.6.6 Registrar may enable Registered Name Holders who are individuals to elect not to have Personal Data concerning their registrations available for bulk access for marketing purposes based on Registrar's "Opt-Out" policy, and if Registrar has such a policy, Registrar shall require the third party to abide by the terms of that Opt-Out policy; provided, however, that Registrar may not use such data subject to opt-out for marketing purposes in its own value-added product or service.
- 3.3.7 Registrar's obligations under Subsection 3.3.6 shall remain in effect until the earlier of (a) replacement of this policy with a different ICANN policy, established according to Section 4, governing bulk access to the data subject to public access under Subsection 3.3.1, or (b) demonstration, to the satisfaction of the United States Department of Commerce, that no individual or entity is able to exercise market

power with respect to registrations or with respect to registration data used for development of value-added products and services by third parties.

- 3.3.8 To comply with applicable statutes and regulations and for other reasons, ICANN may from time to time adopt policies and specifications establishing limits (a) on the Personal Data concerning Registered Names that Registrar may make available to the public through a public-access service described in this Subsection 3.3 and (b) on the manner in which Registrar may make such data available. In the event ICANN adopts any such policy, Registrar shall abide by it.

3.4 Retention of Registered Name Holder and Registration Data.

- 3.4.1 During the Term of this Agreement, Registrar shall maintain its own electronic database, as updated from time to time, containing data for each active Registered Name sponsored by it within each TLD for which it is accredited. The data for each such registration shall include the elements listed in Subsections 3.3.1.1 through 3.3.1.8; the name and (where available) postal address, e-mail address, voice telephone number, and fax number of the billing contact; and any other Registry Data that Registrar has submitted to the Registry Operator or placed in the Registry Database under Subsection 3.2.

- 3.4.2 During the Term of this Agreement and for three years thereafter, Registrar (itself or by its agent(s)) shall maintain the following records relating to its dealings with the Registry Operator(s) and Registered Name Holders:

3.4.2.1 In electronic form, the submission date and time, and the content, of all registration data (including updates) submitted in electronic form to the Registry Operator(s);

3.4.2.2 In electronic, paper, or microfilm form, all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Registered Name Holders, including registration contracts; and

3.4.2.3 In electronic form, records of the accounts of all Registered Name Holders with Registrar, including dates and amounts of all payments and refunds.

- 3.4.3 During the Term of this Agreement and for three years thereafter, Registrar shall make these records available for inspection and copying by ICANN upon reasonable notice. ICANN shall not disclose the content of such records except as expressly permitted by an ICANN specification or policy.

- 3.5 Rights in Data. Registrar disclaims all rights to exclusive ownership or use of the data elements listed in Subsections 3.2.1.1 through 3.2.1.3 for all Registered Names submitted by Registrar to the Registry Database for, or sponsored by Registrar in, each TLD for which it is accredited. Registrar does not disclaim rights in the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and Subsections 3.3.1.3 through 3.3.1.8 concerning active Registered Names sponsored by it in each TLD for which it is accredited, and agrees to grant non-exclusive, irrevocable, royalty-free licenses to make use of and disclose the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 for the purpose of providing a service or services (such as a Whois service under Subsection 3.3.4) providing interactive, query-based public access. Upon a change in sponsorship from Registrar of any Registered Name in a TLD for which it is accredited, Registrar acknowledges that the registrar gaining sponsorship shall have the rights of an owner to the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 concerning that Registered Name, with Registrar also retaining the rights of an owner in that data. Nothing in this Subsection prohibits Registrar from (1) restricting bulk public access to data elements in a manner consistent with this Agreement and any ICANN specifications or policies or (2) transferring rights it claims in data elements subject to the provisions of this Subsection.
- 3.6 Data Escrow. During the Term of this Agreement, on a schedule, under the terms, and in the format specified by ICANN, Registrar shall submit an electronic copy of the database described in Subsection 3.4.1 to ICANN or, at Registrar's election and at its expense, to a reputable escrow agent mutually approved by Registrar and ICANN, such approval also not to be unreasonably withheld by either party. The data shall be held under an agreement among Registrar, 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 Subsection, ICANN (or its assignee) shall have a non-exclusive, irrevocable, royalty-free license to exercise (only for transitional purposes) or have exercised all rights necessary to provide Registrar Services.
- 3.7 Business Dealings, Including with Registered Name Holders.
- 3.7.1 In the event ICANN adopts a specification or policy, supported by a consensus of ICANN-Accredited registrars, establishing or approving a Code of Conduct for ICANN-Accredited registrars, Registrar shall abide by that Code.
- 3.7.2 Registrar shall abide by applicable laws and governmental regulations.
- 3.7.3 Registrar shall not represent to any actual or potential Registered Name Holder that Registrar enjoys access to a registry for which

Registrar is Accredited that is superior to that of any other registrar Accredited for that registry.

- 3.7.4 Registrar shall not activate any Registered Name unless and until it is satisfied that it has received a reasonable assurance of payment of its registration fee. For this purpose, a charge to a credit card, general commercial terms extended to creditworthy customers, or other mechanism providing a similar level of assurance of payment shall be sufficient, provided that the obligation to pay becomes final and non-revocable by the Registered Name Holder upon activation of the registration.
- 3.7.5 Registrar shall register Registered Names to Registered Name Holders only for fixed periods. At the conclusion of the registration period, failure by or on behalf of the Registered Name Holder to pay a renewal fee within the time specified in a second notice or reminder shall, in the absence of extenuating circumstances, result in cancellation of the registration. In the event that ICANN adopts a specification or policy concerning procedures for handling expiration of registrations, Registrar shall abide by that specification or policy.
- 3.7.6 Registrar shall not insert or renew any Registered Name in any registry for which Registrar is accredited by ICANN in a manner contrary to an ICANN policy stating a list or specification of excluded Registered Names that is in effect at the time of insertion or renewal.
- 3.7.7 Registrar shall require all Registered Name Holders to enter into an electronic or paper registration agreement with Registrar including at least the following provisions:
 - 3.7.7.1 The Registered Name Holder shall provide to Registrar accurate and reliable contact details and promptly correct and update them 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 Registered Name Holder; name of authorized person for contact purposes in the case of an Registered Name Holder that is an organization, association, or corporation; and the data elements listed in Subsections 3.3.1.2, 3.3.1.7 and 3.3.1.8.
 - 3.7.7.2 A Registered Name Holder's willful provision of inaccurate or unreliable information, its willful failure promptly to update information provided to Registrar, or its failure to respond for over fifteen calendar days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration shall constitute a material breach of the Registered Name

Holder-registrar contract and be a basis for cancellation of the Registered Name registration.

- 3.7.7.3 Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder 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 promptly discloses the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm.
- 3.7.7.4 Registrar shall provide notice to each new or renewed Registered Name Holder stating:
- 3.7.7.4.1 The purposes for which any Personal Data collected from the applicant are intended;
 - 3.7.7.4.2 The intended recipients or categories of recipients of the data (including the Registry Operator and others who will receive the data from Registry Operator);
 - 3.7.7.4.3 Which data are obligatory and which data, if any, are voluntary; and
 - 3.7.7.4.4 How the Registered Name Holder or data subject can access and, if necessary, rectify the data held about them.
- 3.7.7.5 The Registered Name Holder shall consent to the data processing referred to in Subsection 3.7.7.4.
- 3.7.7.6 The Registered Name Holder shall represent that notice has been provided equivalent to that described in Subsection 3.7.7.4 to any third-party individuals whose Personal Data are supplied to Registrar by the Registered Name Holder, and that the Registered Name Holder has obtained consent equivalent to that referred to in Subsection 3.7.7.5 of any such third-party individuals.
- 3.7.7.7 Registrar shall agree that it will not process the Personal Data collected from the Registered Name Holder in a way incompatible with the purposes and other limitations about

which it has provided notice to the Registered Name Holder in accordance with Subsection 3.7.7.4 above.

- 3.7.7.8 Registrar shall agree that it will take reasonable precautions to protect Personal Data from loss, misuse, unauthorized access or disclosure, alteration, or destruction.
 - 3.7.7.9 The Registered Name Holder shall represent that, to the best of the Registered Name Holder'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.
 - 3.7.7.10 For the adjudication of disputes concerning or arising from use of the Registered Name, the Registered Name Holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the Registered Name Holder's domicile and (2) where Registrar is located.
 - 3.7.7.11 The Registered Name Holder shall agree that its registration of the Registered Name shall be subject to suspension, cancellation, or transfer pursuant to any ICANN adopted specification or policy, or pursuant to any registrar or registry procedure not inconsistent with an ICANN adopted specification or policy, (1) to correct mistakes by Registrar or the Registry Operator in registering the name or (2) for the resolution of disputes concerning the Registered Name.
 - 3.7.7.12 The Registered Name Holder shall indemnify and hold harmless the Registry Operator and its directors, officers, employees, and agents from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses) arising out of or related to the Registered Name Holder's domain name registration.
- 3.7.8 Registrar shall abide by any specifications or policies established according to Section 4 requiring reasonable and commercially practicable (a) verification, at the time of registration, of contact information associated with a Registered Name sponsored by Registrar or (b) periodic re-verification of such information. Registrar shall, upon notification by any person of an inaccuracy in the contact information associated with a Registered Name sponsored by Registrar, take reasonable steps to investigate that claimed inaccuracy. In the event Registrar learns of inaccurate contact

information associated with a Registered Name it sponsors, it shall take reasonable steps to correct that inaccuracy.

- 3.7.9 Registrar shall abide by any ICANN adopted specifications or policies prohibiting or restricting warehousing of or speculation in domain names by registrars.
- 3.7.10 Nothing in this Agreement prescribes or limits the amount Registrar may charge Registered Name Holders for registration of Registered Names.
- 3.8 Domain-Name Dispute Resolution. During the Term of this Agreement, Registrar shall have in place a policy and procedures for resolution of disputes concerning Registered Names. Until different policies and procedures are established by ICANN under Section 4, Registrar shall comply with the Uniform Domain Name Dispute Resolution Policy identified on ICANN's website (www.icann.org/general/consensus-policies.htm).
- 3.9 Accreditation Fees. As a condition of accreditation, Registrar shall pay accreditation fees to ICANN. These fees consist of yearly and variable fees.
 - 3.9.1 Yearly Accreditation Fee. Registrar shall pay ICANN a yearly accreditation fee in an amount established by the ICANN Board of Directors, in conformity with ICANN's bylaws and articles of incorporation. This yearly accreditation fee shall not exceed US\$4,000 for the first TLD for which Registrar is Accredited plus US\$500 for each additional TLD for which Registrar is Accredited at any time during the year. Payment of the yearly fee shall be due within thirty days after invoice from ICANN.
 - 3.9.2 Variable Accreditation Fee. Registrar shall pay the variable accreditation fees established by the ICANN Board of Directors, in conformity with ICANN's bylaws and articles of incorporation, provided that in each case such fees are reasonably allocated among all registrars that contract with ICANN and that any such fees must be expressly approved by registrars accounting, in the aggregate, for payment of two-thirds of all registrar-level fees. Registrar shall pay such fees in a timely manner for so long as all material terms of this Agreement remain in full force and effect, and notwithstanding the pendency of any dispute between Registrar and ICANN.
 - 3.9.3 On reasonable notice given by ICANN to Registrar, accountings submitted by Registrar shall be subject to verification by an audit of Registrar's books and records by an independent third-party that shall preserve the confidentiality of such books and records (other than its findings as to the accuracy of, and any necessary corrections to, the accountings).

- 3.10 Insurance. Registrar shall maintain in force commercial general liability insurance with policy limits of at least US\$500,000 covering liabilities arising from Registrar's registrar business during the term of this Agreement.

4 PROCEDURES FOR ESTABLISHMENT OR REVISION OF SPECIFICATIONS AND POLICIES.

- 4.1 Registrar's Ongoing Obligation to Comply With New or Revised Specifications and Policies. During the Term of this Agreement, Registrar shall comply with the terms of this Agreement on the schedule set forth in Subsection 4.4, with
- 4.1.1 new or revised specifications (including forms of agreement to which Registrar is a party) and policies established by ICANN as Consensus Policies in the manner described in Subsection 4.3,
 - 4.1.2 in cases where:
 - 4.1.2.1 this Agreement expressly provides for compliance with revised specifications or policies established in the manner set forth in one or more subsections of this Section 4; or
 - 4.1.2.2 the specification or policy concerns one or more topics described in Subsection 4.2.
- 4.2 Topics for New and Revised Specifications and Policies. New and revised specifications and policies may be established on the following topics:
- 4.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, technical reliability, and/or operational stability of Registrar Services, Registry Services, the DNS, or the Internet;
 - 4.2.2 registrar policies reasonably necessary to implement ICANN policies or specifications relating to a DNS registry or to Registry Services;
 - 4.2.3 resolution of disputes concerning the registration of Registered Names (as opposed to the use of such domain names), including where the policies take into account use of the domain names;
 - 4.2.4 principles for allocation of Registered Names (e.g., first-come/first-served, timely renewal, holding period after expiration);
 - 4.2.5 prohibitions on warehousing of or speculation in domain names by registries or registrars;
 - 4.2.6 maintenance of and access to accurate and up-to-date contact information regarding Registered Names and nameservers;
 - 4.2.7 reservation of Registered Names that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual

property, or (c) the technical management of the DNS or the Internet (e.g., "example.com" and names with single-letter/digit labels);

- 4.2.8 procedures to avoid disruptions of registration due to suspension or termination of operations by a registry operator or a registrar, including allocation of responsibility among continuing registrars of the Registered Names sponsored in a TLD by a registrar losing accreditation; and
- 4.2.9 the transfer of registration data upon a change in registrar sponsoring one or more Registered Names.

Nothing in this Subsection 4.2 shall limit Registrar's obligations as set forth elsewhere in this Agreement.

4.3 Manner of Establishment of New and Revised Specifications and Policies.

- 4.3.1 "Consensus Policies" are those specifications or policies established based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (a) action of the ICANN Board of Directors establishing the specification or policy, (b) a recommendation, adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and (c) a written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy.
- 4.3.2 In the event that Registrar disputes the presence of such a consensus, it shall seek review of that issue from an Independent Review Panel established under ICANN's bylaws. Such review must be sought within fifteen working days of the publication of the Board's action establishing the policy. The decision of the panel shall be based on the report and supporting materials required by Subsection 4.3.1. In the event that Registrar seeks review and the Independent Review Panel sustains the Board's determination that the policy is based on a consensus among Internet stakeholders represented in the ICANN process, then Registrar must implement such policy unless it promptly seeks and obtains a stay or injunctive relief under Subsection 5.6.
- 4.3.3 If, following a decision by the Independent Review Panel convened under Subsection 4.3.2, Registrar still disputes the presence of such a consensus, it may seek further review of that issue within fifteen

working days of publication of the decision in accordance with the dispute resolution procedures set forth in Subsection 5.6; provided, however, that Registrar must continue to implement the policy unless it has obtained a stay or injunctive relief under Subsection 5.6 or a final decision is rendered in accordance with the provisions of Subsection 5.6 that relieves Registrar of such obligation. The decision in any such further review shall be based on the report and supporting materials required by Subsection 4.3.1.

- 4.3.4 A specification or policy established by the ICANN Board of Directors on a temporary basis, without a prior recommendation by the council of an ICANN Supporting Organization, shall also be considered to be a Consensus Policy if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the Board reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the operational stability of Registrar Services, Registry Services, the DNS, or the Internet, and that the proposed specification or policy is as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately refer the matter to the appropriate Supporting Organization for its evaluation and review with a detailed explanation of its reasons for establishing the temporary specification or policy and why the Board believes the policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds ninety days, the Board shall reaffirm its temporary establishment every ninety days for a total period not to exceed one year, in order to maintain such specification or policy in effect until such time as it meets the standard set forth in Subsection 4.3.1. If the standard set forth in Subsection 4.3.1 is not met within the temporary period set by the Board, or the council of the Supporting Organization to which it has been referred votes to reject the temporary specification or policy, it will no longer be a "Consensus Policy."
- 4.3.5 For all purposes under this Agreement, the policies specifically identified by ICANN on its website (www.icann.org/general/consensus-policies.htm) at the date of this Agreement as having been adopted by the ICANN Board of Directors before the date of this Agreement shall be treated in the same manner and have the same effect as "Consensus Policies" and accordingly shall not be subject to review under Subsection 4.3.2.
- 4.3.6 In the event that, at the time the ICANN Board of Directors establishes a specification or policy under Subsection 4.3.1 during the Term of this Agreement, ICANN does not have in place an Independent Review Panel established under ICANN's bylaws, the fifteen-working-day period allowed under Subsection 4.3.2 to seek review shall be

extended until fifteen working days after ICANN does have such an Independent Review Panel in place and Registrar shall not be obligated to comply with the specification or policy in the interim.

- 4.4 Time Allowed for Compliance. Registrar shall be afforded a reasonable period of time after receiving notice of the establishment of a specification or policy under Subsection 4.3 in which to comply with that specification or policy, taking into account any urgency involved.

