

REGISTRAR AGREEMENT

Version 3.2 FINAL

Between

Council of Country Code Administrators Incorporated
and

Statement of Purpose:

This CoCCA Accreditation Agreement - when accompanied by a Registry Operator – Registrar Agreement, (where applicable) grants a registrar a right to access a CoCCA member's country code Top Level Domain (ccTLD) registry for the purpose of processing applications to register a domain name or to maintain an already registered domain name.

The CoCCA accreditation program benefits both the registrar community and the ccTLD Manager by introducing a harmonized commercial and public policy environment across ccTLDs managed by CoCCA members.

The Model:

Step One: The Sponsoring Organisation of a ccTLD assigns (a non-exclusive) authority for accreditation to CoCCA. The CoCCA Accreditation Agreement is concerned with the application and harmonization of applicable policies. The commercial and technical arrangements may be captured in a collateral agreement, the Registry Operator – Registrar Agreement. If no collateral agreement is in place, a Registrar is fully accredited, but pricing and technical specifications are subject to change at the sole discretion of the Sponsoring Organisation.

Step Two: CoCCA accredits registrars so long as:

- The registrar binds registrants to policies in the applicable ccTLD, including (where applicable) a ccTLD Registrant Agreement, during the registration and renewal processes; and
- The registrar complies with the commercial terms and operational rules in the Registry Operator – Registrar Agreement (where applicable and required by the ccTLD Administrator).

Step Three: Registrar enters into Registry Operator – Registrar Agreement with the relevant ccTLD registry operator.

REGISTRAR AGREEMENT

THIS AGREEMENT is made on the Commencement Date specified in Item 1 of Schedule One.

BETWEEN:

COUNCIL OF COUNTRY CODE ADMINISTRATORS INCORPORATED 2219209 (“CoCCA”) a not-for-profit, member owned company operating from 11a Wynyard Street, Devonport, Auckland NZ 0624

And

The company named and described in Item 3 of Schedule One (“the Registrar”)

RECITALS:

A. CoCCA has been assigned a non-exclusive authority to designate and accredit registrars who, as a result of CoCCA accreditation, are authorised to accept and process applications to register Domain Names in a Country Code Top Level Domain managed by a CoCCA member.

B. CoCCA is committed to exercising its responsibilities to the Registrar, the ccTLD Sponsor, applicable local communities and the global Internet community in an open and transparent manner and to apply standards and policies in a manner that is not arbitrary, unjust nor inequitable.

C. The Registrar wishes to be a registrar accredited by CoCCA to provide Registrar Services for one or more of the ccTLDs managed by CoCCA members on a non-exclusive basis.

D. The Registrar warrants that it has the technical ability to act as a registrar.

E. CoCCA and the Registrar have agreed to enter into an agreement on the terms and conditions contained in this Agreement.

IT IS AGREED:

INTERPRETATION

1. Definitions

In this Agreement the following terms will have the meanings assigned to them:

“Accreditation Criteria” means the requirements specified by CoCCA from time to time in relation to the minimum criteria, which must be met and satisfied by a person in order for that person to be accredited as a registrar by CoCCA.

“Agreement” means this agreement.

“API” means **A**pplication **P**rogramming **I**nterface, and is the language and message format used by an application program to communicate with the operating system or some other control program(s) such as a database management system or a communications system.

“Authoritative Root” means the DNS root server of the Internet, also referred to as the Internet “A root”, which at the time of execution of this Agreement was controlled by ICANN, and identifies all ccTLD zone root servers, including the CoCCA member ccTLD root servers.

“Business” means the business of the provision of the Registrar Services to be carried on by the Registrar.

“Business Day” means any weekday from Monday to Friday other than a Gazetted public holiday in New Zealand.

“ccTLD” means a country code top level domain in the domain name hierarchy (for example, .cx in Christmas Island, .tl for Timor-Leste).

“ccTLD Database” is a database of all second level Domain Names and certain third level Domain Names and associated contact information that enables the TLD Sponsor to establish contact with the individual responsible for the domain, and that data which is used to create zone files for a ccTLD.

“ccTLD Manager” means the entity responsible for policy development and the stability and interoperability of a ccTLD with the DNS, normally the entity designated as the Sponsoring Organisation by the IANA. (<http://iana.org>)

“CoCCA” means **COUNCIL OF COUNTRY CODE ADMINISTRATORS INCORPORATED (2219209)** a not-for-profit, member owned company

operating from CoCCA Registry Services (NZ) Ltd., 11a Wynward Street, Devonport, Auckland NZ 0624

"Commencement Date" means the date specified in Item 1 of Schedule One.

"Confidential Information" means all information, in any material form or medium that is:

- a. Disclosed or communicated by CoCCA or on behalf of CoCCA, a CoCCA member, the Registrar, or a related corporation to the Registrar; or;
- b. Created, ascertained, discovered or derived by any of the parties to this Agreement, whether directly or indirectly, from any such information disclosed or communicated by or on behalf of CoCCA, a CoCCA member, the Registrar, or a related corporation to the Registrar;

Including, without limitation:

- a. The terms of this Agreement and any information arising from or relating to the commercial or financial activities, arrangements or position of CoCCA, or the Registrar, or any of the dealings, transactions or affairs of the business of CoCCA or the Registrar and

Any other information the parties consider confidential and proprietary.

- b. It does not include information already in the public domain unless such information arrived there by unauthorised or unlawful means.

"Domain Name" means a domain name in the member top level domain MTLTLD.

"Domain Name Application" means an application by a Registrant for a Domain Name Licence or the renewal of an existing Domain Name Licence.

"Domain Name Licence" means the license to use a Domain Name for a specified period of time as evidenced by the execution of the Registrant Agreement issued by ccTLD manager and or the Registrar to a Registrant.