5 MISCELLANEOUS PROVISIONS.

- 5.1 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 5.6 below, provided the party seeking such performance is not in material breach of its obligations.
- 5.2 Termination of Agreement by Registrar. This Agreement may be terminated before its expiration by Registrar by giving ICANN thirty days written notice. Upon such termination by Registrar, Registrar shall not be entitled to any refund of fees paid to ICANN pursuant to this Agreement.
- 5.3 Termination of Agreement by ICANN. This Agreement may be terminated before its expiration by ICANN in any of the following circumstances:
- 5.3.1 There was a material misrepresentation, material inaccuracy, or materially misleading statement in Registrar's application for accreditation or any material accompanying the application.
- 5.3.2 Registrar:
- 5.3.2.1 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 committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of those offenses; or
- 5.3.2.2 is disciplined by the government of its domicile for conduct involving dishonesty or misuse of funds of others.
- 5.3.3 Any officer or director of Registrar is convicted of a felony or of a misdemeanor related to financial activities, or is judged by a court to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these; provided, such officer or director is not removed in such circumstances.
- 5.3.4 Registrar fails to cure any breach of this Agreement (other than a failure to comply with a policy adopted by ICANN during the term of this Agreement as to which Registrar is seeking, or still has time to seek, review under Subsection 4.3.2 of whether a consensus is

present) within fifteen working days after ICANN gives Registrar notice of the breach.

- 5.3.5 Registrar fails to comply with a ruling granting specific performance under Subsections 5.1 and 5.6.
- 5.3.6 Registrar continues acting in a manner that ICANN has reasonably determined endangers the stability or operational integrity of the Internet after receiving three days notice of that determination.
- 5.3.7 Registrar becomes bankrupt or insolvent.

This Agreement may be terminated in circumstances described in Subsections 5.3.1 – 5.3.6 above only upon fifteen days written notice to Registrar (in the case of Subsection 5.3.4 occurring after Registrar's failure to cure), with Registrar being given an opportunity during that time to initiate arbitration under Subsection 5.6 to determine the appropriateness of termination under this Agreement. In the event Registrar initiates litigation or arbitration concerning the appropriateness of termination by ICANN, the termination shall be stayed an additional thirty days to allow Registrar to obtain a stay of termination under Subsection 5.6 below. If Registrar 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 working days pending ICANN's application for more extended specific performance or injunctive relief under Subsection 5.6. This Agreement may be terminated immediately upon notice to Registrar in circumstance described in Subsection 5.3.7 above.

- 5.4 Term of Agreement; Renewal; Right to Substitute Updated Agreement. This Agreement shall be effective on the Effective Date and shall have an initial term running until the Expiration Date, unless sooner terminated. Thereafter, if Registrar seeks to continue its accreditation, it may apply for renewed accreditation, and shall be entitled to renewal provided it meets the ICANN-adopted specification or policy on accreditation criteria then in effect, is in compliance with its obligations under this Agreement, as it may be amended, and agrees to be bound by terms and conditions of the then-current Registrar accreditation agreement (which may differ from those of this Agreement) that ICANN adopts in accordance with Subsection 2.3 and Subsection 4.3. In connection with renewed accreditation, Registrar shall confirm its assent to the terms and conditions of the then-current Registrar accreditation agreement by signing that accreditation agreement. In the event that, during the Term of this Agreement, ICANN posts on its web site an updated form of registrar accreditation agreement applicable to Accredited registrars, Registrar (provided it has not received (1) a notice of breach that it has not cured or (2) a notice of termination of this Agreement under Subsection 5.3 above) may elect, by giving ICANN written notice, to enter an agreement in the updated form in place of this Agreement. In the event of such election, Registrar and ICANN shall promptly sign a new accreditation agreement that contains the provisions of the updated form posted on the web site, with the length of the term of the substituted

agreement as stated in the updated form posted on the web site, calculated as if it commenced on the date this Agreement was made, and this Agreement will be deemed terminated.

- 5.5 Addition or Deletion of TLDs for Which Registrar Accredited. On the Effective Date, Registrar shall be accredited according to Subsection 2.1 for each TLD as to which an appendix executed by both parties is attached to this Agreement. During the Term of this Agreement, Registrar may request accreditation for any additional TLD(s) by signing an additional appendix for each additional TLD in the form prescribed by ICANN and submitting the appendix to ICANN. In the event ICANN agrees to the request, ICANN will sign the additional appendix and return a copy of it to Registrar. The mutually signed appendix shall thereafter be an appendix to this Agreement. During the Term of this Agreement, Registrar may abandon its accreditation for any TLD under this Agreement (provided that Registrar will thereafter remain accredited for at least one TLD under this Agreement) by giving ICANN written notice specifying the TLD as to which accreditation is being abandoned. The abandonment shall be effective thirty days after the notice is given.
- 5.6 Resolution of Disputes Under this Agreement. Disputes arising under or in connection with this Agreement, including (1) disputes arising from ICANN's failure to renew Registrar's accreditation and (2) requests for specific performance, shall be resolved in a court of competent jurisdiction or, at the election of either party, by an arbitration conducted as provided in this Subsection 5.6 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. There shall be three arbitrators: each party shall choose one arbitrator and, if those two arbitrators do not agree on a third arbitrator, the third shall be chosen by the AAA. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators 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 arbitrators may not reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety days of the conclusion of the arbitration hearing. In the event Registrar initiates arbitration to contest the appropriateness of termination of this Agreement by ICANN, Registrar may at the same time request that the arbitration panel stay the termination until the arbitration decision is rendered, and that request shall have the effect of staying the termination until the arbitration panel has granted an ICANN request for specific performance and Registrar has failed to comply with such ruling. In the event Registrar initiates arbitration to contest an Independent Review Panel's decision under Subsection 4.3.3 sustaining the Board's determination that a specification or policy is supported by consensus, Registrar may at the same time request that the arbitration panel 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 arbitration panel 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 and/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 arbitration panel or in a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

- 5.7 Limitations on Monetary Remedies for Violations of this Agreement. ICANN's aggregate monetary liability for violations of this Agreement shall not exceed the amount of accreditation fees paid by Registrar to ICANN under Subsection 3.9 of this Agreement. Registrar's monetary liability to ICANN for violations of this Agreement shall be limited to accreditation fees owing to ICANN under this Agreement. In no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages for any violation of this Agreement.
- 5.8 Handling by ICANN of Registrar-Supplied Data. Before receiving any Personal Data from Registrar, ICANN shall specify to Registrar in writing the purposes for and conditions under which ICANN intends to use the Personal Data. ICANN may from time to time provide Registrar with a revised specification of such purposes and conditions, which specification shall become effective no fewer than thirty days after it is provided to Registrar. ICANN shall not use Personal Data provided by Registrar 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.
- 5.9 Assignment. Either party may assign or transfer this Agreement only with the prior written consent of the other party, which shall not be unreasonably withheld, except that ICANN may, with the written approval of the United States Department of Commerce, assign this agreement by giving Registrar written notice of the assignment. In the event of assignment by ICANN, the assignee may, with the approval of the United States Department of Commerce, revise the definition of "Consensus Policy" to the extent necessary to meet the organizational circumstances of the assignee, provided the revised definition requires that Consensus Policies be based on a demonstrated consensus of Internet stakeholders.
- 5.10 No Third-Party Beneficiaries. This Agreement shall not be construed to create any obligation by either ICANN or Registrar to any non-party to this Agreement, including any Registered Name Holder.
- 5.11 Notices, Designations, and Specifications. 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. Any 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, or when scheduled for delivery by internationally

recognized courier service. Designations and specifications by ICANN under this Agreement shall be effective when written notice of them is deemed given to Registrar.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers
Registrar Accreditation
4676 Admiralty Way, Suite 330
Marina del Rey, California 90292 USA
Attention: General Counsel
Telephone: 1/310/823-9358
Facsimile: 1/310/823-8649

If to Registrar, addressed to:

Top Class Names, Inc.
a Delaware Corporation
150 West Maynard, Apt. 1K
Columbus, Ohio 43202
USA

Attention: Bhavin Turakhia
Registrar Website URL: www.topclassnames.com
Telephone: 91-9820097557
Facsimile: 91 22 5679 7510
e-mail: info@topclassnames.com

- 5.12 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.
- 5.13 Language. All notices, designations, and specifications made under this Agreement shall be in the English language.
- 5.14 Amendments and Waivers. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both 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 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.
- 5.15 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.
- 5.16 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 appendices, which form part of it) constitutes the

entire agreement of the parties pertaining to the accreditation of Registrar and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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

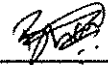
ICANN

By:


Kurt Pritz
Vice President, Business Operations

Top Class Names, Inc.

By:


Name: Bhawn Turakhia
Title: CEO

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Policy on Transfer of Registrations between Registrars

12 July 2004

A. Holder-Authorized Transfers

1. Registrar Requirements

Registered Name Holders must be able to transfer their domain name registrations between Registrars provided that the Gaining Registrar's transfer process meets the minimum standards of this policy and that such transfer is not prohibited by ICANN or Registry policies. Inter-Registrar domain name transfer processes must be clear and concise in order to avoid confusion. Further, Registrars should make reasonable efforts to inform Registered Name Holders of, and provide access to, the published documentation of the specific transfer process employed by the Registrars.

1.1 Transfer Authorities

The Administrative Contact and the Registered Name Holder, as listed in the Losing Registrar's or applicable Registry's (where available) publicly accessible WHOIS service are the only parties that have the authority to approve or deny a transfer request to the Gaining Registrar. In the event of a dispute, the Registered Name Holder's authority supersedes that of the Administrative Contact.

Registrars may use Whois data from either the Registrar of Record or the relevant Registry for the purpose of verifying the authenticity of a transfer request; or from another data source as determined by a consensus policy.

2. Gaining Registrar Requirements

For each instance where a Registered Name Holder requests to transfer a domain name registration to a different Registrar, the Gaining Registrar shall:

2.1 Obtain express authorization from either the Registered Name Holder or the Administrative Contact (hereafter, "Transfer Contact"). Hence, a transfer may only proceed if confirmation of the transfer is received by the Gaining Registrar from the Transfer Contact.

2.1.1 The authorization must be made via a valid Standardized Form of Authorization (FOA). There are two different FOA's available at the ICANN website. The FOA labeled "Initial Authorization for Registrar Transfer" must be used by the Gaining Registrar to request an authorization for a registrar transfer from the Transfer Contact. The FOA labeled "Confirmation of Registrar Transfer Request" may be used by the Registrar of Record to request confirmation of the transfer from the Transfer Contact.

The FOA shall be communicated in English, and any dispute arising out of a transfer request shall be conducted in the English language. Registrars may choose to communicate with the Transfer Contact in additional languages. However, Registrars choosing to exercise such option are responsible for the accuracy and completeness of the translation into such additional non-English version of the FOA.

A Registrar of Record can choose independently to confirm the intent of the Registered Name Holder when a notice of a pending transfer is received from the Registry. The Registrar of Record must do so in a manner consistent with the standards set forth in this agreement pertaining to Gaining Registrars. In order to ensure that the form of the request employed by the Registrar of Record is substantially administrative and informative in nature and clearly provided to the Transfer Contact for the purpose of verifying the intent of the Transfer Contact, the Registrar of Record must use the FOA.

The FOA shall be communicated in English, and any dispute arising out of a transfer request, shall be conducted in the English language. Registrars may choose to communicate with the Transfer Contact in additional languages. However, the Registrar choosing to exercise such option is responsible for the accuracy and completeness of the translation into such additional non-English version of the FOA. Further, such non-English communications must follow the processes and procedures set forth in this policy. This includes but is not limited to the requirement that no Registrar shall add any additional information to the FOA used to obtain the consent of the Transfer Contact in the case of a transfer request.

This requirement does not preclude the Registrar of Record from marketing to its existing customers through separate communications.

The FOA should be sent by the Registrar of Record to the Transfer Contact as soon as operationally possible, but must be sent not later than twenty-four (24) hours after receiving the transfer request from the Registry Operator.

Failure by the Registrar of Record to respond within five (5) calendar days to a notification from the Registry regarding a transfer request will result in a default "approval" of the transfer.

In the event that a Transfer Contact listed in the Whois has not confirmed their request to transfer with the Registrar of Record and the Registrar of Record has not explicitly denied the transfer request, the default action will be that the Registrar of Record must allow the transfer to proceed.

Upon denying a transfer request for any of the following reasons, the Registrar of Record must provide the Registered Name Holder and the potential Gaining Registrar with the reason for denial. The Registrar of Record may deny a transfer request only in the following specific instances:

1. Evidence of fraud
2. UDRP action
3. Court order by a court of competent jurisdiction
4. Reasonable dispute over the identity of the Registered Name Holder or Administrative Contact
5. No payment for previous registration period (including credit card charge-backs) if the domain name is past its expiration date or for previous or current registration periods if the domain name has not yet expired. In all such cases, however, the domain name must be put into "Registrar Hold" status by the Registrar of Record prior to the denial of transfer.
6. Express written objection to the transfer from the Transfer Contact. (e.g. - email, fax, paper document or other processes by which the Transfer Contact has expressly and voluntarily objected through opt-in means)
7. A domain name was already in "lock status" provided that the Registrar provides a readily accessible and reasonable means for the Registered Name Holder to remove the lock status.
8. A domain name is in the first 60 days of an initial registration period.
9. A domain name is within 60 days (or a lesser period to be determined) after being transferred (apart from being transferred back to the original Registrar in cases where both Registrars so agree and/or where a decision in the dispute resolution process so directs).

Instances when the requested change of Registrar may not be denied include, but are not limited to:

- Nonpayment for a pending or future registration period

- No response from the Registered Name Holder or Administrative Contact.
- Domain name in Registrar Lock Status, unless the Registered Name Holder is provided with the reasonable opportunity and ability to unlock the domain name prior to the Transfer Request.
- Domain name registration period time constraints, other than during the first 60 days of initial registration or during the first 60 days after a registrar transfer.
- General payment defaults between Registrar and business partners / affiliates in cases where the Registered Name Holder for the domain in question has paid for the registration.

The Registrar of Record has other mechanisms available to collect payment from the Registered Name Holder that are independent from the Transfer process. Hence, in the event of a dispute over payment, the Registrar of Record must not employ transfer processes as a mechanism to secure payment for services from a Registered Name Holder. Exceptions to this requirement are as follows:

(i) In the case of non-payment for previous registration period(s) if the transfer is requested after the expiration date, or

(ii) In the case of non-payment of the current registration period, if transfer is requested before the expiration date.

4. Registrar Coordination

Each Registrar is responsible for keeping copies of documentation, including the FOA and the Transfer Contacts response thereto, that may be required for filing and supporting a dispute under the dispute resolution policy. Gaining Registrars must maintain copies of the FOA as received from the Transfer Contact as per the standard document retention policies of the contracts. Copies of the reliable evidence of identity must be kept with the FOA.

Both the Gaining Registrar and the Registrar of Record must provide the evidence relied on for the transfer during and after the applicable inter-registrar domain name transaction(s). Such information must be provided when requested by, and only by, the other Registrar that is party to the transfer transaction. Additionally, ICANN, the Registry Operator, a court or authority with jurisdiction over the matter or a third party dispute resolution panel may also require such information within five (5) days of the request.

The Gaining Registrar must retain, and produce pursuant to a request by a Losing Registrar, a written or electronic copy of the FOA. In instances where the Registrar of Record has requested copies of the FOA, the Gaining Registrar must fulfill the Registrar of Records request (including providing the attendant supporting documentation) within five (5) calendar days. Failure to provide this documentation within the time period specified is grounds for reversal by the Registry Operator or the Dispute Resolution Panel in the event that a transfer complaint is filed in accordance with the requirements of this policy.

If either a Registrar of Record or a Gaining Registrar does not believe that a transfer request was handled in accordance with the provisions of this policy, then the Registrar may initiate a dispute resolution procedure as set forth in Section C of this policy.

For purposes of facilitating transfer requests, Registrars should provide and maintain a unique and private email address for use only by other Registrars and the Registry:

- i. This email address is for issue related to transfer requests and the procedures set forth in this policy only.
- ii. The email address should be managed to ensure messages are received by someone who can respond to the transfer issue.
- iii. Messages received at such email address must be responded to within a

commercial reasonable timeframe not to exceed seven (7) calendar days.

5. EPP - based Registry Requirements for Registrars

In EPP-based gTLD Registries, Registrars must follow the requirements set forth below.

Registrars must provide the Registered Name Holder with the unique "AuthInfo" code within five (5) calendar days of the Registered Name Holder's initial request if the Registrar does not provide facilities for the Registered Name Holder to generate and manage their own unique "AuthInfo" code.

Registrars may not employ any mechanism for complying with a Registered Name Holder's request to obtain the applicable "AuthInfo Code" that is more restrictive than the mechanisms used for changing any aspect of the Registered Name Holder's contact or name server information.

The Registrar of Record must not refuse to release an "AuthInfo Code" to the Registered Name Holder solely because there is a dispute between the Registered Name Holder and the Registrar over payment.

Registrar-generated "AuthInfo" codes must be unique on a per-domain basis.

The "Auth-Info" codes must be used solely to identify a Registered Name Holder, whereas the FOA's still need to be used for authorization or confirmation of a transfer request, as described in Section 2 and Section 4 of this policy.

6. Registry Requirements

Upon receipt of the "transfer" command from the Gaining Registrar, Registry Operator will transmit an electronic notification to both Registrars. In the case of those Registries that use electronic mail notifications, the response notification may be sent to the unique email address established by each Registrar for the purpose of facilitating transfers.

The Registry Operator shall complete the requested transfer unless, within five (5) calendar days, Registry Operator receives a NACK protocol command from the Registrar of Record.

When the Registry's database has been updated to reflect the change to the Gaining Registrar, Registry Operator will transmit an electronic notification to both Registrars. The notification may be sent to the unique email address established by each Registrar for the purpose of facilitating transfers or such other email address agreed to by the parties.

The Registry Operator shall undo a transfer if, after a transfer has occurred, the Registry Operator receives one of the notices as set forth below. In such case, the transfer will be reversed and the domain name reset to its original state. The Registry Operator must undo the transfer within five (5) calendar days of receipt of the notice except in the case of a Registry dispute decision, in which case the Registry Operator must undo the transfer within fourteen calendar days unless a court action is filed. The notice required shall be one of the following:

- i. Agreement of the Registrar of Record and the Gaining Registrar sent by email, letter or fax that the transfer was made by mistake or was otherwise not in accordance with the procedures set forth in this policy;
- ii. The final determination of a dispute resolution body having jurisdiction over the transfer; or
- iii. Order of a court having jurisdiction over the transfer.

7. Records of Registration

Each Registrar shall require its customer, the Registered Name Holder, to maintain its own records appropriate to document and prove the initial domain name registration date.

8. Effect on Term of Registration

The completion by Registry Operator of a holder-authorized transfer under this Part A shall result in a one-year extension of the existing registration, provided that in no event shall the total unexpired term of a registration exceed ten (10) years.

B. ICANN-Approved Transfers

Transfer of the sponsorship of all the registrations sponsored by one Registrar as the result of (i) acquisition of that Registrar or its assets by another Registrar, or (ii) lack of accreditation of that Registrar or lack of its authorization with the Registry Operator, may be made according to the following procedure:

(a) The gaining Registrar must be accredited by ICANN for the Registry TLD and must have in effect a Registry-Registrar Agreement with Registry Operator for the Registry TLD.

(b) ICANN must certify in writing to Registry Operator that the transfer would promote the community interest, such as the interest in stability that may be threatened by the actual or imminent business failure of a Registrar.

Upon satisfaction of these two conditions, Registry Operator will make the necessary one-time changes in the Registry database for no charge, for transfers involving 50,000 name registrations or fewer. If the transfer involves registrations of more than 50,000 names, Registry Operator will charge the gaining Registrar a one-time flat fee of US\$ 50,000.

C. Transfer Dispute Resolution Policy

Procedures for handling disputes concerning inter-registrar transfers are set forth in the Transfer Dispute Resolution Policy. Procedures in this policy must be followed by the applicable Registry Operators and ICANN accredited Registrars.



Registrar Accreditation Agreement

(17 May 2001)
(Additional appendices posted on 2002 - 2006)

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Registrar Accreditation Agreement

This REGISTRAR ACCREDITATION AGREEMENT ("Agreement") is by and between the Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation, and [Registrar Name], a [Organization type and jurisdiction] ("Registrar"), and shall be deemed made on _____, at Los Angeles, California, USA.

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

1.1 "Accredit" means to identify and set minimum standards for the performance of registration functions, to recognize persons or entities meeting those standards, and to enter into an accreditation agreement that sets forth the rules and procedures applicable to the provision of Registrar Services.

1.2 "DNS" refers to the Internet domain-name system.

1.3 The "Effective Date" is _____.

1.4 The "Expiration Date" is _____.

1.5 "ICANN" refers to the Internet Corporation for Assigned Names and Numbers, a party to this Agreement.

1.6 "Personal Data" refers to data about any identified or identifiable natural person.

1.7 "Registered Name" refers to a domain name within the domain of a TLD that is the subject of an appendix to this Agreement, whether consisting of two or more (e.g., john.smith.name) levels, about which a TLD Registry Operator (or an affiliate engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).

1.8 "Registered Name Holder" means the holder of a Registered Name.

Exhibit D 44

1.9 The word "Registrar," when appearing with an initial capital letter, refers to [Registrar Name], a party to this Agreement.

1.10 The word "registrar," when appearing without an initial capital letter, refers to a person or entity 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.

1.11 "Registrar Services" means services provided by a registrar in connection with a TLD as to which it has an agreement with the TLD's Registry Operator, and includes contracting with Registered Name Holders, collecting registration data about the Registered Name Holders, and submitting registration information for entry in the Registry Database.

1.12 "Registry Data" means all Registry Database data maintained in electronic form, and shall include TLD Zone-File Data, all data used to provide Registry Services and submitted by registrars in electronic form, and all other data used to provide Registry Services concerning particular domain name registrations or nameservers maintained in electronic form in a Registry Database.

1.13 "Registry Database" means a database comprised of data about one or more DNS domain names within the domain of a registry 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.

1.14 A "Registry Operator" is the person or entity then responsible, in accordance with an agreement between ICANN (or its assignee) and that person or entity (those persons or entities) or, if that agreement is terminated or expires, in accordance with an agreement between the US Government and that person or entity (those persons or entities), for providing Registry Services for a specific TLD.

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

1.16 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 loses accreditation, in accordance with then-current ICANN specifications and policies.

1.17 "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.

1.18 A "TLD" is a top-level domain of the DNS.

1.19 "TLD Zone-File Data" means all data contained in a DNS zone file for the registry, or for any subdomain for which Registry Services are provided and that contains Registered Names, as provided to nameservers on the Internet.

2. ICANN OBLIGATIONS.

2.1 Accreditation. During the Term of this Agreement, Registrar is hereby accredited by ICANN to act as a registrar (including to insert and renew registration of Registered Names in the Registry Database) for the TLD(s) that are the subject of appendices to this Agreement according to Subsection 5.5.

2.2 Registrar Use of ICANN Name and Website. ICANN hereby grants to Registrar a non-exclusive, worldwide, royalty-free license during the Term of this Agreement (a) to state that it is accredited by ICANN as a registrar for each TLD that is the subject of an appendix to this Agreement and (b) to link to pages and documents within the ICANN web site. No other use of ICANN's name or website is licensed hereby. This license may not be assigned or sublicensed by Registrar.

2.3 General Obligations of ICANN. With respect to all matters that impact the rights, obligations, or role of Registrar, 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 Registrar 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 Registrar, to the extent it is adversely affected by ICANN standards, policies, procedures or practices.

3. REGISTRAR OBLIGATIONS.

3.1 Obligations to Provide Registrar Services. During the Term of this Agreement, Registrar agrees that it will operate as a registrar for each TLD for which it is accredited by ICANN in accordance with this Agreement.

3.2 Submission of Registered Name Holder Data to Registry. During the Term of this Agreement:

3.2.1 As part of its registration of Registered Names in a TLD as to which it is accredited, Registrar shall submit to, or shall place in

the Registry Database operated by, the Registry Operator for the TLD the following data elements:

- 3.2.1.1 The name of the Registered Name being registered;
- 3.2.1.2 The IP addresses of the primary nameserver and secondary nameserver(s) for the Registered Name;
- 3.2.1.3 The corresponding names of those nameservers;
- 3.2.1.4 Unless automatically generated by the registry system, the identity of the Registrar;
- 3.2.1.5 Unless automatically generated by the registry system, the expiration date of the registration; and
- 3.2.1.6 Any other data the Registry Operator requires be submitted to it.

The appendix to this Agreement for a particular TLD may state substitute language for Subsections 3.2.1.1 through 3.2.1.6 as applicable to that TLD; in that event the substitute language shall replace and supersede Subsections 3.2.1.1 through 3.2.1.6 stated above for all purposes under this Agreement but only with respect to that particular TLD.

3.2.2 Within five (5) business days after receiving any updates from the Registered Name Holder to the data elements listed in Subsections 3.2.1.2, 3.1.2.3, and 3.2.1.6 for any Registered Name Registrar sponsors, Registrar shall submit the updated data elements to, or shall place those elements in the Registry Database operated by the Registry Operator.

3.2.3 In order to allow reconstitution of the Registry Database in the event of an otherwise unrecoverable technical failure or a change in the designated Registry Operator, within ten days of any such request by ICANN, Registrar shall submit an electronic database containing the data elements listed in Subsections 3.2.1.1 through 3.2.1.6 for all active records in the registry sponsored by Registrar, in a format specified by ICANN, to the Registry Operator for the appropriate TLD.

3.3 Public Access to Data on Registered Names. During the Term of this Agreement:

3.3.1 At its expense, Registrar shall provide an interactive web page and a port 43 Whois service providing free public query-

based access to up-to-date (i.e., updated at least daily) data concerning all active Registered Names sponsored by Registrar for each TLD in which it is accredited. The data accessible shall consist of elements that are designated from time to time according to an ICANN adopted specification or policy. Until ICANN otherwise specifies by means of an ICANN adopted specification or policy, this data shall consist of the following elements as contained in Registrar's database:

3.3.1.1 The name of the Registered Name;

3.3.1.2 The names of the primary nameserver and secondary nameserver(s) for the Registered Name;

3.3.1.3 The identity of Registrar (which may be provided through Registrar's website);

3.3.1.4 The original creation date of the registration;

3.3.1.5 The expiration date of the registration;

3.3.1.6 The name and postal address of the Registered Name Holder;

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

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

The appendix to this Agreement for a particular TLD may state substitute language for Subsections 3.3.1.1 through 3.3.1.8 as applicable to that TLD; in that event the substitute language shall replace and supersede Subsections 3.3.1.1 through 3.3.1.8 stated above for all purposes under this Agreement but only with respect to that particular TLD.

3.3.2 Upon receiving any updates to the data elements listed in Subsections 3.3.1.2, 3.3.1.3, and 3.3.1.5 through 3.3.1.8 from the Registered Name Holder, Registrar shall promptly update its database used to provide the public access described in Subsection 3.3.1.

3.3.3 Registrar may subcontract its obligation to provide the public access described in Subsection 3.3.1 and the updating described in Subsection 3.3.2, provided that Registrar shall remain fully

responsible for the proper provision of the access and updating.

3.3.4 Registrar shall abide by any ICANN specification or policy established as a Consensus Policy according to Section 4 that requires registrars to cooperatively implement a distributed capability that provides query-based Whois search functionality across all registrars. If the Whois service implemented by registrars does not in a reasonable time provide reasonably robust, reliable, and convenient access to accurate and up-to-date data, the Registrar shall abide by any ICANN specification or policy established as a Consensus Policy according to Section 4 requiring Registrar, if reasonably determined by ICANN to be necessary (considering such possibilities as remedial action by specific registrars), to supply data from Registrar's database to facilitate the development of a centralized Whois database for the purpose of providing comprehensive Registrar Whois search capability.

3.3.5 In providing query-based public access to registration data as required by Subsections 3.3.1 and 3.3.4, Registrar shall not impose terms and conditions on use of the data provided, except as permitted by policy established by ICANN. Unless and until ICANN establishes a different policy according to Section 4, Registrar shall permit use of data it provides in response to queries for any lawful purposes except to: (a) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

3.3.6 In addition, Registrar shall provide third-party bulk access to the data subject to public access under Subsection 3.3.1 under the following terms and conditions:

3.3.6.1 Registrar shall make a complete electronic copy of the data available at least one time per week for download by third parties who have entered into a bulk access agreement with Registrar.

3.3.6.2 Registrar may charge an annual fee, not to exceed US\$10,000, for such bulk access to the data.

3.3.6.3 Registrar's access agreement shall require the third party to agree not to use the data to allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other

than such third party's own existing customers.

3.3.6.4 Registrar's access agreement shall require the third party to agree not to use the data to enable high-volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

3.3.6.5 Registrar's access agreement may require the third party to agree not to sell or redistribute the data except insofar as it has been incorporated by the third party into a value-added product or service that does not permit the extraction of a substantial portion of the bulk data from the value-added product or service for use by other parties.

3.3.6.6 Registrar may enable Registered Name Holders who are individuals to elect not to have Personal Data concerning their registrations available for bulk access for marketing purposes based on Registrar's "Opt-Out" policy, and if Registrar has such a policy, Registrar shall require the third party to abide by the terms of that Opt-Out policy; provided, however, that Registrar may not use such data subject to opt-out for marketing purposes in its own value-added product or service.

3.3.7 Registrar's obligations under Subsection 3.3.6 shall remain in effect until the earlier of (a) replacement of this policy with a different ICANN policy, established according to Section 4, governing bulk access to the data subject to public access under Subsection 3.3.1, or (b) demonstration, to the satisfaction of the United States Department of Commerce, that no individual or entity is able to exercise market power with respect to registrations or with respect to registration data used for development of value-added products and services by third parties.

3.3.8 To comply with applicable statutes and regulations and for other reasons, ICANN may from time to time adopt policies and specifications establishing limits (a) on the Personal Data concerning Registered Names that Registrar may make available to the public through a public-access service described in this Subsection 3.3 and (b) on the manner in which Registrar may make such data available. In the event ICANN adopts any such policy, Registrar shall abide by it.

3.4 Retention of Registered Name Holder and Registration Data.

3.4.1 During the Term of this Agreement, Registrar shall maintain

its own electronic database, as updated from time to time, containing data for each active Registered Name sponsored by it within each TLD for which it is accredited. The data for each such registration shall include the elements listed in Subsections 3.3.1.1 through 3.3.1.8; the name and (where available) postal address, e-mail address, voice telephone number, and fax number of the billing contact; and any other Registry Data that Registrar has submitted to the Registry Operator or placed in the Registry Database under Subsection 3.2.

3.4.2 During the Term of this Agreement and for three years thereafter, Registrar (itself or by its agent(s)) shall maintain the following records relating to its dealings with the Registry Operator (s) and Registered Name Holders:

3.4.2.1 In electronic form, the submission date and time, and the content, of all registration data (including updates) submitted in electronic form to the Registry Operator(s);

3.4.2.2 In electronic, paper, or microfilm form, all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Registered Name Holders, including registration contracts; and

3.4.2.3 In electronic form, records of the accounts of all Registered Name Holders with Registrar, including dates and amounts of all payments and refunds.

3.4.3 During the Term of this Agreement and for three years thereafter, Registrar shall make these records available for inspection and copying by ICANN upon reasonable notice. ICANN shall not disclose the content of such records except as expressly permitted by an ICANN specification or policy.

3.5 Rights in Data. Registrar disclaims all rights to exclusive ownership or use of the data elements listed in Subsections 3.2.1.1 through 3.2.1.3 for all Registered Names submitted by Registrar to the Registry Database for, or sponsored by Registrar in, each TLD for which it is accredited. Registrar does not disclaim rights in the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and Subsections 3.3.1.3 through 3.3.1.8 concerning active Registered Names sponsored by it in each TLD for which it is accredited, and agrees to grant non-exclusive, irrevocable, royalty-free licenses to make use of and disclose the data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 for the purpose of providing a service or services (such as a Whois service under Subsection 3.3.4) providing interactive, query-based public access. Upon a change in sponsorship from Registrar of any Registered Name in a TLD for which it is accredited, Registrar acknowledges that the registrar gaining sponsorship shall have the rights of an owner to the

data elements listed in Subsections 3.2.1.4 through 3.2.1.6 and 3.3.1.3 through 3.3.1.8 concerning that Registered Name, with Registrar also retaining the rights of an owner in that data. Nothing in this Subsection prohibits Registrar from (1) restricting bulk public access to data elements in a manner consistent with this Agreement and any ICANN specifications or policies or (2) transferring rights it claims in data elements subject to the provisions of this Subsection.

3.6 Data Escrow. During the Term of this Agreement, on a schedule, under the terms, and in the format specified by ICANN, Registrar shall submit an electronic copy of the database described in Subsection 3.4.1 to ICANN or, at Registrar's election and at its expense, to a reputable escrow agent mutually approved by Registrar and ICANN, such approval also not to be unreasonably withheld by either party. The data shall be held under an agreement among Registrar, 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 Subsection, ICANN (or its assignee) shall have a non-exclusive, irrevocable, royalty-free license to exercise (only for transitional purposes) or have exercised all rights necessary to provide Registrar Services.

3.7 Business Dealings, Including with Registered Name Holders.

3.7.1 In the event ICANN adopts a specification or policy, supported by a consensus of ICANN-Accredited registrars, establishing or approving a Code of Conduct for ICANN-Accredited registrars, Registrar shall abide by that Code.

3.7.2 Registrar shall abide by applicable laws and governmental regulations.

3.7.3 Registrar shall not represent to any actual or potential Registered Name Holder that Registrar enjoys access to a registry for which Registrar is Accredited that is superior to that of any other registrar Accredited for that registry.

3.7.4 Registrar shall not activate any Registered Name unless and until it is satisfied that it has received a reasonable assurance of payment of its registration fee. For this purpose, a charge to a credit card, general commercial terms extended to creditworthy customers, or other mechanism providing a similar level of assurance of payment shall be sufficient, provided that the obligation to pay becomes final and non-revocable by the Registered Name Holder upon activation of the registration.

3.7.5 Registrar shall register Registered Names to Registered Name Holders only for fixed periods. At the conclusion of the registration period, failure by or on behalf of the Registered Name Holder to pay a renewal fee within the time specified in a second notice or reminder shall, in the absence of extenuating circumstances, result in cancellation of the registration. In the event that ICANN adopts a specification or policy concerning procedures for handling expiration of registrations, Registrar shall abide by that specification or policy.

3.7.6 Registrar shall not insert or renew any Registered Name in any registry for which Registrar is accredited by ICANN in a manner contrary to an ICANN policy stating a list or specification of excluded Registered Names that is in effect at the time of insertion or renewal.

3.7.7 Registrar shall require all Registered Name Holders to enter into an electronic or paper registration agreement with Registrar including at least the following provisions:

3.7.7.1 The Registered Name Holder shall provide to Registrar accurate and reliable contact details and promptly correct and update them 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 Registered Name Holder; name of authorized person for contact purposes in the case of an Registered Name Holder that is an organization, association, or corporation; and the data elements listed in Subsections 3.3.1.2, 3.3.1.7 and 3.3.1.8.