"Effective Control" means in relation to a body corporate, the ability of any person to exercise control (which includes the ability to remove or appoint all or a majority of the directors of the body corporate) over the body corporate by virtue of holding of voting shares in that body corporate or by any other means.

"Event of Force Majeure" means an event or circumstance beyond the reasonable control of the party as further described in Section 11.1.

"IANA" means the Internet Assigned Numbers Authority.

"ICANN" means the Internet Corporation for Assigned Names and Numbers, a California based non-profit corporation, which oversees the IANA and has been designated by the United States government to serve as the global consensus entity to which the United States government has transferred responsibility for the four key functions of the Internet:

- The management of the domain name system;
- The allocation of Internet Protocol ("IP") address space;
- The assignment of protocol parameters; and
- The management of the root server system.

"Insolvency Event" means the happening of any of the following events:

- A party, being an individual, commits an act of bankruptcy; or
- An order is made or an application is made to a court for an order that CoCCA or the Registrar be wound up; or
- An application is made to a court for an order appointing a liquidator or provisional liquidator in respect of CoCCA or the Registrar; or
- A receiver, receiver and manager, administrator, controller, liquidator or provisional liquidator is appointed in respect of CoCCA or the Registrar; or
- CoCCA or the Registrar becomes insolvent; or
- CoCCA or the Registrar enters into or resolves to enter into a scheme of arrangement, deed of company arrangement, compromise or composition with or assignment of any of its property for the benefit of all or any class of its creditors, or it proposes a re-organisation, moratorium or other administration involving any of them; or
- The holder of an encumbrance or charge takes any step towards taking possession or takes possession of any assets of a party or exercises any power of sale; or
- A party ceases to carry on business.

"Internet" means the large network made up of a number of smaller networks connecting computers for the purpose of transmitting, communicating or providing information and messages electronically, known commonly as "the Internet".

"MTLD" means Member Top Level Domain, being a Domain Name at the second or lower level of a ccTLD's domain name hierarchy that the ccTLD manager for that ccTLD has granted CoCCA a right to accredit registrars.

“CoCCA Privacy Principles” unless specifically amended, is the CoCCA Privacy Policy posted online at <http://cocca.cx>.

“Parties” means the parties to this Agreement and "party" means any one of the parties.

“Payment Gateway” means an automated on-line payment processing, revenue billing and collection system that is utilised by the Registrar to make payment for Domain Names.

“Published Policies” means applicable specifications and policies published at or accessible via <http://cocca.cx>.

“Registrant” means a holder of or applicant for a Domain Name Licence, and includes its agent.

“Registrant Agreement” means the agreement to be entered into on renewal or registration between a Registrant and the ccTLD Manager and where applicable, the Registrar - in relation to a Domain Name to this Agreement as amended and modified by CoCCA and notified from time to time.

“Registrar” means the party named and described in Item 3 of Schedule One.

“Registrar Fee” means the registry fee payable by the Registrar to the Registry Operator as set out in Schedule One or via the Registry's web-based interface.

“Registrar Services” means the provision of the services by the Registrar as set out in this Agreement in respect of the MTLTD, including without limitation the following services:

- To process and apply to the Registry to register a Domain Name on behalf of a Registrant;
- Billing and collecting revenue in relation to services provided with respect to Domain Names;
- Sending necessary Domain Name System (“DNS”) and Registration Contact Information to the Registry for entry into the applicable ccTLD database;
- To provide all associated services to such Registrants, including services relating to the maintenance, transfer, modification, renewal and cancellation of a Domain Name or Domain Name License.

“Registrar Software” means that certain software which makes it possible for the Registrar to register Domain Names, specifically that set of programming statements or instructions which coordinates and communicates the

Registrar's registration services with the applicable CoCCA member ccTLD database.

"Registrar Website" means the website maintained by the Registrar for the purpose of providing MTLTLD Domain Name registrations to potential registrants pursuant to this Agreement.

"Registration Fees" means those fees paid by a Registrant for registration of a Domain Name.

"Registrant Core Information" means:

- o The Registrant's legal name;
- o The Registrant's physical address;
- o The Registrant's telephone number
- o The Registrants e-mail address
- o The Registrant's State or Province - if applicable
- o The Registrant's country;
- o The Domain Name;
- o The name servers the Domain Name is to be delegated to;
- o The term of registration of the Domain Name;

"Registry API" means the API owned by or licensed to CoCCA members and (sub)licensed to Registrars pursuant to this Agreement, which Registry API is provided as a means to register Domain Names and make changes to Registration Information and the Registry Database.

"Registry Operator" means that particular entity which maintains the applicable ccTLD database and specifically which receives DNS information and Registrant information from domain name registrars, inserts that information into a centralised database ("the **Registry Database**") and propagates the information in Zone File Data on the Internet such that Internet users around the world can access Internet domain names in the Registry database via the DNS and specifically through such applications such as the world wide web and electronic mail.

"Registry Data" means all data maintained by the Registry Operator in electronic form in the ccTLD database, including Zone File Data, and Registration Information, and all other data required by the Registry Operator and subsequently submitted by accredited registrars, which data is required to properly delegate and generate zone files for a particular ccTLD and maintain a WHOIS service for the ccTLD.

"Registry Technology" means the Registry API, any account and/or websites provided by CoCCA and/or a Registry Operator through which the Registrar and/or Registrants may use and/or configure services obtained from

CoCCA and/or the Registry Operator, and Source Tracking Identifiers.

“Related Entity” in relation to a body corporate, means any of the following, unless specifically amended:

- (a) A promoter of the body;
- (b) A relative of such a promoter;
- (c) A relative of a spouse of such a promoter;
- (d) A director or member of the body or of a related body corporate;
- (e) A relative of such a director or member;
- (f) A relative of a spouse of such a director or member;
- (g) A body corporate that is related to the first-mentioned body;
- (h) A beneficiary under a trust of which the first-mentioned body is or has at any time been a trustee;
- (i) A relative of such a beneficiary;
- (j) A relative of a spouse of such a beneficiary;
- (k) A body corporate one of whose directors is also a director of the first-mentioned body;
- (l) A trustee of a trust under which a person is a beneficiary, where the person is a related entity of the first-mentioned body because of any other application or applications of this definition.