3.7.7.2 A Registered Name Holder's willful provision of inaccurate or unreliable information, its willful failure promptly to update information provided to Registrar, or its failure to respond for over fifteen calendar days to inquiries by Registrar concerning the accuracy of contact details associated with the Registered Name Holder's registration shall constitute a material breach of the Registered Name Holder-registrar contract and be a basis for cancellation of the Registered Name registration.

3.7.7.3 Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems

that arise in connection with the Registered Name. A Registered Name Holder 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 promptly discloses the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm.

3.7.7.4 Registrar shall provide notice to each new or renewed Registered Name Holder stating:

3.7.7.4.1 The purposes for which any Personal Data collected from the applicant are intended;

3.7.7.4.2 The intended recipients or categories of recipients of the data (including the Registry Operator and others who will receive the data from Registry Operator);

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

3.7.7.4.4 How the Registered Name Holder or data subject can access and, if necessary, rectify the data held about them.

3.7.7.5 The Registered Name Holder shall consent to the data processing referred to in Subsection 3.7.7.4.

3.7.7.6 The Registered Name Holder shall represent that notice has been provided equivalent to that described in Subsection 3.7.7.4 to any third-party individuals whose Personal Data are supplied to Registrar by the Registered Name Holder, and that the Registered Name Holder has obtained consent equivalent to that referred to in Subsection 3.7.7.5 of any such third-party individuals.

3.7.7.7 Registrar shall agree that it will not process the Personal Data collected from the Registered Name Holder in a way incompatible with the purposes and other limitations about which it has provided notice to the Registered Name Holder in accordance with Subsection 3.7.7.4 above.

3.7.7.8 Registrar shall agree that it will take reasonable precautions to protect Personal Data from loss, misuse, unauthorized access or disclosure, alteration, or

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destruction.

3.7.7.9 The Registered Name Holder shall represent that, to the best of the Registered Name Holder'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.

3.7.7.10 For the adjudication of disputes concerning or arising from use of the Registered Name, the Registered Name Holder shall submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts (1) of the Registered Name Holder's domicile and (2) where Registrar is located.

3.7.7.11 The Registered Name Holder shall agree that its registration of the Registered Name shall be subject to suspension, cancellation, or transfer pursuant to any ICANN adopted specification or policy, or pursuant to any registrar or registry procedure not inconsistent with an ICANN adopted specification or policy, (1) to correct mistakes by Registrar or the Registry Operator in registering the name or (2) for the resolution of disputes concerning the Registered Name.

3.7.7.12 The Registered Name Holder shall indemnify and hold harmless the Registry Operator and its directors, officers, employees, and agents from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable legal fees and expenses) arising out of or related to the Registered Name Holder's domain name registration.

3.7.8 Registrar shall abide by any specifications or policies established according to Section 4 requiring reasonable and commercially practicable (a) verification, at the time of registration, of contact information associated with a Registered Name sponsored by Registrar or (b) periodic re-verification of such information. Registrar shall, upon notification by any person of an inaccuracy in the contact information associated with a Registered Name sponsored by Registrar, take reasonable steps to investigate that claimed inaccuracy. In the event Registrar learns of inaccurate contact information associated with a Registered Name it sponsors, it shall take reasonable steps to correct that inaccuracy.

3.7.9 Registrar shall abide by any ICANN adopted specifications or policies prohibiting or restricting warehousing of or speculation in domain names by registrars.

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3.7.10 Nothing in this Agreement prescribes or limits the amount Registrar may charge Registered Name Holders for registration of Registered Names.

3.8 Domain-Name Dispute Resolution. During the Term of this Agreement, Registrar shall have in place a policy and procedures for resolution of disputes concerning Registered Names. Until different policies and procedures are established by ICANN under Section 4, Registrar shall comply with the Uniform Domain Name Dispute Resolution Policy identified on ICANN's website (www.icann.org/general/consensus-policies.htm).

3.9 Accreditation Fees. As a condition of accreditation, Registrar shall pay accreditation fees to ICANN. These fees consist of yearly and variable fees.

3.9.1 Yearly Accreditation Fee. Registrar shall pay ICANN a yearly accreditation fee in an amount established by the ICANN Board of Directors, in conformity with ICANN's bylaws and articles of incorporation. This yearly accreditation fee shall not exceed US\$4,000 for the first TLD for which Registrar is Accredited plus US\$500 for each additional TLD for which Registrar is Accredited at any time during the year. Payment of the yearly fee shall be due within thirty days after invoice from ICANN.

3.9.2 Variable Accreditation Fee. Registrar shall pay the variable accreditation fees established by the ICANN Board of Directors, in conformity with ICANN's bylaws and articles of incorporation, provided that in each case such fees are reasonably allocated among all registrars that contract with ICANN and that any such fees must be expressly approved by registrars accounting, in the aggregate, for payment of two-thirds of all registrar-level fees. Registrar shall pay such fees in a timely manner for so long as all material terms of this Agreement remain in full force and effect, and notwithstanding the pendency of any dispute between Registrar and ICANN.

3.9.3 On reasonable notice given by ICANN to Registrar, accountings submitted by Registrar shall be subject to verification by an audit of Registrar's books and records by an independent third-party that shall preserve the confidentiality of such books and records (other than its findings as to the accuracy of, and any necessary corrections to, the accountings).

3.10 Insurance. Registrar shall maintain in force commercial general liability insurance with policy limits of at least US\$500,000 covering liabilities arising from Registrar's registrar business during the term of this Agreement.

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

4.1 Registrar's Ongoing Obligation to Comply With New or Revised

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Specifications and Policies. During the Term of this Agreement, Registrar shall comply with the terms of this Agreement on the schedule set forth in Subsection 4.4, with

4.1.1 new or revised specifications (including forms of agreement to which Registrar is a party) and policies established by ICANN as Consensus Policies in the manner described in Subsection 4.3,

4.1.2 in cases where:

4.1.2.1 this Agreement expressly provides for compliance with revised specifications or policies established in the manner set forth in one or more subsections of this Section 4; or

4.1.2.2 the specification or policy concerns one or more topics described in Subsection 4.2.

4.2 Topics for New and Revised Specifications and Policies. New and revised specifications and policies may be established on the following topics:

4.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, technical reliability, and/or operational stability of Registrar Services, Registry Services, the DNS, or the Internet;

4.2.2 registrar policies reasonably necessary to implement ICANN policies or specifications relating to a DNS registry or to Registry Services;

4.2.3 resolution of disputes concerning the registration of Registered Names (as opposed to the use of such domain names), including where the policies take into account use of the domain names;

4.2.4 principles for allocation of Registered Names (e.g., first-come/first-served, timely renewal, holding period after expiration);

4.2.5 prohibitions on warehousing of or speculation in domain names by registries or registrars;

4.2.6 maintenance of and access to accurate and up-to-date contact information regarding Registered Names and nameservers;

4.2.7 reservation of Registered Names that may not be registered initially or that may not be renewed due to reasons reasonably related to (a) avoidance of confusion among or misleading of users, (b) intellectual property, or (c) the technical management of the DNS or the Internet (e.g., "example.com" and names with

single-letter/digit labels);

4.2.8 procedures to avoid disruptions of registration due to suspension or termination of operations by a registry operator or a registrar, including allocation of responsibility among continuing registrars of the Registered Names sponsored in a TLD by a registrar losing accreditation; and

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

Nothing in this Subsection 4.2 shall limit Registrar's obligations as set forth elsewhere in this Agreement.

4.3 Manner of Establishment of New and Revised Specifications and Policies.

4.3.1 "Consensus Policies" are those specifications or policies established based on a consensus among Internet stakeholders represented in the ICANN process, as demonstrated by (a) action of the ICANN Board of Directors establishing the specification or policy, (b) a recommendation, adopted by at least a two-thirds vote of the council of the ICANN Supporting Organization to which the matter is delegated, that the specification or policy should be established, and (c) a written report and supporting materials (which must include all substantive submissions to the Supporting Organization relating to the proposal) that (i) documents the extent of agreement and disagreement among impacted groups, (ii) documents the outreach process used to seek to achieve adequate representation of the views of groups that are likely to be impacted, and (iii) documents the nature and intensity of reasoned support and opposition to the proposed policy.

4.3.2 In the event that Registrar disputes the presence of such a consensus, it shall seek review of that issue from an Independent Review Panel established under ICANN's bylaws. Such review must be sought within fifteen working days of the publication of the Board's action establishing the policy. The decision of the panel shall be based on the report and supporting materials required by Subsection 4.3.1. In the event that Registrar seeks review and the Independent Review Panel sustains the Board's determination that the policy is based on a consensus among Internet stakeholders represented in the ICANN process, then Registrar must implement such policy unless it promptly seeks and obtains a stay or injunctive relief under Subsection 5.6.

4.3.3 If, following a decision by the Independent Review Panel convened under Subsection 4.3.2, Registrar still disputes the presence of such a consensus, it may seek further review of that issue within fifteen working days of publication of the decision in accordance with the dispute resolution procedures set forth in

Subsection 5.6; provided, however, that Registrar must continue to implement the policy unless it has obtained a stay or injunctive relief under Subsection 5.6 or a final decision is rendered in accordance with the provisions of Subsection 5.6 that relieves Registrar of such obligation. The decision in any such further review shall be based on the report and supporting materials required by Subsection 4.3.1.

4.3.4 A specification or policy established by the ICANN Board of Directors on a temporary basis, without a prior recommendation by the council of an ICANN Supporting Organization, shall also be considered to be a Consensus Policy if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the Board reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the operational stability of Registrar Services, Registry Services, the DNS, or the Internet, and that the proposed specification or policy is as narrowly tailored as feasible to achieve those objectives. In establishing any specification or policy under this provision, the ICANN Board of Directors shall state the period of time for which the specification or policy is temporarily adopted and shall immediately refer the matter to the appropriate Supporting Organization for its evaluation and review with a detailed explanation of its reasons for establishing the temporary specification or policy and why the Board believes the policy should receive the consensus support of Internet stakeholders. If the period of time for which the specification or policy is adopted exceeds ninety days, the Board shall reaffirm its temporary establishment every ninety days for a total period not to exceed one year, in order to maintain such specification or policy in effect until such time as it meets the standard set forth in Subsection 4.3.1. If the standard set forth in Subsection 4.3.1 is not met within the temporary period set by the Board, or the council of the Supporting Organization to which it has been referred votes to reject the temporary specification or policy, it will no longer be a "Consensus Policy."

4.3.5 For all purposes under this Agreement, the policies specifically identified by ICANN on its website (www.icann.org/general/consensus-policies.htm) at the date of this Agreement as having been adopted by the ICANN Board of Directors before the date of this Agreement shall be treated in the same manner and have the same effect as "Consensus Policies" and accordingly shall not be subject to review under Subsection 4.3.2.

4.3.6 In the event that, at the time the ICANN Board of Directors establishes a specification or policy under Subsection 4.3.1 during the Term of this Agreement, ICANN does not have in place an Independent Review Panel established under ICANN's bylaws, the

fifteen-working-day period allowed under Subsection 4.3.2 to seek review shall be extended until fifteen working days after ICANN does have such an Independent Review Panel in place and Registrar shall not be obligated to comply with the specification or policy in the interim.

4.4 Time Allowed for Compliance. Registrar shall be afforded a reasonable period of time after receiving notice of the establishment of a specification or policy under Subsection 4.3 in which to comply with that specification or policy, taking into account any urgency involved.

5. MISCELLANEOUS PROVISIONS.

5.1 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 5.6 below, provided the party seeking such performance is not in material breach of its obligations.

5.2 Termination of Agreement by Registrar. This Agreement may be terminated before its expiration by Registrar by giving ICANN thirty days written notice. Upon such termination by Registrar, Registrar shall not be entitled to any refund of fees paid to ICANN pursuant to this Agreement.

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

5.3.1 There was a material misrepresentation, material inaccuracy, or materially misleading statement in Registrar's application for accreditation or any material accompanying the application.

5.3.2 Registrar:

5.3.2.1 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 committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of those offenses; or

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

5.3.3 Any officer or director of Registrar is convicted of a felony or of a misdemeanor related to financial activities, or is judged by a court to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these; provided, such officer or director is not removed in such circumstances.

5.3.4 Registrar fails to cure any breach of this Agreement (other than a failure to comply with a policy adopted by ICANN during the term of this Agreement as to which Registrar is seeking, or still has time to seek, review under Subsection 4.3.2 of whether a consensus is present) within fifteen working days after ICANN gives Registrar notice of the breach.

5.3.5 Registrar fails to comply with a ruling granting specific performance under Subsections 5.1 and 5.6.

5.3.6 Registrar continues acting in a manner that ICANN has reasonably determined endangers the stability or operational integrity of the Internet after receiving three days notice of that determination.

5.3.7 Registrar becomes bankrupt or insolvent.

This Agreement may be terminated in circumstances described in Subsections 5.3.1 - 5.3.6 above only upon fifteen days written notice to Registrar (in the case of Subsection 5.3.4 occurring after Registrar's failure to cure), with Registrar being given an opportunity during that time to initiate arbitration under Subsection 5.6 to determine the appropriateness of termination under this Agreement. In the event Registrar initiates litigation or arbitration concerning the appropriateness of termination by ICANN, the termination shall be stayed an additional thirty days to allow Registrar to obtain a stay of termination under Subsection 5.6 below. If Registrar 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 working days pending ICANN's application for more extended specific performance or injunctive relief under Subsection 5.6. This Agreement may be terminated immediately upon notice to Registrar in circumstance described in Subsection 5.3.7 above.

5.4 Term of Agreement; Renewal; Right to Substitute Updated Agreement.

This Agreement shall be effective on the Effective Date and shall have an initial term running until the Expiration Date, unless sooner terminated. Thereafter, if Registrar seeks to continue its accreditation, it may apply for renewed accreditation, and shall be entitled to renewal provided it meets the ICANN-adopted specification or policy on accreditation criteria then in effect, is in compliance with its obligations under this Agreement, as it may be amended, and agrees to be bound by terms and conditions of the then-current Registrar accreditation agreement (which may differ from those of this Agreement) that ICANN adopts in accordance with Subsection 2.3 and Subsection 4.3. In connection with renewed accreditation, Registrar shall confirm its assent to the terms and conditions of the then-current Registrar accreditation agreement by signing that accreditation agreement. In the event that, during the Term of this Agreement, ICANN posts on its web site an updated form of registrar accreditation agreement applicable to Accredited registrars, Registrar (provided it has not received (1) a notice of breach that it has not cured or (2) a notice of termination of this Agreement under

Subsection 5.3 above) may elect, by giving ICANN written notice, to enter an agreement in the updated form in place of this Agreement. In the event of such election, Registrar and ICANN shall promptly sign a new accreditation agreement that contains the provisions of the updated form posted on the web site, with the length of the term of the substituted agreement as stated in the updated form posted on the web site, calculated as if it commenced on the date this Agreement was made, and this Agreement will be deemed terminated.

5.5 Addition or Deletion of TLDs for Which Registrar Accredited. On the Effective Date, Registrar shall be accredited according to Subsection 2.1 for each TLD as to which an appendix executed by both parties is attached to this Agreement. During the Term of this Agreement, Registrar may request accreditation for any additional TLD(s) by signing an additional appendix for each additional TLD in the form prescribed by ICANN and submitting the appendix to ICANN. In the event ICANN agrees to the request, ICANN will sign the additional appendix and return a copy of it to Registrar. The mutually signed appendix shall thereafter be an appendix to this Agreement. During the Term of this Agreement, Registrar may abandon its accreditation for any TLD under this Agreement (provided that Registrar will thereafter remain accredited for at least one TLD under this Agreement) by giving ICANN written notice specifying the TLD as to which accreditation is being abandoned. The abandonment shall be effective thirty days after the notice is given.

5.6 Resolution of Disputes Under this Agreement. Disputes arising under or in connection with this Agreement, including (1) disputes arising from ICANN's failure to renew Registrar's accreditation and (2) requests for specific performance, shall be resolved in a court of competent jurisdiction or, at the election of either party, by an arbitration conducted as provided in this Subsection 5.6 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. There shall be three arbitrators: each party shall choose one arbitrator and, if those two arbitrators do not agree on a third arbitrator, the third shall be chosen by the AAA. The parties shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators 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 arbitrators may not reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety days of the conclusion of the arbitration hearing. In the event Registrar initiates arbitration to contest the appropriateness of termination of this Agreement by ICANN, Registrar may at the same time request that the arbitration panel stay the termination until the arbitration decision is rendered, and that request shall have the effect of staying the termination until the arbitration panel has granted an ICANN request for specific performance and Registrar has failed to comply with such ruling. In the event Registrar initiates arbitration to contest an Independent Review Panel's decision under Subsection 4.3.3 sustaining the Board's determination that a specification or policy is supported by consensus, Registrar may at the same time request

that the arbitration panel 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 arbitration panel 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 and/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 arbitration panel or in a court located in Los Angeles, California, USA, which shall not be a waiver of this arbitration agreement.

5.7 Limitations on Monetary Remedies for Violations of this Agreement.

ICANN's aggregate monetary liability for violations of this Agreement shall not exceed the amount of accreditation fees paid by Registrar to ICANN under Subsection 3.9 of this Agreement. Registrar's monetary liability to ICANN for violations of this Agreement shall be limited to accreditation fees owing to ICANN under this Agreement. In no event shall either party be liable for special, indirect, incidental, punitive, exemplary, or consequential damages for any violation of this Agreement.

5.8 Handling by ICANN of Registrar-Supplied Data. Before receiving any Personal Data from Registrar, ICANN shall specify to Registrar in writing the purposes for and conditions under which ICANN intends to use the Personal Data. ICANN may from time to time provide Registrar with a revised specification of such purposes and conditions, which specification shall become effective no fewer than thirty days after it is provided to Registrar. ICANN shall not use Personal Data provided by Registrar 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.