“Reseller” means a person appointed by the Registrar to sell domain name services and provide customer services to Registrants, which domain name services are provided by the Registrar.

“Reseller License” means any contract, arrangement or understanding between the Registrar and a Reseller in relation to the Reseller selling the services of the Registrar to Registrants.

“Source Tracking Identifiers” means the identifier created by CoCCA that will facilitate the tracking by the Registrar and CoCCA and/or a Registry Operator of all registrations through the shared registry interface.

“Term” means the term or period specified in Item 5 of Schedule One.

“URL” means a Uniform Resource Locator defining the address of a website on the Internet.

“WHOIS Service” means the protocol used to provide a public information service in relation to data in a registry.

“Zone File Data” means a file or data that contains the mapping between each domain name in the ccTLD registry and the Internet addresses of computers that can resolve sub-domains of the domain name to Internet Protocol addresses.

2. Construction

In this Agreement unless the contrary intention appears or the context otherwise requires:

- Words importing the singular include the plural and vice versa, and any gender includes all genders.
- An agreement, representation, warranty or obligation in favour of two or more persons is for the benefit of them jointly and severally.
- An agreement, representation, warranty or obligation on the part of two or more persons will bind each of them severally, only to the extent of their obligations individually pursuant to this Agreement.
- If a word or phrase is given a particular meaning then cognate words and phrases have corresponding meanings.
- Unless otherwise agreed, all prices, sums of money and payments referred to in this Agreement will be in Australian currency.
- If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- If an act prescribed under this Agreement to be done by a party on or by a given day is done after 5.00 p.m. on that day, it is to be taken to be done on the following day.
- A reference to:
 - A person includes a firm, body corporate, an unincorporated association or an authority and includes a reference to the person's executives, administrators, successors, substitutes (including but not limited to persons taking by novation) and permitted assigns;
 - A statute, ordinance, code or other law includes regulations and other statutory instruments¹ under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority;
 - This Agreement or any other instrument includes any variation or replacement of either of them notwithstanding any change in the identity of the parties;

- A recital, clause, schedule, annexure or appendix is a reference to a recital clause of or schedule, annexure or appendix to this Agreement and references to this Agreement include any recital, schedule, annexure or appendix;
- Writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
- Time is to local time in the Country of New Zealand;
- A day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- Anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- A month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next calendar month but if a corresponding day does not occur in the next calendar month the period will end on the last day of that next calendar month;
- A right includes a remedy, authority or power;
- A person, body or authority which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged or the functions of which have become exercisable by any other person, body or authority in its place will be taken to refer to the person, body or authority established or constituted in its place or by which its functions have become exercisable.

2.1 Headings

Headings, marginal notes and the index are inserted for convenience and will be ignored in constructing this Agreement.

2.2 Recitals

The Recitals form part of this Agreement and the parties acknowledge that the Recitals are true and correct.

3. TERM OF AGREEMENT

3.1 This Agreement has effect on and from the Commencement Date and continues for the Term or until it is earlier terminated.

3.2 This Agreement will be automatically renewed after the end of the initial Term on a month to month basis, under the same terms and conditions as this Agreement (save for the length of the Term of such renewed agreement) until and unless, during a renewal Term, either party provides written notice of termination of the Agreement to the other party thirty (30) days or more prior to the first day of any calendar month, and on the giving of such notice this Agreement will terminate at midnight New Zealand time on the day before such first day of the month.

4. REGISTRAR and CoCCA OBLIGATIONS

4.1 CoCCA hereby grants to the Registrar the non-exclusive right to act in the capacity as Registrar for the Designated MTL D(s) specified in paragraph 4 of Schedule One, (which may be modified subsequently modified by mutual agreement) with the ability to offer Registrar Services to Registrants and specifically to cause registration for Registrants of Domain Names that are not already registered or otherwise restricted by a CoCCA Member's policies.

4.2 The Registrar acknowledges and agrees that there is no limit on the number of registrars, which CoCCA may accredit or appoint, and that CoCCA has entered into this Agreement in reliance upon the representations and warranties contained in this Agreement.

4.3 The Registrar represents and warrants to CoCCA:

- a. On the Commencement Date, that it meets the Accreditation Criteria; and
- b. As a continuing warranty during the Term, that it continues to meet the Accreditation Criteria;
- c. As a continuing warranty during the Term, that it continues to meet and comply with the CoCCA Registrar Policy and the CoCCA Code of Conduct as published and amended from time to time;
- d. That all written information and reports which it has furnished or will furnish to CoCCA in connection with this Agreement:
 - i. Are true, accurate and not misleading in any material aspects, whether by way of omission or otherwise; and
 - ii. Where appropriate, contain forecasts and opinions all of which were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and are fair and reasonable.

4.4 The Registrar must promptly notify CoCCA if the Registrar becomes aware at any time:

- a. That it does not meet any of the Accreditation Criteria; or
- b. Of any circumstance, fact or thing that affects its ability to continue to meet the Accreditation Criteria.

4.5 The Registrar will advertise the availability of registration services in the Designated MTL D(s), including but not limited to informing internet users of the availability of the Designated MTL D(s) via the Registrar Site.

4.6 The Registrar is responsible for the development, operation and maintenance the Registrar Website for registration of Domain Names in the Designated MTL D(s) and for provision of the Registrar Services, and is responsible for all materials and content appearing on the Registrar Website. The Registrar's responsibilities include but are not limited to:

- a. The technical operation of the Registrar Website and all related equipment;
- b. The accuracy and propriety of all materials or content posted on the Registrar Website; and
- c. Ensuring that all content and materials posted on or appearing on the Registrar Website do not violate or infringe upon the rights of any third party and are not libellous or otherwise illegal.

CoCCA and the Registry Operator(s) disclaim all liability for operation of, and content or materials posted or appearing on, the Registrar Website.

4.7 Registrar Websites and content or materials accessed from, accessed by means of, or contained or displayed thereon shall not:

- a. Contain, promote or link to sexually explicit, violent, defamatory, infringing or illegal material;
- b. Contain unlawful material, including material that may violate the intellectual property rights of a third party;
- c. Contain material that promotes discrimination based on gender, religion, race, age sexual orientation, national origin or mental or physical disability;
- d. Contain misleading, inaccurate or fraudulent material, or omit statements that would cause confusion or deceive consumers or potential registrants if omitted.

4.8 The Registrar acknowledges and agrees that it must not assign, transfer or sub-licence the Registrar Services or the Registrar's rights under this Agreement without the prior written consent of CoCCA; provided, however, that such consent is hereby provided if a transfer is:

- a. to a parent or subsidiary corporation of the Registrar,
- b. part of a corporate re-organisation which does not change the Effective Control of Registrar, or
- c. to an entity which acquires substantially all of the assets of the Registrar and
- d. Provided that the transfer will not result in a violation of any provision of this Agreement (including, without limitation, that the transferee will continue to meet the accreditation criteria), and the transferee agrees to assume all rights and obligations of this Agreement without modification.

4.9 Unless otherwise approved in writing by CoCCA the Registrar shall provide a link to the CoCCA or Members Published Policies at or via <http://www.cocca.org.nz> ("**Policy Site**") and shall not maintain any policies which conflict with or attempt to supersede the Published Policies displayed on the Policy Site. Each Registrant must clearly acknowledge that they are bound by Published Policies, and each Registrant must also be made aware at the time of registration or renewal that they are entering into a collateral Registrant Agreement with the applicable CoCCA member, and must accept that they are bound by that agreement and those Policies.

4.10 The Registrar acknowledges that it has read and will, as an integral part of the processing of applications and renewals, make registrants aware of and bind registrants to the following:

- a. The applicable CoCCA member's Registration Agreement (and those policies included by reference) as modified periodically and published via <http://cocca.org.nz>;
- b. The applicable CoCCA Complaint Resolution policies as modified periodically and published via <http://cocca.org.nz>;

4.11 The Registrar shall contract or maintain a technical infrastructure system for the provision of the Registrar Services, which includes the following:

- a. A constant and high speed connection to the Internet;
- b. Secure computer servers to host the Registrar Software and provide, keep and maintain the Registrar Website for provision of the Registrar Services; and
- c. The Registrar may only cause registration of Domain Names in the Designated MTLN(s) via the Registry API and such other means as may be provided by CoCCA from time to time, and shall not attempt to cause registration of Domain Names through any other source or means.

4.12 The Registrar shall make reasonable commercial efforts to provide Registrants with Registrar Services by means of the Registrar Website twenty four (24) hours each day and seven (7) days each week.

4.13 The Registrar must utilise the Registry API and the Registry Technology consistently with the requirements for the same set forth by CoCCA and the Registry Operator. In that regard, the Registrar will have the burden of reasonable programming and/or requirement procurement to ensure compatibility with the Registrar Software and with the Registrar's transmission requirements relating to the same.

4.14 CoCCA grants to the Registrar a non-exclusive, non-transferable, royalty-free licence to use the Registry Technology during the term of this Agreement as follows:

- a. The licence is granted solely for the purpose of causing registration of Domain Names in the Designated MTLN(s) and updates thereto through the shared registry system, except for the rights expressly granted in this paragraph 3.14, CoCCA retains all rights in the Registry Technology;
- b. Registrar agrees that it shall not directly or indirectly reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the Registry Technology;
- c. Registrar agrees that it shall not branch or otherwise prepare derivatives of the Registry API;
- d. Registrar agrees that it shall not use the Registry Technology to communicate with, access, or control system(s) other than those designated by CoCCA and that Registrar shall use the Registry Technology only to communicate with, access, or control the system(s) designated by CoCCA;
- e. Registrar agrees that it shall not intentionally or negligently abuse the Registry Technology, wherein "abuse" shall mean any action or conduct which, in the opinion of CoCCA, degrades any other party's reasonable communication with, access to, or control over the Registry Technology; and
- f. CoCCA retains all right, title, and interest in and to Registry API and associated software programs. The licence is terminable and shall expire at the will of CoCCA immediately upon the termination of this Agreement.

- g. CoCCA's infringement indemnification of Registrar in relation to the Registry Technology: CoCCA will defend and indemnify Registrar against a claim that the Registry Technology infringes a copyright, a patent, or other intellectual property right, provided that:
 - i. Registrar notifies CoCCA in writing within 30 days of the claim;
 - ii. CoCCA has sole control of the defence and all related settlement negotiations; and
 - iii. Registrar provides CoCCA with the assistance, information and authority necessary to perform CoCCA's obligations under this Section, inclusive of its subsections.

If the Registry Technology is held or believed by CoCCA to infringe, CoCCA shall have the option, at its expense, to

- a. modify the Registry Technology to be non-infringing; or
- b. obtain a license to continue using the Registry Technology.

If it is not commercially reasonable to perform either of the above options, then CoCCA may terminate the license with respect to the infringing Registry Technology and refund as cash that portion of payments by Registrar to CoCCA or an applicable Registry Operator in the preceding twelve months for the services which can reasonably be allocated to such Registry Technology, subject to the overall Limitation on CoCCA's Liability found in this Agreement. This section states CoCCA's entire liability and Registrar's exclusive remedy for infringement by the Registry Technology.