5.9 Assignment. Either party may assign or transfer this Agreement only with the prior written consent of the other party, which shall not be unreasonably withheld, except that ICANN may, with the written approval of the United States Department of Commerce, assign this agreement by giving Registrar written notice of the assignment. In the event of assignment by ICANN, the assignee may, with the approval of the United States Department of Commerce, revise the definition of "Consensus Policy" to the extent necessary to meet the organizational circumstances of the assignee, provided the revised definition requires that Consensus Policies be based on a demonstrated consensus of Internet stakeholders.

5.10 No Third-Party Beneficiaries. This Agreement shall not be construed to create any obligation by either ICANN or Registrar to any non-party to this Agreement, including any Registered Name Holder.

5.11 Notices, Designations, and Specifications. 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. Any 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, or when scheduled for delivery by internationally recognized courier service. Designations and specifications by ICANN under this Agreement shall be effective when written notice of them is deemed given to Registrar.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers
Registrar Accreditation
4676 Admiralty Way, Suite 330
Marina del Rey, California 90292 USA
Attention: General Counsel
Telephone: 1/310/823-9358
Facsimile: 1/310/823-8649

If to Registrar, addressed to:

[Registrar Name]
a [organization type and jurisdiction]
[Courier Address]
[Mailing Address]
Attention: [contact person]
Registrar Website URL: [URL]
Telephone: [telephone number]
Facsimile: [fax number]
e-mail: [e-mail address]

5.12 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.

5.13 Language. All notices, designations, and specifications made under this Agreement shall be in the English language.

5.14 Amendments and Waivers. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both 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 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.

5.15 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.

5.16 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 appendices, which form part of it) constitutes the entire agreement of the parties pertaining to the accreditation of Registrar and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____

[Registrar Name]

By: _____
Name: _____
Title: _____

.AERO APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".aero Appendix") is a part.

Registrar wishes to be accredited in the .aero TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .aero TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. Definitions. All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.

2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .aero TLD.

3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .aero TLD.

4. Need for Agreement with Sponsor. Registrar's obligation under Subsection 3.1 to operate as a registrar for the .aero TLD is conditioned upon the .aero Sponsor (designated as such by a TLD Sponsorship Agreement with ICANN) selecting Registrar as one authorized to act as an .aero registrar and upon an Authorizing Agreement between Registrar and the .aero Sponsor.

5. Sponsored TLD/Sponsor's Delegated Authority. Registrar acknowledges that the .aero TLD is a sponsored TLD, over which the .aero Sponsor has delegated policy-formulation authority under its TLD Sponsorship Agreement with ICANN. The scope of delegation is currently stated at <<http://www.icann.org/tlds/agreements/aero/sponsorship-agmt-att2-20nov01.htm>> and includes topics that will affect the manner in which Registrar conducts its business of registering domain names in the .aero TLD. (The delegation includes, for example, "Practices and performance of ICANN-Accredited Registrars selected by Sponsor with respect to Registered Names and their registration.") Registrar agrees to comply with the requirements established by the .aero Sponsor within its delegated scope of policy-formulation authority.

6. Deviations from Obligations of this Agreement Due to Delegation. The .aero Sponsor may develop and implement a policy within the scope of its authority granted by its TLD Sponsorship Agreement with ICANN that requires Registrar to deviate from one or more obligations of this Registrar Accreditation Agreement. In that event, the .aero Sponsor will notify ICANN in writing of the policy and the manner in which the .aero Sponsor believes that Registrar's obligation(s) under this Registrar Accreditation Agreement should be modified. Within thirty days after this notification, ICANN will either:

(a) notify Registrar and the .aero Sponsor in writing of the modification(s) to Registrar's obligations under this Registrar Accreditation Agreement that in ICANN's opinion is (are) appropriate to allow Registrar to comply with the .aero Sponsor policy. In case of this notification by ICANN, Registrar may act in conformity with the modified obligation(s) stated in the ICANN notification.

(b) notify Registrar and the .aero Sponsor in writing that in ICANN's opinion no modification of Registrar's obligations is appropriate. In case of this notification by ICANN, Registrar will continue to comply with its obligations without any modification until it is notified in writing by ICANN that a resolution of any difference between the opinions of ICANN and the .aero Sponsor is resolved.

IN WITNESS WHEREOF, the parties hereto have caused this .aero Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: _____

By: _____

Name:

Title:

Dated: _____, 200__

.BIZ APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".biz Appendix") is a part.

Registrar wishes to be accredited in the .biz TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .biz TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. **Definitions.** All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.
2. **Registrar Election.** Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .biz TLD.
3. **ICANN's Acceptance.** ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .biz TLD.

IN WITNESS WHEREOF, the parties hereto have caused this .biz Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: _____

By: _____

Name:

Title:

Dated: _____, 200__

.COM APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".com Appendix") is a part.

Registrar wishes to be accredited in the .com TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .com TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

- 1. Definitions. All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.
- 2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .com TLD.
- 3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .com TLD.

IN WITNESS WHEREOF, the parties hereto have caused this .com Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: _____

By: _____

Name:

Title:

Dated: _____, 200__

.COOP APPENDIX

ICANN and [Registrar] have entered into a Registrar Accreditation Agreement ("RAA"), of which this .coop Appendix ("Appendix") is a part. Pursuant to and subject to the RAA, Registrar and ICANN hereby agree as follows:

- 1. Definitions. As used in the RAA (including this appendix) with respect to the .coop TLD:
 - 1.1 "Sponsor" refers to the entity designated as the Sponsoring Organization for the .coop TLD by a Sponsorship Agreement with ICANN, so long as that Sponsorship Agreement is in effect.
 - 1.2 "Registry Operator" is the entity responsible, in accordance with an agreement between the Sponsor (or its assignee) and that person or entity,

for providing Registry Services for the .coop TLD.

1.3 "Registry Services," with respect to the .coop TLD, shall have the meaning defined in the Sponsorship Agreement in effect between ICANN and the Sponsor.

1.4 "Authorizing Agreement" refers to the Sponsor's standard written agreement with registrars under which they are authorized to receive from Registry Operator Registry Services for the .coop TLD.

1.5 "Registered Name" refers to a domain name within the domain of the .coop TLD, whether at the second or a lower level, about which Registry Operator (or an affiliate engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).

All initially capitalized terms not otherwise defined in this Appendix shall have the definitions assigned to such terms in the RAA.

2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registrar Services in the .coop TLD.

3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registrar Services in the .coop TLD.

4. Need for Agreement with Sponsor. Registrar's obligation under RAA Subsection 3.1 to operate as a registrar for the .coop TLD is conditioned upon the .coop Sponsor selecting Registrar as one authorized to act as a .coop registrar, and upon Registrar and the .coop Sponsor having an Authorizing Agreement in effect.

5. Sponsored TLD/Sponsor's Delegated Authority. Registrar acknowledges that the .coop TLD is a sponsored TLD, over which the .coop Sponsor has been delegated policy-formulation authority under its TLD Sponsorship Agreement with ICANN. The scope of delegation is currently stated at <<http://www.icann.org/tlds/agreements/coop/sponsorship-agmt-att2-06nov01.htm>> and includes topics that will affect the manner in which Registrar conducts its business of registering domain names in the .coop TLD. (The delegation includes, for example, "Practices of ICANN-Accredited Registrars selected by Sponsor with respect to Registered Names and their registration.") Registrar agrees to comply with the requirements established by the .coop Sponsor within its delegated scope of policy-formulation authority.

6. Deviations from Obligations of this Agreement Due to Delegation. The .coop Sponsor may develop and implement a policy within the scope of its authority granted by its TLD Sponsorship Agreement with ICANN that requires Registrar to deviate from one or more obligations of this RAA. In that event, the .coop Sponsor will notify ICANN in writing of the policy and the manner in which the .coop Sponsor believes that Registrar's obligation(s) under this RAA should be modified. Within thirty days after this notification, ICANN will either:

(a) notify Registrar and the .coop Sponsor in writing of the modification(s) to Registrar's obligations under this RAA that in ICANN's opinion is (are) appropriate to allow Registrar to comply with the .coop Sponsor policy. In case of this notification by ICANN, Registrar may act in conformity with the modified obligation(s) stated in the ICANN notification.

(b) notify Registrar and the .coop Sponsor in writing that in ICANN's opinion no modification of Registrar's obligations is appropriate. In case of this notification by ICANN, Registrar will continue to comply with its obligations under the RAA without any modification until it is notified in writing by ICANN that a resolution of any difference between the opinions of ICANN and the .coop Sponsor is resolved.

IN WITNESS WHEREOF, the parties hereto have caused this .coop Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: _____

By: _____

Name:

Title:

Dated: _____, 200__

.INFO APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".info Appendix") is a part.

Registrar wishes to be accredited in the .info TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .info TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. Definitions. All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.
2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .info TLD.
3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .info TLD.

IN WITNESS WHEREOF, the parties hereto have caused this .info Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: _____

By: _____

Name:

Title:

Dated: _____, 200__

.MUSEUM APPENDIX

ICANN and [Registrar Name] have entered into a Registrar Accreditation Agreement ("RAA"), of which this .museum Appendix ("Appendix") is a part. Pursuant to and subject to the RAA, Registrar and ICANN hereby agree as follows:

1. Definitions. As used in the RAA (including this appendix) with respect to the .museum TLD:

1.1 "Sponsor" refers to the entity designated as the Sponsoring Organization for the .museum TLD by a Sponsorship Agreement with ICANN, so long as that Sponsorship Agreement is in effect.

1.2 "Registry Operator" is the entity responsible, in accordance with an agreement between the Sponsor (or its assignee) and that person or entity, for providing Registry Services for the .museum TLD.

1.3 "Registry Services," with respect to the .museum TLD, shall have the meaning defined in the Sponsorship Agreement in effect between ICANN and the Sponsor.

1.4 "Authorizing Agreement" refers to the Sponsor's standard written agreement with registrars under which they are authorized to receive from Registry Operator Registry Services for the .museum TLD.

1.5 "Registered Name" refers to a domain name within the domain of the .museum TLD, whether consisting of two or more (e.g., example.art.museum) levels, about which Registry Operator (or an affiliate engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).

All initially capitalized terms not otherwise defined in this Appendix shall have the definitions assigned to such terms in the RAA.

2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registrar Services in the .museum TLD.

3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registrar Services in the .museum TLD.

4. Need for Agreement with Sponsor. Registrar's obligation under RAA Subsection 3.1 to operate as a registrar for the .museum TLD is conditioned upon the .museum Sponsor selecting Registrar as one authorized to act as a .museum registrar, and upon Registrar and the .museum Sponsor having an Authorizing Agreement in effect.

5. Sponsored TLD/Sponsor's Delegated Authority. Registrar acknowledges that the .museum TLD is a sponsored TLD, over which the .museum Sponsor has been delegated policy-formulation authority under its TLD Sponsorship Agreement with ICANN. The scope of delegation is currently stated at <http://www.icann.org/tlds/agreements/museum/sponsorship-agmt-att2-20aug01.htm> and includes topics that will affect the manner in which Registrar conducts its business of registering domain names in the .museum TLD. (The delegation includes, for example, "Practices of ICANN-Accredited Registrars selected by Sponsor with respect to Registered Names and their registration.") Registrar agrees to comply with the requirements established by the .museum Sponsor within its delegated scope of policy-formulation authority.

6. Deviations from Obligations of this Agreement Due to Delegation. The .museum Sponsor may develop and implement a policy within the scope of its authority granted by its TLD Sponsorship Agreement with ICANN that requires Registrar to deviate from one or more obligations of this RAA. In that event, the .museum Sponsor will notify ICANN in writing of the policy and the manner in which the .museum Sponsor believes that Registrar's obligation(s) under this RAA should be modified. Within thirty days after this notification, ICANN will either:

(a) notify Registrar and the .museum Sponsor in writing of the modification(s) to Registrar's obligations under this RAA that in ICANN's opinion is (are) appropriate to allow Registrar to comply with the .museum Sponsor policy. In case of this notification by ICANN, Registrar may act in conformity with the modified obligation(s) stated in the ICANN notification.

(b) notify Registrar and the .museum Sponsor in writing that in ICANN's opinion no modification of Registrar's obligations is appropriate. In case of this notification by ICANN, Registrar will continue to comply with its obligations under the RAA without any modification until it is notified in writing by ICANN that a resolution of any difference between the opinions of ICANN and the .museum Sponsor is resolved.

IN WITNESS WHEREOF, the parties hereto have caused this .museum Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: _____

By: _____

Exhibit D 72

Name:

Title:

Dated: _____, 200__

.NAME APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".name Appendix") is a part.

Registrar wishes to be accredited in the .name TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .name TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. Definitions. All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.

2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .name TLD.

3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .name TLD.

4. Data Submission. Pursuant to Subsection 3.2.1, as part of its registration for SLD E-mail forwarding, the NameWatch Service, and Defensive Registrations, Registrar shall submit to, or shall place in the Registry Database operated by, the Registry Operator for the TLD that Registry Operator, consistent with Appendix C to its Registry Agreement with ICANN, data elements Registry Operator requires be submitted to it.

IN WITNESS WHEREOF, the parties hereto have caused this .name Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: _____

By: _____

Name:

Title:

Dated: _____, 200__

.NET APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".net Appendix") is a part.

Registrar wishes to be accredited in the .net TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .net TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. Definitions. All initially capitalized terms not otherwise defined herein shall have the definitions assigned to such terms in the Registrar Accreditation Agreement.
2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .net TLD.
3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .net TLD.

IN WITNESS WHEREOF, the parties hereto have caused this .net Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: _____

By: _____

Name:

Title:

Dated: _____, 200__

.ORG APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix (".org Appendix") is a part.

Registrar wishes to be accredited in the .org TLD pursuant to and subject to the Registrar Accreditation Agreement and ICANN wishes to accredit Registrar in the .org TLD. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

1. Definitions. All initially capitalized terms not otherwise defined herein shall have the

definitions assigned to such terms in the Registrar Accreditation Agreement.

2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registration Services in the .org TLD.

3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registration Services in the .org TLD.

IN WITNESS WHEREOF, the parties hereto have caused this .org Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: _____

By: _____

Name:

Title:

Dated: _____, 200__

.PRO APPENDIX

ICANN and [Registrar] have entered into a Registrar Accreditation Agreement ("RAA"), of which this .pro Appendix ("Appendix") is a part. Pursuant to and subject to the RAA, Registrar and ICANN hereby agree as follows:

1. Definitions. As used in the RAA (including this appendix) with respect to the .pro TLD, all initially capitalized terms not otherwise defined in this Appendix shall have the definitions assigned to such terms in the RAA.

2. Registrar Election. Registrar hereby elects and agrees to become accredited by ICANN to provide Registrar Services in the .pro TLD.

3. ICANN's Acceptance. ICANN hereby accepts Registrar's election to become accredited by ICANN to provide Registrar Services in the .pro TLD.

IN WITNESS WHEREOF, the parties hereto have caused this .pro Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: _____

By: _____

Name:

Title:

Dated: _____, 200__

Exhibit D75

LOGO LICENSE APPENDIX

The Internet Corporation for Assigned Names and Numbers, a California non-profit, public benefit corporation ("ICANN"), and [Registrar Name], a [organization type and jurisdiction] ("Registrar") have entered into a Registrar Accreditation Agreement ("Registrar Accreditation Agreement"), of which this appendix ("Logo License Appendix") is a part. Definitions in the Registrar Accreditation Agreement apply in this Logo License Appendix.

Registrar wishes to acquire from ICANN, and ICANN wishes to grant to Registrar, a license to use the trademarks listed below the signature block of this Logo License Appendix ("Trademarks") in connection with Registrar's role as an ICANN-accredited registrar. Pursuant to and subject to the Registrar Accreditation Agreement, Registrar and ICANN hereby agree as follows:

LICENSE

1. Grant of License. ICANN grants to Registrar a non-exclusive, worldwide right and license to use the Trademarks, during the term of this appendix and solely in connection with the provision and marketing of Registrar Services in order to indicate that Registrar is accredited as a registrar of domain names by ICANN. Except as provided in this subsection and Subsection 2.2 of the Registrar Accreditation Agreement, Registrar shall not use the Trademarks, any term, phrase, or design which is confusingly similar to the Trademarks or any portion of the Trademarks in any manner whatsoever.
2. Ownership of Trademarks. Any and all rights in the Trademarks that may be acquired by Registrar shall inure to the benefit of, and are hereby assigned to, ICANN. Registrar shall not assert ownership of the Trademarks or any associated goodwill.
3. No Sublicense. Registrar shall not sublicense any of its rights under this appendix to any other person or entity (including any of Registrar's resellers) without the prior written approval of ICANN.

REGISTRATION AND ENFORCEMENT

1. Registration. Registration and any other form of protection for the Trademarks shall only be obtained by ICANN in its name and at its expense.
2. Enforcement. Registrar shall promptly notify ICANN of any actual or suspected infringement of the Trademarks by third parties, including Registrar's resellers or affiliates. ICANN shall

have the sole discretion to initiate and maintain any legal proceedings against such third parties; Registrar shall not take any such actions without the prior written approval of ICANN; and ICANN shall retain any and all recoveries from such actions.

3. Further Assurances. Registrar agrees to execute such other documents and to take all such actions as ICANN may request to effect the terms of this appendix, including providing such materials (for example URLs and samples of any promotional materials bearing the Trademarks), cooperation, and assistance as may be reasonably required to assist ICANN in obtaining, maintaining, and enforcing trademark registration(s) and any other form of protection for the Trademarks.