CoCCA shall have no liability for any claim of infringement based on any of the following and for all such claims, the Registrar agrees to indemnify and defend CoCCA from and against all damages, costs and expenses, including reasonable attorneys' fees:

- a. Registrar's use of a superseded or altered release of the Registry Technology if the infringement would have been avoided by the use of a current unaltered release of the Registry Technology; or
- b. Combination of the Registry Technology with a non-CoCCA product, program or data; or
- c. Adaptation or modification of the Registry Technology by Registrar or by CoCCA at Registrar's direction pursuant to a written agreement.

4.15 The Registrar shall offer technical and administrative support to its Registrants. Upon CoCCA's request, the Registrar will provide CoCCA with its customer service Policies (e.g. Hours of operation, availability of telephone support, availability of e-mail support, etc).

4.16 CoCCA may determine the applicability of Published Policies from time to time with respect to the registration of Domain Names in the MTL D(s). The Registrar will ensure that it complies with such CoCCA Published Policies and the Registrar Code of Conduct. Subject to CoCCA Published Policies the Registry Operator will be responsible for, and shall have discretion with respect to, implementation of CoCCA Published Policies relating in any way to the MTL D. At the direction of CoCCA the Registry Operator and Registrar shall carry out and enforce such CoCCA Published Policies. By way of example, and without limitation, the Registrar must,

Prior to registering any Domain Name in a Designated MTL D, require such Registrant to enter into and agree to be bound by the Registrar's standard Service Agreement, which shall contain links to CoCCA's and the ccTLD managers Published Policies;

Revenue, Billing and Policy Applicability:

- o The Registrar may, in its sole discretion, determine and set fees to be charged to any and all Registrants for the registration of Domain Name(s) in the Designated MTL D(s) (the "**Standard Registration Fee**").
- o The Registrar shall strictly comply with the terms of this Agreement and those CoCCA Published Policies posted and provided by CoCCA at its <http://www.cocca.cx/> website or such other internet site as may be designated by CoCCA from time to time. Registrants who register a Domain Name through the Registrar are deemed to be entering into an agreement with the applicable CoCCA Sponsoring Organisation. Accordingly, all of the CoCCA Member's Published Policies, and operating procedures concerning Registrants' Domain Name Applications, and Registrar Services, apply to those Registrants. The Registration Agreement and CoCCA Published Policies may be modified, supplemented, or amended from time to time by the CoCCA Member in its sole discretion. The Registrar must not publish, alter, amend or display the CoCCA Registration Agreement or CoCCA Published Policies on the Registrars Website or materials, but must provide Registrants with links to the relevant CoCCA Published Policies page at a URL designated by CoCCA. All accredited Registrar's Websites and materials may not fall within the specific scope of such CoCCA Published Policies. Breach of this section will be deemed a material breach of this agreement.

4.18 Disclosure of Information:

(1) The Registrar must at all times provide true, accurate and current contact information in any and all Registrar Websites and materials so that Registrants or potential Registrants are able to contact the Registrar regarding its services.

(2) CoCCA may not contact or enter into any commercial transactions directly with any affiliate, customer, partner or contact of Registrar's without Registrar's prior written consent.

4.19 The Registrar must at all times comply with any and all laws concerning consumer protection, fair trading, taxation and sales over the Internet, and any other applicable laws.

4.20 The Registrar must not engage in communications or activity which may involve deceptive marketing practices such as the fraudulent offering of products, items or services.

4.21 Registrar agrees to review and follow the "Operational Rules" published by CoCCA and/or the Registry Operator, a copy of which may be currently found at <http://cocca.org.nz>, which Operational Rules and Recommendations may be updated from time to time upon the giving to the Registrar sixty (30) days advance prior written notice of any changes or updates.

4.23 Registrar agrees to provide accurate and *correct* Registrant Core Information to the registry, the contact information provided to the registry must correspond to, and match exactly the contact information the registrant has provided to the registrar. Providing "proxy", "agent" or other data that in any way obfuscates contact information, requires the registry to work through the registrar (or another agent) as an intermediary, makes it difficult for the registry to contact the registrant, or prevents registrants from retrieving "authcodes" without facilitation by the registrar is a material breach of this Registrar Agreement.

Registrars may supplement some of the "Registrant Core Information" with additional "Registrant WHOIS Information"- where the registrant has explicitly directed the registrar to do so.

Supplemental registrant WHOIS Information (if provided), will be displayed to entities that query the public WHOIS Server, individuals initiating a query will be advised that certain contact information is that of an agent and will be given advice on how to order a full Historical Abstract. Historical Abstracts attract a fee and contain all historical information available - including both agent and Registrant Core Information.

4.24 CoCCA will use its best efforts to process all domain name registration requests and renewals submitted by Registrar and register the requested domain name in the ccTLD registry within twenty-four (24) hours after receipt of the request.

4.25 CoCCA shall provide engineering and customer service support in accordance with Schedule Four.

4.26 CoCCA agrees to cooperate with Registrar in administering all system tests of the CoCCA API and Registry Technology deemed reasonably necessary by the Registrar. During the Term of this Agreement, CoCCA agrees to provide Registrar with reasonable engineering telephone support to address engineering issues arising in connection with Registrar's use of the API and the Registry Technology.

4.27 CoCCA agrees to make best commercial efforts to maintain performance of its registry system in accordance with the service levels described in Schedule Three.

5. REGISTRY FEE AND PERFORMANCE

5.1 Registrar Fee

The Registrar will pay the Registrar Fee to the Registry Operator for each new registration of Domain Name inserted into the MTLT register and/or each subsequent renewal made by the Registrar after the Commencement Date, to be paid in accordance with the Registry Operator – Registrar Agreement for the MTLT. In the event a collateral Registry Operator – Registrar Agreement is not in place, the fees required to facilitate registration or renewal will be set by CoCCA or a CoCCA member. In that regard, the Registry Operator is a third party beneficiary of this Agreement. Accordingly, CoCCA, the Registry, or both CoCCA and the Registry, may bring an action against the Registrar in the event of a breach of this clause 5.1.

6. INTELLECTUAL PROPERTY RIGHTS; CONTACTING REGISTRANTS

6.1 Registrar hereby agrees to provide the Registrant Core Information, (as defined above section one) to the Registry Operator in order to effect or maintain the registration of a Domain Name and comply with relevant TLD policy.

6.2 Registrar acknowledges and agrees that CoCCA or the Registry Operator may, on behalf of the ccTLD manager, contact a Registrant directly when:

- a. a response to a communication, complaint or query is required from the Registrant in order to resolve a complaint or ensure compliance with ccTLD policy;
- b. validation of contact information provided to the Registry by the Registrar is required; and
- c. confirmation that the Registrant has read, and is agreement with, applicable ccTLD policy and agreements is required.

6.3 The Registry Operator will make their reasonable commercial efforts to implement technology in the provision of the public WHOIS Services to protect personal information and minimise the risks associated with automated harvesting of personal information from the WHOIS database.

6.4 Registrar agrees and acknowledges that CoCCA and/or any Registry Operator shall own all database, compilation, collective and similar rights, title and interests worldwide in any database(s) containing Registration Information and all information and derivative works generated from the database(s). CoCCA and/or any Registry Operator shall not have any ownership interest in a single Registrant's specific Registration Information outside of CoCCA's and/or any Registry Operator's rights in such database(s)

7. WARRANTIES AND INDEMNITY

- a. CoCCA represents, warrants and guarantees that:
- b. It is authorised to grant accreditation rights in respect to the MTLT(s) noted in this Agreement;
- c. It does not have any reason to believe that its authorisation may be revoked, rescinded, altered, modified, or otherwise re-delegated;
- d. It has the full and unrestricted right to enter into this Agreement and to grant the rights to the Registrar pursuant to this Agreement, and that there are no other Agreements with any third party in conflict with the provisions of this Agreement; and
- e. CoCCA's license to the Registrar to use the Registry Technology does not infringe upon the rights of any third party, subject to the remedy and limitation of liability provided in this agreement.

7.2 The Registrar represents, warrants and guarantees that:

- a. It has the technical ability and infrastructure to act as Registrar pursuant to this Agreement;
- b. It will strictly comply with the requirements set out in this agreement; and
- c. It has the full and unrestricted right to enter into this Agreement, and there are no other agreements with any third party which conflict with its obligations under this Agreement.

7.3 Except as set forth to the contrary, each party will defend, indemnify and hold the other party (which, in the case of CoCCA, includes the Registry Operator(s)) harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable legal fees and expenses) associated with any claim or action brought against the indemnified party by a third party arising out of (i) any breach or alleged breach of any of the representations and warranties of the indemnifying party contained herein, or (ii) the indemnifying party's intentional, unlawful, or reckless acts or omissions. The indemnified party shall notify the indemnifying party promptly of any such claim it learns of in writing, provided, however, that the failure to give such notice shall not relieve the indemnifying party of its obligations hereunder except to the extent that the indemnifying party was actually and prejudiced by such failure. The indemnifying party will have the sole right to conduct the defence of any such claim or action and all negotiations for its settlement or compromise unless otherwise agreed to in writing by the parties. However, if the indemnifying party, after receiving notice of any such claim, fails immediately to begin the defence of such claim or action, the indemnified party may (with notice to the indemnifying party) retain counsel and undertake the defence, compromise, or settlement of such claim or action at the expense of the indemnifying party.

8. CONFIDENTIAL INFORMATION

8.1 The Registrar and CoCCA, will not, from the date of signing this Agreement, during the term of this Agreement or at any time thereafter, directly or indirectly disclose to any person, firm or corporation or any other person any Confidential Information, trade secrets, secret formula, processes or instructions which has been given or disclosed to either party, and both parties will regard at all times, will guard Confidential Information as a trade secret and will use the same only in connection with the duties rendered under this Agreement.

8.2 The contractual relationship between CoCCA and the Registrar is founded on trust. Any breach of this trust by the Registrar such as the unauthorised disclosure to a third party of Confidential Information about the Business even after termination of this Agreement, will render the Registrar liable to disciplinary action, and/or civil proceedings to restrain the Registrar from disclosing the Confidential Information to a third party or making personal use of it without written authority from a senior manager of CoCCA or for damages if loss to CoCCA results from the unauthorised disclosure.

8.3 On or before the termination of this Agreement, upon Registrar's receipt any written request by CoCCA, the Registrar will forthwith within a period of four (4) business days, erase or otherwise destroy all Confidential Information and other property or materials belonging to CoCCA contained

in computer memory, magnetic, optical, laser, electronic or other media in their possession or control which is not capable of delivery to CoCCA.

9. LIMITATION OF LIABILITY

9.1 The Registrar acknowledges and agrees that if the Registrar has any outstanding fees owing to CoCCA for more than thirty (30) days after CoCCA has notified Registrar of the overdue fees, CoCCA may in its sole discretion terminate the Registrar Agreement.

9.2 The Registrar acknowledges and agrees that CoCCA is not responsible in any way for the use of any Domain Name in the Registry database and that CoCCA is not responsible in any way for any conflict or dispute with or any actual or threatened claim against a Registrar or Registrant, including one relating to a registered or unregistered trade mark, a corporate, business or other trade name, rights relating to a name or other identifying indicia or of an individual or other intellectual property rights of a third party, or relating to the defamation or unlawful discrimination with respect to any other person.