TERM AND TERMINATION

This Logo License Appendix shall be effective from the date it is signed below by both parties until the Expiration Date, unless this appendix or the Registrar Accreditation Agreement is earlier terminated. Each party shall have the right to terminate this appendix at any time by giving the other party written notice. Upon expiration or termination of this appendix, Registrar shall immediately discontinue all use of the Trademarks.

IN WITNESS WHEREOF, the parties have caused this Logo License Appendix to be executed by their duly authorized representatives.

ICANN

[Registrar Name]

By: _____

By: _____

Name:

Title:

Dated: _____, 200__

TRADEMARKS:

1. ICANN Accredited Registrar

2.



Comments concerning the layout, construction and functionality of this site
should be sent to webmaster@icann.org.

Page Updated 11-April-2006

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Exhibit D 78



The Internet Corporation for Assigned Names and Numbers

16 March 2007

Via Facsimile and Fed Ex

RegisterFly.com, Inc.
960 Arthur Godfrey Road
Suite 402
Miami Beach, FL 33140
Attn: Kevin Medina, CEO

Re: Notice of Termination of Registrar Accreditation Agreement for Top Class Names, Inc. ("RegisterFly")

Dear Mr. Medina:

This shall constitute formal notice of termination of the Registrar Accreditation Agreement between Top Class Names, Inc. (the corporate predecessor and contracting party identified herein as "RegisterFly") and ICANN (the "RAA"). Effective 31 March 2007, consistent with the terms of the RAA, RegisterFly will no longer be allowed to operate as an ICANN-Accredited Registrar.

Additionally, ICANN hereby provides you notice of the revocation of the Logo License Appendix to the above-mentioned RAA, and demands that you remove all ICANN Trademarks immediately from your website and business materials, that have been licensed to you under the terms of that appendix.

As you are aware and have acknowledged in communications with ICANN staff and others, on 21 February 2007, ICANN issued to RegisterFly a "Notice of Breach of Registrar Accreditation Agreement" (the "21 February Notice"). As stated in the 21 February Notice, pursuant to Section 5.3.4 of the RAA, if RegisterFly did not cure each identified breach within 15 working days, ICANN may provide notice of and terminate the RAA.

RegisterFly's 15 working days to cure has expired. RegisterFly remains in breach of the identified provisions. As a result, and in accordance with sections 5.3 and 5.3.4 of the RAA, ICANN hereby gives RegisterFly notice that ICANN is terminating the RAA and RegisterFly's accreditation will expire effective 31 March 2007.

As set forth in the 21 February Notice, RegisterFly is in breach of sections 3.4 and 4.1 of the RAA. RegisterFly has failed to cure its breaches of section 3.4 and has not demonstrated that the breaches of section 4.1 have been cured within the 15 working day notice period. For

LAI-2854212v1

Exhibit E 79

Brussels 6 Rond Point Schuman, Bt. 5 B-1040 Brussels BELGIUM T +32 2 234 7870 F +32 2 234 7848
Marina del Rey 4676 Admiralty Way, Suite 330 Marina del Rey, CA 90292 USA T +1 310 823 9358 F +1 310 823 8649

<http://icann.org>



RegisterFly.com, Inc.
16 March 2007
Page 2

example, in continuing breach of section 4.1, RegisterFly has failed to demonstrate that it has cured its violations of the Inter-Registrar Transfer Policy and ICANN receives information, on a daily basis, that RegisterFly continues to fail to unlock and/or timely provide required AuthInfo codes to registrants requesting to transfer their registered names to a different ICANN-accredited registrar. On 8 March 2007, ICANN again informed RegisterFly in writing of its continuation of this breach.

RegisterFly also failed to cure its breach of section 3.4, governing the maintenance and provision of all registration data to ICANN. RegisterFly failed to comply with ICANN's repeated audit demands within the time frames reasonably set by ICANN.

Due to RegisterFly's failures to cure its breaches of the RAA identified in the 21 February Notice, ICANN hereby terminates the RAA effective 31 March 2007. ICANN further notes that RegisterFly has failed to cure other RAA breaches identified in ICANN's 2 March 2007 Breach Notice to RegisterFly.

Accordingly, effective 31 March 2007, RegisterFly will no longer be allowed to operate as an ICANN-Accredited Registrar. Between now and 31 March, under the RAA and the Inter-Registrar Transfer Policy, RegisterFly is required to unlock and provide all necessary AuthInfo Codes to allow for domain name transfers to occur. Any and all registrants wishing to transfer from RegisterFly during this period should be allowed to do so and the transfer must be performed expeditiously. Further, under the RAA and the Inter-Registrar Transfer Policy, upon termination of the RegisterFly RAA, ICANN may approve a bulk transfer of all current RegisterFly domain names to an ICANN-Accredited Registrar if ICANN deems doing so will promote the community interests. RegisterFly may suggest an ICANN-Accredited Registrar that meets all ICANN required criteria. That suggestion will be considered should a bulk transfer of registrations occur, depending on the suitability.

ICANN continues to demand that RegisterFly act in the best interests of the registrants. ICANN encourages RegisterFly to act with all due haste in assisting the registrants that are still reportedly not getting appropriate services.



RegisterFly.com, Inc.
16 March 2007
Page 3

Finally, the formal date of termination should not restrict you from taking earlier steps to the benefit of the registrants. ICANN remains willing to approve a bulk transfer of registrations to an ICANN-Accredited Registrar prior to 31 March 2007.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John O. Jeffrey', with a long horizontal flourish extending to the right.

John O. Jeffrey
General Counsel & Secretary
Internet Corporation for Assigned Names
and Numbers



The Internet Corporation for Assigned Names and Numbers

TRANSMITTED VIA FACSIMILE & U.S. MAIL

8 March 2007

RegisterFly.Com, Inc.
404 Main Street, Suite 401
Boonton, NJ 07005
Attn: Glenn Stansbury

**Re: Request for Clarifying Information Regarding Recent
Data Submission and Transfer Policy Compliance**

Dear Mr. Stansbury:

Request for Clarifying Information Regarding Recent Data Submission

ICANN is in receipt of data provided by Registryfly.Com, Inc. ("RegisterFly") in the file "Customer_Info.rar". As described in greater detail below, there appear to be inconsistencies and missing information for which I am requesting that RegisterFly provide clarifying information to ICANN no later than 2:00 pm (EST) on 8 March 2007.

ICANN carefully analyzed the Customer_Info.rar file provided by RegisterFly on 5 March 2007. Our technology team took two samples of domain names that were documented at the registries as being registered through RegisterFly. Each sample set was 1000 names. We ran each of these sample sets against the two CSV files that RegisterFly provided to us (domains-customers.csv and regfly_escrow.csv).

Exhibit F 82

Brussels
Marina del Rey

6 Rond Point Schuman, Bt. 5
4676 Admiralty Way, Suite 330

B-1040 Brussels
Marina del Rey, CA 90292

BELGIUM T +32 2 234 7870
USA T +1.310 823 9358

F +32 2 234 7848
F +1 310 823 8649

<http://icann.org>



We noted the following:

1. The two CSV files do not match;
2. The more complete data set seems to be "regfly_escrow.csv" as this contains expiration dates;
3. In a sample of 1000 .info domain names, we discovered 0.2% of the names are not listed in either file; and
4. In a sample of 1000 .com and .net names we discovered more than 9.0% of the names are not listed in either file.

Attached hereto at Appendix A, we have provided some of the names that our test run showed were missing from RegisterFly's files and we would like to receive an explanation as to why the names listed do not appear in the data provided by RegisterFly. Please also provide information regarding any other names that may be missing from the data set RegisterFly provided.

Additionally, ICANN found approximately 15,000 records that indicated the registrant to be ProtectFly Whois Protection Service. Please explain who "ProtectFly Whois Protection Service" is and whether it is an actual registrant or a service offered by RegisterFly.Com. To assist you in responding to our inquiry, we have also attached a sampling of the records illustrative of the issue at Appendix B.

Transfer Policy Compliance

ICANN continues to receive complaints from registrants regarding RegisterFly's failure to comply with the Inter-Registrar Transfer Policy and in particular RegisterFly's failure to issue 'AuthInfo' codes.

As referenced in ICANN's Notice of Breach to RegisterFly dated 21 February 2007, Section 4.1 of the RAA obligates RegisterFly to abide by all consensus policies, including the Inter-Registrar Transfer Policy ("Transfer Policy"). Section A.5 of the Transfer Policy requires registrars to "provide the Registered Name holder with the unique 'AuthInfo' code within five (5) calendar days of the Registered Name Holder's Initial request (and subsequently, unlock the name, if required).

ICANN continues to receive complaints regarding RegisterFly's failure to provide AuthInfo codes. The details regarding these complaints can be provided to you. RegisterFly's consistent failure to comply with its contractual obligation to provide requested AuthInfo codes continues to cause significant harm to registrants.



Accordingly, I am requesting that RegisterFly provide an explanation regarding the steps it has taken to address this problem by 2:00pm (EST) 9 March 2007.

ICANN expects RegisterFly to continue working to quickly rectify these and other compliance matters.

I hope this correspondence is clear. Elaboration on any of these points can be provided. Please contact me at (310) 301-5809.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kurt J. Pritz". The signature is written in a cursive style with a large, looped initial "K".

Kurt J. Pritz
Senior Vice President, Services

Attachments:
Appendix A
Appendix B

Cc:

Appendix A

REDACTED

Appendix B:

REDACTED



The Internet Corporation for Assigned Names and Numbers

21 February 2007

Registerfly.Com, Inc.
404 Main Street, Suite 401
Boonton, NJ 07005
Attn: Glenn Stansbury

Re: Notice of Breach of ICANN Registrar Accreditation Agreement

Dear Glenn:

This letter is a formal notice of several breaches of sections 3.4, 3.9, and 4.1 of Registerfly.Com, Inc.'s ("Registerfly") Registrar Accreditation Agreement ("RAA"). Under section 5.3.4 of the RAA, Registerfly has 15 working days to cure the breaches described in this letter. If the breaches are not cured in that period, then the Internet Corporation for Assigned Names and Numbers ("ICANN") may give notice of termination of the RAA, after which Registerfly may initiate arbitration to determine the appropriateness of termination.

As you are aware, ICANN staff has met with executive management of Registerfly on at least three occasions over the past year and exchanged numerous email messages and telephone calls in an attempt to resolve the issues described below. Despite repeated assurances of progress, the volume of complaints directed to ICANN about Registerfly continues to grow on a daily basis. ICANN provides you with the following information regarding Registerfly's breaches and potential breaches of the RAA.

I. Consensus Policy Breaches

A. Governing Provisions

Section 4.1 obligates ICANN-accredited registrars to abide by any Consensus Policies. One such applicable Consensus Policy is the 12 July 2004 Policy on Transfer of Registrations between Registrars ("Inter-Registrar Transfer Policy"), available at <http://www.icann.org/transfers/policy-12jul04.htm>. The Inter-Registrar Transfer Policy ("Transfer Policy") limits the situations in which a losing Registrar may deny a transfer request. (Inter-Registrar Transfer Policy at section A.3). In addition, under Section A.5, "Registrars must provide the Registered Name Holder with the unique 'AuthInfo' code within five (5) calendar days of the Registered Name Holder's initial request if the Registrar does not provide facilities for the Registered Name Holder to generate and manage their own unique 'AuthInfo' code."

Exhibit G 87



If a Registered Name is in Registrar Lock Status, the losing Registrar may not deny a transfer request unless the Registered Name Holder is provided with the reasonable opportunity and ability to unlock the domain name prior to the Transfer Request. (Inter-Registrar Transfer Policy at section A.3)

B. Registerfly's Breach of the Provisions

This portion of the notice of breach addresses Registerfly's obligations under section 4.1, under which Registerfly agreed to abide by all Consensus Policies addressing "the transfer of registration data upon a change in registrar sponsoring one or more Registered Names." As part of this obligation, Registerfly is bound to follow the Inter-Registrar Transfer Policy, which specifies, at section A.3, the obligations of a losing registrar. Under section A.3, Registerfly has five days within which to provide requested information and assist a Registered Name Holder in the process for transferring registrations to a different Registrar. Under section A.5, if the transfer of a Registered Name requires additional security codes, Registerfly must provide these "AuthInfo" codes within five days. Finally, Registerfly may not block a Registered Name Holder's request to transfer a locked domain name without providing an opportunity to unlock the name. Despite these explicit obligations, Registerfly has withheld its approval or otherwise acted to block requested transfers of Registered Names. The following are seven examples of Registerfly's failure to comply with its contractual obligations:

1. Failure to provide authorization info codes

a. A complainant stated that he requested AuthInfo codes for four Registered Names (NAMES REDACTED) but that Registerfly did not provide the codes, despite the lapse of over five days.

b. A complainant stated that he requested AuthInfo codes for fifteen Registered Names (NAMES REDACTED) but that Registerfly did not provide the requested codes within one week of the request.

c. A complainant stated that she requested an AuthInfo code for her Registered Name (NAME REDACTED), but that Registerfly ignored the request for at least six days and never issued an AuthInfo code.

d. A complainant stated that she requested AuthInfo codes for both of her Registered Names (NAMES REDACTED) on 12 February 2007, but that as of 19 February 2007, Registerfly had not provided any AuthInfo codes.

e. A complainant stated that as of 22 January 2007, Registerfly had not responded to his 12 January 2007 requests for AuthInfo codes to transfer his Registered Names (NAMES REDACTED).



2. Failure to unlock names

a. A complainant stated that several times since 4 February 2007 he requested that his domain name (NAME REDACTED) be unlocked, but that Registerfly did not act on these requests, causing the transfer to be denied.

b. A complainant stated that on 15 February 2007 he requested that his Registered Names (NAMES REDACTED) be unlocked, but that Registerfly reported that it could not unlock the domains. The domain names remain locked to date.

Registerfly's demonstrated failure to follow the Inter-Registrar Transfer Policy is not simply a violation of the RAA. It also frustrates and impedes ICANN's stated purpose in providing a "straightforward procedure for domain name holders to transfer their names from one ICANN-accredited registrar to another should they wish to do so." (See <http://www.icann.org/transfers/>.) Each registrar's compliance with these procedures is essential for this Consensus Policy to work as anticipated. Violations of this policy by Registerfly, as those outlined above, harm both the customer and other registrars. Registerfly's violation of the Transfer Policy provides an independent ground for termination of Registerfly's accreditation, if all such violations are not cured within 15 days of this notice.

II. Documentation Breaches

A. Governing Provisions

Section 3.4 of the RAA obligates ICANN-accredited registrars to maintain and update databases containing certain data elements for each active Registered Name it has sponsored within each TLD for which it is accredited. The data points include:

- The name and postal address of the Registered Name Holder, administrative contact, technical contact, and billing contact;
- Email address of the administrative contact, technical contact, and billing contact;
- Voice telephone number of the administrative contact, technical contact, and billing contact;
- Fax number, where available, of the administrative contact, technical contact, and billing contact; and
- Any other Registry Data that Registrar submitted to the Registry Operator.

In addition, ICANN-accredited registrars are bound to maintain certain records relating to dealings with Registry Operators and Registered Name Holders for three years, and make these



records available for ICANN inspection. The Registrar must maintain the following information:

3.4.2.1 In electronic form, the submission date and time, and the content, of all registration data (including updates) submitted in electronic form to the Registry Operator(s);

3.4.2.2 In electronic, paper, or microfilm form, all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Registered Name Holders, including registration contracts; and

3.4.2.3 In electronic form, records of the accounts of all Registered Name Holders with Registrar, including dates and amounts of all payments and refunds.

B. History of Registerfly's Documentation and Customer Service Issues Potentially Implicating the RAA's Documentation Provisions

On 13 October 2004, ICANN entered into a registrar accreditation agreement with Top Class Names, Inc. On or around 22 November 2004, Top Class Names, Inc. filed a Certificate of Amendment of Certificate of Incorporation with the State of Delaware, changing its name to Registerfly.Com, Inc. Prior to this time, Registerfly had only been a reseller of domain names for eNom, Inc. (an ICANN-accredited registrar) and, to a lesser extent, other accredited registrars.

In late 2005 and early 2006, ICANN began seeing a large number of complaints from Registerfly customers. At that time, most of the complaints involved Registered Names that were registered by Registerfly not as a registrar, but as a reseller for eNom. The complaints frequently included allegations that Registerfly was overcharging (two, three and four times per transaction). Customers reported that Registerfly did not provide customer service: Registerfly did not answer emails or support tickets and the call hold time was frequently in excess of 30 minutes. When the customers would initiate a chargeback through their credit card companies, Registerfly apparently retaliated by denying the customer access to all of the Registered Names in their account, not just the Registered Name involved in the chargeback transaction. ICANN forwarded the complaints to eNom.

On 17 January 2006, Tim Cole, ICANN's Chief Registrar Liaison, forwarded a complaint about Registerfly (as reseller) to eNom, and mentioned "the unusually high number of complaints we get concerning Registerfly." eNom responded with an explanation from its reseller (Registerfly) which indicated that Registerfly intended to move the domain names under its management to its own credential (from eNom's). In this same response, Registerfly indicated that 90% of its complaints involved chargebacks.

On 21 February 2006, Tim Cole again contacted eNom (through its then General Counsel, Martin Garthwaite), describing a potential breach of eNom's RAA occurring through allegations of Registerfly (as reseller) altering customers' whois data and populating the whois record with intentionally inaccurate data. At this time, ICANN confirmed with eNom that any Registered



Names sponsored through eNom's accreditation – even if processed through Registerfly a reseller – were eNom's responsibility.

In April 2006, ICANN continued to receive complaints about Registerfly as both a registrar and as a reseller. Registerfly's customers reported being inexplicably locked out of their accounts. Additionally, complaints stated that domain names were disappearing from customer accounts. Kevin Medina, Registerfly's listed primary contact, contacted Mike Zupke, ICANN's Registrar Liaison Manager, and stated these issues were as a result of "growing pains." On 18 April 2006, Mike Zupke reiterated to Registerfly ICANN's concerns regarding the volume of complaints against Registerfly, and the fact that many of these complaints concerned chargebacks. The complaints continued, and in May 2006 started to include reports of problems with "stolen" registrations and Registerfly reseller renewals, which actually resulted in transferred registrations to Registerfly as a registrar.

On 19 May 2006, ICANN received a complaint from a Registered Name Holder that after a reportedly heated argument with Registerfly, the Whois information for the 220 Registered Names held by that party had been changed to reflect "Kevin Medina" as the Registered Name Holder instead of the customer. As part of its investigation of this situation, ICANN immediately requested documentation pursuant to section 3.4 of the RAA. After receiving no response, on 26 May 2006, ICANN announced an on-site audit to obtain the requested information. On 6 June 2006, Kevin Medina agreed to respond to ICANN's request voluntarily. On 12 June 2006, Registerfly provided incomplete records to ICANN. ICANN had to continually pressure Registerfly until the documentation was complete.

On 15 June 2006, in response to ICANN's audit notice and in addition to dealing with the requested documentation, Registerfly, through its representatives Kevin Medina and Glenn Stansbury (VP of Operations for Registerfly), came to ICANN's Marina del Rey headquarters to meet with ICANN staff to discuss the inordinate number of complaints ICANN had received regarding Registerfly. Mr. Medina and Mr. Stansbury both assured ICANN that Registerfly was working hard to improve its customer service and that it was working to relieve the pressure on the Registerfly employees who worked in the Risk/Fraud department so that chargebacks would no longer be an issue. Mr. Medina disclosed that employees in Registerfly's Risk/Fraud department were paid strictly on commission, but that the policy would be changed as a result of Registerfly's discussions with ICANN.

Over the next few months, complaints to ICANN about Registerfly's handling of chargebacks decreased, although overall complaints regarding Registerfly increased. In particular, ICANN began to see a number of complaints from customers who experienced difficulty in renewing their registrations because they were unclear about "renewal/transfers." These "renewal/transfers" were apparently transactions in which Registerfly (as registrar) offered Registerfly's (as reseller) eNom-managed customers incentives to migrate to Registerfly's accreditation.



ICANN did not receive complete documentation in response to its audit request of 26 May 2006 until 4 October 2006. Upon review of the complete documentation, ICANN determined that the provided records demonstrated irregularities.

On 20 November 2006, Tim Cole requested that Registerfly meet with ICANN in person at the upcoming Sao Paulo ICANN meeting because Registerfly was not responding to email or telephonic inquiries about, among other things, the ever-increasing complaints from Registerfly customers about over-charging. On 3 December 2006, Tim Cole, Mike Zupke, and ICANN's Contractual Compliance Director Stacy Burnette met with Registerfly representatives Mr. Stansbury and Mark Klein (VP of Sales of Registerfly) in Sao Paulo, Brazil to discuss the continuing issues with Registerfly. These issues included:

- (1) Registerfly's failure to renew customer names;
- (2) customer service failures;
- (3) customer billing errors;
- (4) nonpayment of ICANN invoices; and
- (5) insufficient funding of registry accounts.

At the meeting, Mr. Stansbury and Mr. Klein repeated the previous assurances from Registerfly that these issues were being corrected and that Registerfly would be opening a new customer service facility within one week. Ms. Burnette provided Mr. Stansbury with a document including the greatest of ICANN's concerns. Mr. Stansbury promised to respond in writing by 3 January 2007, but no response was ever received by ICANN. Mr. Stansbury also asked ICANN to provide his email address and telephone number to all Registerfly customers who needed assistance, saying that he would personally resolve all complaints.

In January 2007, ICANN continued to receive complaints about Registerfly in both its registrar and reseller capacities for failing to process transactions, as well as many other general customer service complaints from consumers, other ICANN-accredited registrars, ICANN board members, and the U.S. Department of Commerce. The most common complaint by Registerfly customers was that transactions that were billed and paid were not being effected at the registry. In addition, multiple-year renewals and registrations were only processed for one year instead of the number of years that had been paid for. ICANN requested responses from Registerfly on several occasions, but received little or no explanation. Customers reported that Registerfly was unresponsive to their inquiries, even those referred directly by ICANN to Mr. Stansbury or Mr. Medina.

C. Registerfly's Breaches of the Provisions

This portion of the notice of breach addresses Registerfly's obligations under section 3.4 of the RAA, under which Registerfly agreed to maintain, and provide ICANN with copies for inspection, of records of Registered Name Holder accounts, including payment and other modifications. Despite these promises, Registerfly has failed to provide ICANN with the



complete documentation to satisfy its obligations under section 3.4. The following are two examples of Registerfly's failure to comply with its contractual obligations:

1. Request on 22 January 2007: Mike Zupke received a voice mail message from a Registerfly customer seeking assistance with renewal of two domain names: (NAMES REDACTED). According to the customer, he had been trying since 12 January 2007 to renew his Registered Names or obtain authorization codes to transfer his Registered Names to another ICANN-accredited registrar. On 22 January 2007, Mr. Zupke emailed Mr. Stansbury and Mr. Medina requested, under section 3.4, "copies of all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Registered Name Holders, including registration contracts, between your registrar and this customer, by no later than 29 January 2007." The email message was transmitted again to Mr. Medina on 6 February 2007. ICANN has not received any response to this Request.

2. Request on 26 January 2007: Stacy Burnette sent an email to Mr. Stansbury regarding a complaint over seven Registered Names: (NAMES REDACTED). In accordance with Registerfly's obligations under section 3.4, Ms. Burnette requested that Registerfly provide the following documentation by 2 February 2007:

- The name(s) and postal address(es) of the Registered Name Holder(s) of the domain names [];
- The name(s), postal address(es), e-mail address(es), voice telephone number(s), and (if available) fax number(s) of the technical contact(s) for the domain names [];
- The name(s), postal address(es), e-mail address(es), voice telephone number(s), and (if available) fax number(s) of the administrative contact(s) for the domain names [];
- The name(s) and (if available) postal address(es), e-mail address(es), voice telephone number(s), and fax number(s) of the billing contact(s) for the domain names [];
- Records of the submission dates and times, and the content, of all registration data (including updates) submitted in electronic form to the Registry Operators related to the domain names []; and
- Records of all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with the Registered Name Holder(s), including but not limited to registration contracts, related to the domain names [].

On 29 January 2007, Ms. Burnette received a reply email from Registerfly, which was copied to Mr. Stansbury, stating "Please be advised we are compiling the requested information. Please contact us if you need any other information." The return email included incomplete records. ICANN has not received any further response to Ms. Burnette's request.



These two examples, as well as other examples of communication by Registerfly, demonstrate Registerfly's breach of section 3.4 of the RAA. Through its failure to adequately and timely respond to ICANN's requests for documentation, Registerfly is not only neglecting its duties under the contract, but frustrating ICANN's ability to assist customers in achieving resolution of customer complaints. As discussed above, Registerfly has a documented history of customer service and registration issues, and its failures to adequately provide information to respond to investigation of these issues only amplifies the problem. In addition, Registerfly's actions in failing to timely provide ICANN with the requested information imposes additional burdens on ICANN, in increased time and staff effort to simply obtain the information. Registerfly's violations of section 3.4 of the RAA provide an independent ground for termination of Registerfly's accreditation, if all such violations are not cured within 15 days of this notice.

III. Accreditation Fee Breaches

Under section 3.9 of the RAA, ICANN-accredited registrars are obligated to pay yearly and variable fees to ICANN in a timely fashion. This portion of the notice of breach concerns Registerfly's obligations under section 3.9 of the RAA, under which Registerfly agreed to timely pay its accreditation fees. Despite this agreement, Registerfly has a substantial outstanding balance to ICANN that it has failed to pay.

On 10 October 2006, ICANN notified Registerfly that it had an outstanding balance of \$131,422.86 in fees immediately due to ICANN, of which \$44,985.16 was over 90 days past due. A month later, on 10 November 2006, ICANN had not received any response from Registerfly. Mike Zupke called Glenn Stansbury to inquire as to why Registerfly was not paying its invoices to ICANN. Mr. Stansbury reported that he was unaware of this issue. Kevin Medina then called Mr. Zupke and claimed to be unaware of the issue but promised to wire \$49,000 to ICANN that week and another \$44,000 at the beginning of the next week. During that conversation, Mr. Zupke expressed to Mr. Medina that failure to pay ICANN invoices is a breach of Registerfly's RAA that, if unresolved, could result in proceedings to terminate Registerfly's accreditation.

On 4 December 2006, ICANN received a wire transfer from Registerfly in the amount of \$70,000. ICANN received an additional \$59,999 the next day. On both 11 December and 19 December 2006, ICANN requested from Mr. Stansbury and Mr. Medina payment of Registerfly's remaining balance. Mr. Medina promised that payment would be made on 22 December 2006. No payment was received. ICANN again requested payment of the outstanding balance on 9 January 2007 and 2 February 2007. To date, \$5,423.86 remains outstanding, and is over 60 days past due.

ICANN-accredited Registrars are bound to pay ICANN in a timely fashion. If Registerfly fails to cure this breach of its RAA within 15 working days, its non-payment of ICANN fees provide an independent ground for ICANN to proceed to termination of Registerfly's accreditation.



IV. Additional Issues Concerning Registerfly's Business Dealings

On 30 October 2006, ICANN received information from (REGISTRY NAME REDACTED) that Registerfly was not maintaining a sufficient balance with (REDACTED) to process all of the transfers into Registerfly that had been requested. Specifically, (REDACTED) provided ICANN with copies of emails to Mr. Medina that indicated that 592 transfers were failing due to Registerfly's insufficient funding of its (REDACTED) account. The emails from (REDACTED) to Mr. Medina (dated 24, 26, and 30 October 2006) were all apparently met with silence, causing (REDACTED) to ask ICANN for assistance. Mike Zupke approached this issue in his 10 November 2006 conversations with Registerfly, and this issue was also one of the topics discussed between Registerfly and ICANN at the 3 December 2006 meeting in Sao Paulo, Brazil.

Registerfly's failure to properly fund its Registry Accounts places its customers at risk of losing the Registered Names the customers paid for. Indeed, Registerfly customers self-report that such instances have already occurred. Moreover, federal court documents filed by UnifiedNames, Inc. against Mr. Medina allege that in January 2007 alone 75,000 registrations were lost due to Registerfly's failure to fund its accounts with registries and eNom. Such failures indicate the potential for complete frustration of the RAA for failure to actually provide the consumer with registrar services. In addition, the inability to retain sufficient funding for Registry Accounts also raises concerns that Registerfly may be bankrupt or insolvent, which would allow ICANN to immediately terminate the RAA under section 5.3.7.

ICANN specifically reserves the right to pursue any and all other breaches besides those enumerated above, and nothing herein shall be deemed a waiver of that right.

V. Conclusion

As noted above, section 5.3.4 of the Registrar Accreditation Agreement agreed in October 2004 between Registerfly and ICANN provides that notice of termination of Registerfly's accreditation may be given if these breaches are not cured within 15 working days.

Registerfly's pattern of neglect of its obligations to ICANN, fellow registrars, and customers demonstrated by the above circumstances is unacceptable. Though Registerfly agreed to such commitments as timely payment of fees, maintenance and provision of required documentation, and the procedures to facilitate the free transfer of domain names in its October 2004 accreditation agreement, these commitments have not been met. The above recitation demonstrates that Registerfly has repeatedly taken what appears to be a cavalier attitude toward the promises it made.

Registerfly's conduct has fallen far short of both its responsibilities to the public and its agreements. We therefore provide this formal notice of breach of Registerfly's Registrar Accreditation Agreement with ICANN.



ICANN's goal in this matter is to promote full compliance with all terms of the RAA in order to provide accurate and timely service to Registerfly customers and to preserve their expectations and abilities to renew and transfer Registered Domain Names. In addition, ICANN seeks to enforce compliance of the fee provisions agreed to by Registerfly. We hereby demand that Registerfly act promptly to cure the breaches outlined in this letter, and will become more responsive and cooperative in dealing with additional issues as they are discovered. Please feel free to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "K. Pritz", with a long horizontal flourish extending to the right.

Kurt J. Pritz
Senior Vice President, Services



The Internet Corporation for Assigned Names and Numbers

21 February 2007

Registerfly.Com, Inc.
404 Main Street, Suite 401
Boonton, NJ 07005
Attn: Glenn Stansbury

Re: Notice of Audit and Notice to Submit Data Escrow

Dear Glenn:

Pursuant to paragraph 3.4.3 of Registerfly's Registrar Accreditation ("RAA"), you are hereby directed to make the following records available to ICANN for inspection and copying at your principle place of business in Boonton, New Jersey, by no later than 10:00 a.m. on 27 February 2007:

- In electronic form, the submission date and time, and the content, of all registration data (including updates) submitted in electronic form to the Registry Operator(s);
- In electronic, paper, or microfilm form, all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Registered Name Holders, including registration contracts; and
- In electronic form, records of the accounts of all Registered Name Holders with Registrar, including dates and amounts of all payments and refunds.

Furthermore, pursuant to paragraph 3.6 of Registerfly's RAA, you are directed to submit to ICANN (or to a reputable escrow agent mutually approved by Registerfly and ICANN), by no later than 27 February 2007, an electronic copy of the database described in paragraph 3.4.1 of Registerfly's RAA, including:

- The name of all Registered Names under Registerfly's sponsorship;
- The names of the primary nameserver and secondary nameserver(s) for all such Registered Names;
- The original creation date of all registrations sponsored by Registerfly;
- The expiration date of all such registrations;
- The name and postal address of the Registered Name Holder for all such registrations;
- The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for all Registered Names under Registerfly's sponsorship;

Exhibit H 97

Brussels
Marina del Rey

6 Rond Point Schuman, Bt. 5
4676 Admiralty Way, Suite 330

B-1040 Brussels
Marina del Rey, CA 90292

BELGIUM T +32 2 234 7870
USA T +1 310 823 9358

F +32 2 234 7848
F +1 310 823 8649

<http://icann.org>



- The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for all such Registered Names;
- The name and (where available) postal address, e-mail address, voice telephone number, and fax number of the billing contact; and
- Any other Registry Data that Registrar has submitted to the Registry Operator or placed in the Registry Database under Subsection 3.2 of Registerfly's RAA.

This electronic copy should be either in the form of an SQL dump (including schema) or comma separated values (csv) text file in a format approved by ICANN prior to submission of the data.

Please contact me immediately if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "K. Pritz", with a large, stylized flourish above the name.

Kurt J. Pritz
Senior Vice President, Services



The Internet Corporation for Assigned Names and Numbers

TRANSMITTED VIA FACSIMILE & U.S. MAIL

28 February 2007

RegisterFly.Com, Inc.
404 Main Street, Suite 401
Boonton, NJ 07005
Attn: Glenn Stansbury

Re: Second Notice of Audit

Dear Mr. Stansbury:

Consistent with ICANN's Notice of Audit transmitted to you on 21 February 2007, ICANN has, at its own expense, sent company representatives to Boonton, New Jersey, to inspect and copy RegistryFly.Com, Inc. ("RegisterFly") records. Our company representatives have waited more than 48 hours to access RegisterFly's records for inspection and copying. Although you have engaged ICANN representatives in several telephone conversations over the past two days and promised to meet our representatives at your Boonton, New Jersey office, as of the date of this letter, RegisterFly has failed to allow ICANN representatives access to any records.

Be advised that ICANN will provide RegisterFly with one more opportunity to allow ICANN representatives to inspect and copy records on Thursday, 1 March 2007 at 3:00 pm (EST) at RegisterFly's business address, 404 Main Street, Boonton, New Jersey 07005, as reflected in John Naruszewicz's most recent letter to ICANN identifying you and Mr. Naruszewicz as officers of RegisterFly. Should you, or any RegisterFly representatives, fail to show up at your business offices on the date and time referenced above, ICANN will interpret RegisterFly's actions as a refusal to provide the requested records.

On or before noon (EST) on Thursday, 1 March 2007 please confirm the address of your business offices by sending me a facsimile at (310) 823-8649. This information is needed as the business address listed in our records, 404 Main Street, Suite 401, Boonton, New Jersey 07005, was not found by our company representatives. When ICANN representatives attempted to locate RegisterFly's offices, they discovered a coffee shop bearing the address 404 Main Street,

Exhibit I 99

Brussels
Marina del Rey

6 Rond Point Schuman, Bt. 5
4676 Admiralty Way, Suite 330

B-1040 Brussels
Marina del Rey, CA 90292

BELGIUM T +32 2 234 7870 F +32 2 234 7848
USA T +1 310 823 9358 F +1 310 823 8649

<http://icann.org>



Boonton, New Jersey 07005. Adjacent to the coffee shop, and part of the same building, our representatives saw a glass door that bore no address, but lead to stairs that appeared to allow access to the upper floors within that building. Please advise ICANN whether RegisterFly's business offices are located in the upper portion of the 404 Main Street, Boonton, New Jersey, 07005, building, or if they can be found in a different location.

Your compliance with ICANN's audit is expected. Should you have any questions, you may contact me at (310) 301-5809.