9.3 Except for those claims addressed by the indemnification provisions, and to the fullest extent permitted by law, CoCCA and the Registry Operator(s) will not be liable to the Registrar nor shall Registrar be liable to CoCCA or the Registry Operator(s) for consequential, indirect or special losses or damages of any kind whatsoever (including without limitation loss of profit, loss or corruption of data, business interruption or indirect costs) suffered by such party as a result of any act or omission whatsoever of the other party and the other parties' employees, agents or sub-contractors or because of any service or system failure, Domain Name system failure, registry system failure, root server failure, internet protocol address failure, access delays or interruptions, data non-delivery or mis-delivery, unauthorised use of passwords, unauthorised use of registration services arising from "hacking" or otherwise, or breach of security, even if the other party has been advised of the potential for such damages and even if the other party may foresee such potential damages. Except as expressly provided herein otherwise, CoCCA's, Registry Operators' and Registrar's liability will be limited to the aggrieved party's direct damages which are the proximate result of a willful or negligent act or omission. The parties agree that Registrar's direct damages shall be limited to the fees paid by Registrar to CoCCA or a Registry Operator in relation to the specific services, which gave rise to the claim.

9.4 All conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law. If CoCCA breaches any term, condition or warranty implied in favour of the Registrar by the Fair Trading Act of 1986 (New Zealand) or any other applicable law which cannot lawfully be excluded, then to the extent

permitted by the applicable law, the liability of CoCCA for any such breach will be limited, at the option of CoCCA, to:

- a. In the case of goods - replacing, repairing or paying the cost of replacing or repairing the goods; or
- b. In the case of services - supplying the services again or paying the cost of having the services supplied again.

9.5 Nothing in this Agreement is intended to exclude the operation of the applicable Fair Trading Acts.

10. TERMINATION

10.1 This Agreement will commence on the Commencement Date for the Term, and will continue until the end of the Term unless earlier terminated by CoCCA or the Registrar in accordance with the provisions of this Agreement.

10.2 CoCCA will have the right to terminate this Agreement immediately by notice in writing to the Registrar upon the happening of any of the following events:

- a. The Registrar fails to perform and observe any material term of this Agreement on its part to be performed or observed, and:
- b. The Registrar fails to remedy the same; or
- c. In the case of a breach incapable of remedy, fails to tender reasonable compensation for the breach, within seven (7) business days of service on the Registrar of a notice containing full particulars of such failure to perform and observe and specifying that this Agreement can be terminated if it is not complied within that time.
- d. If any of the representations or warranties provided by the Registrar proves to be inaccurate or untrue in any material respect.
- e. Where the Registrar habitually or regularly commits breaches of this Agreement or commits a number of breaches which collectively constitute a material breach, whether or not they are remedied.
- f. Where the Registrar ceases to be authorised to provide MTL Domain Name registrations or fails to meet the Accreditation Criteria at any time.
- g. If there is a transfer of rights or obligations in this Agreement by Registrar in violation of this agreement.

h. If an Insolvency Event occurs in respect of the other party.

10.3 The Registrar will have the right to terminate this Agreement forthwith by notice in writing to CoCCA if an Insolvency Event occurs in respect of CoCCA.

10.4 The Registrar will have the right to terminate this Agreement at its convenience upon sixty (60) days prior written notice to CoCCA.

11. RIGHTS ON TERMINATION

11.1 In some circumstances, and where mutually agreed, relevant portions this Agreement will continue to operate and be observed, and remain enforceable following termination of this Agreement notwithstanding the expiration or termination of this Agreement.

11.2 Upon expiration or termination of this Agreement for any reason the Registrar must at its expense:

- a. Do all things, execute all documents and provide CoCCA with all assistance and information (excluding subject to the terms of this Agreement proprietary information or Confidential Information belonging to the Registrar) which CoCCA reasonably considers necessary or desirable to enable the Registrar Services provided by the Registrar to be provided by another person or entity in a manner which ensures orderly transition and continuity of provision of the Registrar Services;
- b. If requested by CoCCA, take all steps necessary to assign or novate to CoCCA or its nominee those agreements to which the Registrar is a party which are reasonably necessary to enable CoCCA to provide the Registrar Services which were provided by the Registrar pursuant to this Agreement (including without limitation software licence agreements and maintenance agreements);
- c. Deliver to CoCCA (and not retain any copies of):
 - i. Confidential Information of CoCCA;
 - ii. Registration Information; sufficient to contact the registrant and;
 - iii. Other property of CoCCA (including but not limited to documents, records, registers, files, security packets, stationary, cheques and agreements) relating to its activities and the provision of the Registrar Services pursuant to this Agreement.

12. FORCE MAJEURE

12.1 Notwithstanding any other provision of this Agreement none of the parties will have the right to terminate this Agreement or any of the rights granted by this Agreement or to make any claim or demand against any other party in respect of that other party's default or non-performance of any of its agreements or obligations under this Agreement if such default or non-performance is a result of an Event of Force Majeure. In no event shall a Party have any claim or right against the other Party for any failure of performance due to the following: fire, explosion, vandalism, facility-threatening weather conditions, or flood; any law, order regulation, direction, action or request of the government having or claiming jurisdiction over CoCCA; national emergencies; insurrections; riots; wars or terrorism.

13. GOOD FAITH

13.1 Each of the parties agrees to act in good faith towards one another and to use its and their best endeavours to comply with the spirit and intention of this Agreement.

14. MODIFICATION OF RIGHTS

14.1 Any present or future legislation that operates to vary an obligation or right, power or remedy of a person in connection with this Agreement is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

15. REMEDIES CUMULATIVE

15.1 The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers and remedies provided by law independently of this Agreement.

16. AUTHORITY

16.1 The parties warrant and represent to each other that each of them has full power and authority to enter into and to perform this Agreement. The entering into and performance of this Agreement does not and will not on or after the signing of this Agreement contravene any contractual, legal or other obligations of either of them whatsoever. This Agreement constitutes a legal, valid and binding obligation on the parties enforceable in accordance with its terms.

17. GOVERNING LAW

17.1 This Agreement will be construed in accordance with and be governed by the laws of New Zealand and the parties agree to submit themselves to the jurisdiction of the Courts of New Zealand including the Federal Court of New Zealand.

18. NOTICES

18.1 Any notice required or authorised to be given by any party to the other concerning any matter or thing relating to this Agreement will be in writing and may (without prejudice to the use of any other method) be given by being sent by prepaid registered letter addressed to the other party at its address herein appearing in Schedule One or left at the address of any party herein appearing in [Schedule One](#). Any such notice if so posted will be deemed to be given three (3) days following the date of posting.

19. WAIVER

19.1 No variation, modification or waiver of any provision of this Agreement nor consent to any departure by any party there from, will in any event be of any force or effect unless the same will be confirmed in writing, signed by the parties, and then such variation, modification, waiver or consent will be effective only to the extent to which it may be made or given.

19.2 No failure, delay, relaxation or indulgence on the part of any party in exercising any power or rights conferred upon such party in terms of this Agreement will operate as a waiver of such power or right, nor will any single or partial exercise of any such power or right preclude any other, or future exercise thereof, or the exercise of any other power or right under this Agreement.

20. ENTIRE AGREEMENT

20.1 This Agreement embodies the entire agreement between the parties and supersedes any prior agreement or understanding between the parties. There are no agreements, representations or warranties oral or written between the parties other than those set forth or provided for in this Agreement. This Agreement may not be modified or changed in whole or in part except by a supplemental Agreement signed by each of the parties.

20.2 The parties agree that each will execute and deliver to the other any and all documents and do or carry out such acts and things as may be reasonably required or requested to effect the transactions contemplated by this Agreement.

21. TIME

21.1 Time will be of the essence as regards to any date or period determined under this Agreement save only to the extent that any such date or period may be altered by mutual agreement between the parties, upon which time will then be of the essence for the altered date or period.

22. SEVERANCE

22.1 If any provision of this Agreement is deemed to be invalid or unenforceable in accordance with its terms, all other provisions that are self-sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with their terms.

23. COUNTERPARTS

23.1 This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all counterparts together will be deemed to constitute one and the same instrument.

24. PERFORMANCE BY THIRD PARTIES

24.1 Except as permitted by Section 3.8 above, the Registrar will not be entitled to assign their rights or obligations, or to perform any one or more of its obligations or the Services pursuant to this Agreement by appointing a third party to do so on its behalf and in its name, without the prior consent in writing of CoCCA, which such consent may not be unreasonably withheld, conditioned, or delayed.

24.2 CoCCA is permitted to assign its rights and obligations under this Agreement to a third party, without obtaining the consent of the Registrar.

25. RELATIONSHIP BETWEEN THE PARTIES

25.1 Nothing contained in the Agreement will constitute or create or be deemed or construed so as to constitute or create any partnership, agency or trust between the parties and neither party will commit or incur any on the part of the other party, nor pledge or attempt to pledge its credit in any way whatsoever.

25.2 For the purposes of this Agreement and all services to be provided pursuant to this Agreement, the Registrar will be and will be deemed to be an independent contractor and not an agent or employee of CoCCA during the time in which it is performing or providing any services for CoCCA pursuant to this Agreement. Neither party will have the authority

to make any statements, representations or commitments of any kind on behalf of the other party without the prior written consent of that party.

26. DISPUTES

26.1 If there is a dispute between the parties concerning this Agreement, either party may give written notice of the dispute to the other party ("the notice") which will state that it is a notice under this part and will specify the dispute concerned ("the dispute").

26.2 If the dispute is not settled by agreement within twenty one (21) days of the service of the notice, the parties agree to refer the dispute to arbitration unless equitable relief is being sought. There shall be three arbitrators: each party shall choose one arbitrator and shall attempt to agree on the third. If the parties cannot agree on a third arbitrator then the third arbitrator shall be chosen by the already selected two arbitrators.

26.3 An Arbitrator will not be a present or former member, officer, employee or agent of either party.

26.4 The Arbitration will be conducted in accordance with the Employment Relations Act 2000 (New Zealand) ("the Arbitration Act") except that:

- a. The Arbitrators will observe the rules of natural justice and rules of evidence;
- b. A party may be represented by a qualified Legal Practitioner or other representative;
- c. The Arbitrators will not have the power conferred by Sections 25 and 27 of the Arbitration Act;
- d. The Arbitrators will include in the arbitration award the findings on material questions of law and of fact, including references to the evidence on which the findings of fact were based; and
- e. The parties consent to an appeal to the Supreme Court of New Zealand on any question of law arising in the course of the Arbitration or out of the arbitration award.

SCHEDULE ONE

1. **Commencement Date:**

2. **Accreditation Body:**

COUNCIL OF COUNTRY CODE ADMINISTRATORS INCORPORATED (2219209)
of CoCCA Registry Services (NZ) Ltd., 11a Wynward Street, Devonport,
Auckland NZ 0624

3. **Registrar:**

4. **Designated MTL D:**

5. **Term:** 5 Years

6. **Fees:** As agreed in the applicable Registry Operator – Registrar Agreement or specified in the Registry UI as modified from time to time.

SCHEDULE TWO

REGISTRANT AGREEMENT – MINIMUM MANDATORY PROVISIONS

The Registrar - Registrant Agreement must contain, or at a minimum, bind the registrant to the terms and conditions contained in the MTL D Registrant Agreement accessible via <http://www.cocca.org.nz>.

Signature Page

EXECUTED as an Agreement.

Council of Country Code Administrators Incorporated

Director (Signature) Date: / /2010 Name (Please Print)

Registrar

Executed for and on behalf of

by its duly authorised officer for that purpose in
accordance with the Constitution of the company.

.....

Name (Please Print) Date: / /2010