Very truly yours,

Stacy Burnett for Kurt Pritz
Kurt J. Pritz
Senior Vice President, Services

Cc: Aristotle Mirzaian,
Counsel for RegisterFly

JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071-2300
TELEPHONE: 213-489-3939 • FACSIMILE: 213-243-2539

Direct Number: (213) 243-2572
jleves@jonesday.com

March 2, 2007

VIA FACSIMILE AND ELECTRONIC MAIL

Aristotle G. Mirzaian, Esq.
Mirzaian Schoenbrodt, LLP
17 Pine Street, 1st Floor
Morristown, NJ 07960

Re: RegisterFly.com, Inc.: Second Notice of Breach and
Notice to File Suit

Dear Mr. Mirzaian:

This law firm represents the Internet Corporation for Assigned Names and Numbers ("ICANN"). As you know, ICANN is responsible for coordinating the management of the technical elements of the Internet's Domain Name System in order to ensure universal resolvability so that all users of the Internet can find all valid addresses.

For several months, ICANN has been expressing concerns to RegisterFly that it was in breach of many of its obligations under the parties' contract (known as the Registrar Accreditation Agreement or "RAA"). Unfortunately, despite repeated assurances that RegisterFly would cure these breaches, it has failed to do so. Accordingly, on February 21, 2007, Kurt Pritz, ICANN's Senior Vice President for Services, sent RegisterFly a ten-page letter identifying many of RegisterFly's breaches of the RAA and giving formal notice to RegisterFly that it was required to cure the breaches. On that same day, Mr. Pritz sent RegisterFly a formal notice of audit and demand for data escrow in accordance with provisions of the RAA.

Following RegisterFly's receipt of Mr. Pritz' February 21 letters and various telephone conversations, ICANN sent two employees from ICANN's offices in Marina del Rey, California to New Jersey to conduct the audit. The most important purpose of this visit, of course, was to inspect and copy all RegisterFly registration data as ICANN had requested. ICANN seeks and is entitled to this data in order to protect RegisterFly's customers so that they will continue to be able to utilize and operate their domain names. As ICANN has repeatedly assured RegisterFly's representatives, ICANN has no other conceivable purpose for requesting this data.

Upon ICANN's arrival in New Jersey, RegisterFly representatives indicated that they did not want to allow ICANN to conduct the audit, but that RegisterFly might be willing to escrow certain data, but only on its own terms. What RegisterFly wants or is willing to do is irrelevant unless it complies with the RAA.

Exhibit J 101

Aristotle G. Mirzaian, Esq.
March 2, 2007
Page 2

On February 28, 2007, while ICANN's representatives were still in New Jersey, Mr. Pritz sent RegisterFly one last letter requesting that ICANN representatives be given access to RegisterFly's offices and data at 3 p.m. EST on March 1, 2007. You sent a response to Mr. Pritz on March 1, in which you indicated that RegisterFly would not, in fact, comply with ICANN's request to inspect and copy RegisterFly's records. Your letter also stated that RegisterFly's refusal to comply with ICANN's audit request "should not be construed as my client's unwillingness to cooperate with ICANN but rather as evidence of their continuing efforts to service their customers." This statement is preposterous: it is ICANN that is attempting to assist RegisterFly's customers by seeking to preserve all of the registration data for those customers. Thus, RegisterFly's refusal to cooperate with ICANN is strong evidence that RegisterFly has no intent to service its customers or to comply with RegisterFly's contractual obligations under the RAA.

Your March 1 letter further indicated that RegisterFly might be willing to enter into an escrow arrangement, which RegisterFly is obligated to do pursuant to the RAA. Your qualification, however, that escrow be conditioned on a stipulation that "the information shall not be released by the escrow agent without my client's prior written consent" is unreasonable. As you and your client are aware, paragraph 3.6 of the RAA sets forth the circumstances under which the data in escrow can be released and ICANN does not intend to stipulate to anything other than what is contained in the RAA. While ICANN appreciates RegisterFly's offer to place data into escrow, this offer does not relieve RegisterFly of its other obligations under the RAA – including the obligations referenced above – nor would it be acceptable for the escrow instructions to require RegisterFly's approval before any data was released from the escrow.

This letter shall serve as an official notice of breach of the audit and data escrow provisions of the RAA and official notice that, if RegisterFly does not cure these breaches within fifteen days, ICANN may terminate your client's RAA and thus terminate your client's right to operate as an ICANN-accredited registrar. This shall also serve as an official notice that your client has breached paragraph 3.3 of the RAA. Specifically, RegisterFly has failed to continuously "provide an interactive web page and a port 43 Whois service providing free public query-based access to up-to-date (i.e., updated at least daily) data concerning all active Registered Names sponsored by Registrar for each TLD in which it is accredited." Again, RegisterFly has fifteen working days to cure this breach or ICANN may terminate your client's RAA.

As a result of RegisterFly's continuing breaches of the RAA, and because of ICANN's great (and increasing) concern that Internet customers will be irreparably harmed if RegisterFly continues flagrantly to breach the RAA, this letter constitutes official notice that ICANN will be filing suit against RegisterFly in the United States District Court for the Central District of California. (The RAA provides that exclusive venue for litigation related to the RAA shall be in California.) ICANN will file this suit on Tuesday, March 6, 2007, prior to noon Pacific time. ICANN will present an ex parte application seeking a temporary restraining order requiring

Aristotle G. Mirzaian, Esq.
March 2, 2007
Page 3

RegisterFly to turn over the data that ICANN has requested (in particular, copies of all registration data for all RegisterFly registrants) and to permit an emergency audit of RegisterFly's books and records. We urge you to consult the Central District's Local Rules in this respect and, in particular, Local Rule 7-19. At the time ICANN files the suit, it will serve you (or your designee) with copies of the papers.

Notwithstanding the above, ICANN would like to continue discussions regarding data escrow. RegisterFly's current proposal with respect to data escrow, however, does not cure any of RegisterFly's breaches of the RAA, and obviously will not change ICANN's decision to proceed with its lawsuit next Tuesday.

Very truly yours,


Jeffrey A. LeVee

cc: Mr. Kurt Pritz
Harold Rabner, Esq.

LAI-2851759v1



The Internet Corporation for Assigned Names and Numbers

15 March 2007

Via Facsimile and Federal Express

RegisterFly.com, Inc.
960 Arthur Godfrey Road
Suite 402
Miami Beach, FL 33140
Attn: Kevin Medina

Re: Further Notice of Continued Breach and Demand for Data Escrow

Dear Kevin:

This shall serve as a reminder that RegisterFly.com, Inc. ("RegisterFly") continues to be in breach of section 3.6 of its Registration Accreditation Agreement ("RAA") to escrow with the Internet Corporation for Assigned Names and Number ("ICANN") a complete set of all current registration data as described in section 3.4.1 of the RAA.

ICANN hereby demands that RegisterFly escrow with ICANN an electronic copy of all current registration data no later than noon, Pacific Daylight Time, Friday, 16 March 2007. In accordance with section 3.6 of the RAA, that data shall be held in escrow under agreement,

. . . 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 Subsection, ICANN (or its assignee) shall have a non-exclusive, irrevocable, royalty-free license to exercise (only for transitional purposes) or have exercised all rights necessary to provide Registrar Services.

See RAA section 3.6. The electronic copy should be either in the form of an SQL dump (including schema) or comma separated values (csv) text file in a format approved by ICANN

Exhibit K 104



RegisterFly.com, Inc.

15 March 2007

Page 2

prior to submission of the data. Please contact me immediately to discuss the format and the means by which RegisterFly will provide its registration data to ICANN.

Very truly yours,

Stacy Burnett for Kurt Pritz
Kurt Pritz
Senior Vice President, Services



The Internet Corporation for Assigned Names and Numbers

20 March 2007

Via Facsimile and Fed Ex

RegisterFly.com, Inc.
960 Arthur Godfrey Road
Suite 402
Miami Beach, FL 33140
Attn: Kevin Medina, CEO

Re: Notice of Continuing Breaches

Dear Mr. Medina:

As you know, the Registrar Accreditation Agreement between Top Class Names, Inc. (the corporate predecessor and contracting party identified herein as "RegisterFly") and ICANN (the "RAA") has been terminated effective 31 March 2007. Notwithstanding such termination, RegisterFly is still required to cooperate with ICANN and operate in accordance with the terms of the RAA. RegisterFly continues to violate the RAA in direct detriment to its own customers and others in the community.

In its termination letter of 16 March 2007, ICANN notified RegisterFly of the revocation of the Logo License Appendix to the above-mentioned RAA, and demanded that RegisterFly immediately remove all ICANN trademarks from its website and business materials. As RegisterFly is well aware, each party to the Logo License Appendix:

[S]hall have the right to terminate this appendix at any time by giving the other party written notice. Upon expiration or termination of this appendix, Registrar shall *immediately discontinue* all use of the Trademarks. (Emphasis added.)

Continued utilization of ICANN's trademarks without ICANN's authorization is both a violation of the RAA and a blatant violation of law. RegisterFly must cease using ICANN's trademarks immediately.

Moreover, notwithstanding numerous representations to ICANN staff and others that RegisterFly would comply with the audit and data escrow provisions under the RAA, RegisterFly continues to be in breach of those provisions.

As set forth in ICANN's 21 February 2007 demand to RegisterFly, its 2 March 2007 notice of breach to RegisterFly, and its 15 March 2007 further demand for data, pursuant to

Exhibit L 106

Brussels	6 Rond Point Schuman, Bt. 5	B-1040 Brussels	BELGIUM	T +32 2 234 7870	F +32 2 234 7848
Marina del Rey	4676 Admiralty Way, Suite 330	Marina del Rey, CA 90292	USA	T +1 310 823 9358	F +1 310 823 8649

<http://icann.org>



RegisterFly.com, Inc.

20 March 2007

Page 2

section 3.6 of the RAA, ICANN requires RegisterFly to *immediately*, but no later than close of business on 21 March 2007, escrow with ICANN an electronic copy of the current database described in paragraph 3.4.1 of the RAA, including:

- The name of all Registered Names under RegisterFly's sponsorship;
- The names of the primary nameserver and secondary nameserver(s) for all such Registered Names;
- The original creation date of all registrations sponsored by RegisterFly;
- The expiration date of all such registrations;
- The name and postal address of the Registered Name Holder for all such registrations;
- The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the technical contact for all Registered Names under RegisterFly's sponsorship;
- The name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for all such Registered Names;
- The name and (where available) postal address, e-mail address, voice telephone number, and fax number of the billing contact; and
- Any other Registry Data that Registrar has submitted to the Registry Operator or placed in the Registry Database under Subsection 3.2 of RegisterFly's RAA.

This electronic copy should be either in the form of an SQL dump (including schema) or comma separated values (csv) text file in a format approved by ICANN prior to submission of the data. In addition, we hereby demand that you provide an updated copy of this database every 48 hours until further notice.

Moreover, as set forth in numerous correspondence from ICANN to RegisterFly, including in the 2 March 2007 notice of breach ICANN sent to RegisterFly, ICANN hereby directs RegisterFly to make the following records available to ICANN for inspection and copying:

- In electronic form, the submission date and time, and the content, of all registration data (including updates) submitted in electronic form to the Registry Operator(s);
- In electronic, paper, or microfilm form, all written communications constituting registration applications, confirmations, modifications, or terminations and related correspondence with Registered Name Holders, including registration contracts; and
- In electronic form, records of the accounts of all Registered Name Holders with Registrar, including dates and amounts of all payments and refunds.



ICANN

RegisterFly.com, Inc.
20 March 2007
Page 3

Contact me no later than close of business 21 March 2007 to discuss the manner, date and location for the above demanded inspection and copying.

Very truly yours,

Amy A. Stathos
Senior Counsel, Office of the General Counsel

REDACTED

Begin forwarded message:

> From: kevin@unifiednames-inc.com
> Date: March 22, 2007 2:36:07 PM PDT
> To: amy.stathos@icann.org
> Cc: mnovick@mitchellnovick.com, hrabner@rabnerallcorn.com
> Subject: ICANN Letter
> Reply-To: kevin@unifiednames-inc.com
>
> Ms Stathos
>
> Pursuant to section 3.6 of the Registration Accreditation Agreement
> ("RAA") we have sent to you via overnight courier the Data Escrow
> information contained within a CD. The format is consistent to the
> last data dump we sent you previously on March 5. The tracking
> number for reference purposes is 8610 5675 6980.
>
> If you have further questions please do not hesitate to contact me.
>
> Kevin Medina
>
>



The Internet Corporation for Assigned Names and Numbers

27 March 2007

Via Facsimile

RegisterFly.com, Inc.
960 Arthur Godfrey Road
Suite 402
Miami Beach, FL 33140
Attn: Kevin Medina, CEO

Re: RegisterFly's Failure to Provide Data and Further Notice of Termination

Dear Mr. Medina:

Your time is up. ICANN will no longer tolerate RegisterFly's refusals to comply with its Registrar Accreditation Agreement ("RAA").

After having conducted a technical review of the data that RegisterFly provided to ICANN on Friday, 23 March 2007, we find it quite suspect that the data, with the file name of regfly_escrow.csv, is the exact same data that RegisterFly sent to and was received by ICANN on 5 March 2007. The data in both files appear to have been created on or about 27 February 2007. If this was an error, please take due care to respond to all such requests as compelled under the Registrar Accreditation Agreement ("RAA") with the correct level of diligence to ensure that the information is useful. If you intentionally provided the same files, we see this as a clear indication that RegisterFly is acting intentionally to delay ICANN's exercise of its rights under the RAA. ICANN demands that RegisterFly fully comply with its obligations.

To reiterate, it appears that the information that RegisterFly provided to ICANN a few days ago was created on or about 27 February 2007, and is now four weeks old. We are aware of significant changes that have occurred during those four weeks relating to this registration data, and those changes are not reflected in the data that RegisterFly supplied this past Friday.

Accordingly, we hereby demand that RegisterFly immediately send to ICANN via electronic means (and additionally via a DVD for delivery tomorrow morning at ICANN's offices located at 4676 Admiralty Way, Suite 330, Marina del Rey, California 90292), all of RegisterFly's current, complete and correct data. We further demand that RegisterFly provide updates to that data every 48 hours thereafter, for as long as it maintains any records associated with its failed accreditation.

As you know, we have revoked RegisterFly's accreditation effective 31 March 2007. As you also know this data is necessary for us to take action to bulk transfer RegisterFly's

Exhibit N 110



registrations, with as little disruption to the registrants as possible, when termination of RegisterFly's accreditation becomes final. As stated many times before, RegisterFly is required to fully cooperate with that transfer.

Given RegisterFly's failure to provide current and complete data, you are also now on notice that RegisterFly has failed to cure its continued breaches of the RAA identified in ICANN's March 2, 2007 "Second Notice of Breach and Notice to File Suit" (the "March 2 Notice"). In accordance with sections 5.3 and 5.3.4 of the RAA, ICANN hereby gives RegisterFly notice of further formal notice of termination and that the impending termination of the RAA is based, in part, on RegisterFly's failure to cure these continuing breaches.

In totality, it is clear that RegisterFly is providing a disservice to the many registrants that have trusted you to provide domain name registration services. You are also disrupting other DNS service providers and causing harm throughout the industry (in particular negatively impacting ICANN and the registries which are required under their agreements with ICANN to provide you service). Despite all of this, you have elected to ignore our demand that you remove ICANN Trademarks from your website. Failure to remove those Trademarks is inexcusable and against the law. You must remedy this immediately.

Very truly yours,

A large, bold, handwritten signature in black ink, appearing to read "John O. Jeffrey".

John O. Jeffrey
General Counsel

cc: Mr. Kurt Pritz
Amy A. Stathos, Esq.
Jeffrey A. LeVee, Esq.
Harold Rabner, Esq.
Mitchell Novick, Esq.

1 **PROOF OF SERVICE BY OVERNIGHT DELIVERY AND ELECTRONIC**
2

3 I am a citizen of the United States and employed in Los Angeles County,
4 California. I am over the age of eighteen years and not a party to the within-entitled
5 action. My business address is 555 South Flower Street, Fiftieth Floor, Los
6 Angeles, California 90071-2300. On March 29, 2007, I deposited with Federal
7 Express, a true and correct copy of the within documents:

8 **DECLARATION OF KURT PRITZ IN SUPPORT
9 OF ICANN'S APPLICATION FOR TRO**

10 in a sealed envelope, addressed as follows and by transmitting electronically the
11 document(s) listed above:

11 Kevin Medina
12 RegisterFly.com, Inc.
13 960 Arthur Godfrey Road
14 Suite 402
15 Miami Beach, FL 33140
16 Email: kevin@unifiednames-inc.com

 Harold Rabner, Esq.
 Rabner, Allcorn, Baumgart & Ben
 Asher, P.C.
 52 Upper Montclair Plaza (Upper
 Montclair)
 Montclair, New Jersey 07043
 Email:
 hrabner@rabnerallcorn.com

16 Mitchell Novick, Esq.
17 Law Offices of Mitchell P. Novick
18 66 Park Street
19 Montclair, New Jersey 07042
20 Email: mnovick@mitchellnovick.com

21 Following ordinary business practices, the envelope was sealed and placed
22 for collection by Federal Express on this date, and would, in the ordinary course of
23 business, be retrieved by Federal Express for overnight delivery on this date.

24 I declare that I am employed in the office of a member of the bar of this court
25 at whose direction the service was made.

26 I declare under penalty of perjury under the laws of the State of California
27 that the above is true and correct.
28

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Executed on March 29, 2007, at Los Angeles, California.

Martha L. Espelage-Alvarez
Martha L. Espelage-Alvarez