

**FILED / PRODUIT**

Date: January 20, 2011

CT- 2011-001

Chantal Fortin for / pour  
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

# 4

File No.  
Registry Document No.

**B E T W E E N:**

BRANDON GRAY INTERNET SERVICES INC.

Applicant

- and -

CANADIAN INTERNET REGISTRATION AUTHORITY also known as AUTORITÉ  
CANADIENNE POUR LES ENREGISTREMENTS INTERNET also known as CIRA  
also known as ACEI

Respondent

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

**AND IN THE MATTER OF** an Application by Brandon Gray Internet Services Inc. for  
relief pursuant to sections 75, 103.1 and 104 of the *Competition Act*, R.S.C. 1985, c. C-34,  
as amended.

**AFFIDAVIT OF LARRY COKER  
(AFFIRMED JANUARY 13, 2011)**

January 17, 2011

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**AND TO: CANADIAN INTERNET REGISTRATION AUTHORITY**  
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**B E T W E E N:**

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Applicant

- and -

CANADIAN INTERNET REGISTRATION AUTHORITY also known as AUTORITÉ  
CANADIENNE POUR LES ENREGISTREMENTS INTERNET also known as CIRA  
also known as ACEI

Respondent

**AFFIDAVIT OF LARRY COKER  
(AFFIRMED JANUARY 13, 2011)**

**I, LARRY COKER**, of the City of Toronto, Province of Ontario, **AFFIRM AND SAY  
AS FOLLOWS:**

1. I am the Senior Systems Administrator of the Applicant, Brandon Gray Internet Registration Services (hereinafter "Brandon Gray"). I have held the position of Senior Systems Administrator of Brandon Gray since 2004, and at all material times, I, along with my colleague Darius Patel, have been responsible for the day-to-day technical operations of Brandon Gray.

2. I make this affidavit based on my own personal knowledge, information and belief. To the extent that there are any statements that I do not have personal knowledge of, I state the source and nature of that information and verily believe same to be true.

3. I make this Affidavit in support of an Application by the Applicant, Brandon Gray, for an Order pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (hereinafter the "Act") granting leave to the Applicant to make (i) an Application for an Interim Order pursuant to section 104 of the Act and (ii) an Application pursuant to section 75 of the Act.

*The Parties*

4. Brandon Gray, is a corporation duly incorporated pursuant to the laws of the Dominion of Canada maintaining its head office in the Town of Markham, Ontario. Since its incorporation in 2004, Brandon Gray has continuously been in the business of registering, renewing, managing and transferring dot-ca, dot-com, dot-org and other domains on behalf of Registrants (persons, corporations, etc. listed in the internet domain name registration systems as the registrants, or holders, of domain names). Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of the Federal Corporation Information Report for Brandon Gray.

5. The Respondent, Canadian Internet Registration Authority also known as Autorité Canadienne pour les Enregistrements Internet also known as CIRA also known as ACEI

(hereinafter "CIRA"), is a corporation duly incorporated pursuant to the laws of the Dominion of Canada, without share capital, that, among other things, manages the dot-ca domain space, develops and implements domain name policy, accredits Registrars and runs a WHOIS service for dot-ca domains. CIRA is the only entity in Canada that is responsible for the management, administration and overseeing of dot-ca domains. There is therefore no availability of an alternative supply of the dot-ca internet domain name registration systems (the "Registry"). Attached hereto and marked as **Exhibit "B"** to this my Affidavit is a true copy of the Federal Corporation Information Report for CIRA, along with a true copy of a printout from CIRA's website that provides an overview of CIRA.

*Description of the dot-ca Industry*

6. A domain name is a name used to identify a computer on the internet. The Domain Name System ("DNS") is a comprehensive directory that connects the names with the numerical addresses of computers on the internet. The dot-ca is the domain extension used to designate Canadian domain names on the internet.

7. CIRA advises that on May 9, 2000, the University of British Columbia and the Government of Canada entered into an Umbrella Agreement which provided that the dot-ca domain space should be developed as a key public resource for social and economic development for all Canadians. In that Umbrella Agreement, the Government of Canada declared that CIRA was designated as the manager of the dot-ca country code top level domains ("ccTLD"). Soon thereafter, on October 10, 2000, the Government of Canada advised the

Internet Corporation for Assigned Names and Numbers ("ICANN") that it had formally designated CIRA as the government's designee to be the dot-ca delegate. Attached hereto and marked as **Exhibit "C"** to this my Affidavit is a true copy of the Umbrella Agreement between the University of British Columbia and the Government of Canada and copy of a Letter from Michael Binder of Industry Canada to Michael Roberts of ICANN.

8. CIRA further advises that after entering into the Umbrella Agreement, CIRA had developed new policies for administration of the dot-ca ccTLD, which policies consisted of a system for the provision of registration services by numerous competitive Registrars, Canadian Presence Requirements that provide that Registrants and Registrars in the dot-ca ccTLD have a substantial, bona fide connection with Canada, and rules with respect to the registration of dot-ca domain names with CIRA. Every Registrar therefore has to meet with the Canadian Presence Requirements, and if the Registrars have met with these Requirements, they could be certified and re-certified annually as a Registrar.

***Brandon Gray's Admittance and Growth in the dot-ca Industry***

9. On or about June 3, 2004, Brandon Gray and CIRA entered into a Registrar Agreement (the "Agreement"). The Agreement authorized Brandon Gray to be certified as a Registrar of the Registry. As a Registrar, Brandon Gray was entitled to, among other things, register dot-ca or sub-domain names and provide related services on behalf of Registrants and Resellers, the latter of which includes individuals, corporations, trusts, partnerships, etc., that purchase domain names and other internet services, such as webhosting and email hosting, with



the intention of reselling them rather than consuming or using them. Attached hereto and marked as **Exhibit "D"** to this my Affidavit is a true copy of the duly executed Agreement.

10. CIRA advises that in order to be certified as a Registrar, every new applicant is asked to complete an expression of interest form, which is later reviewed for validity and accuracy by the Channel Manager of CIRA and its team at CIRA. If the form is valid and accurate, an application would then be sent to the applicant to be completed by that applicant, after which a telephone interview would then be conducted with the applicant. Thereafter, the Channel Manager would make a recommendation and move forward with certification or not. This is the process that every new potential Registrar has to undergo in order to be certified as a Registrar, and this was the process that Brandon Gray had to undertake in order to be certified as a Registrar in 2004.

11. After becoming certified as a Registrar, Brandon Gray then entered into a series of agreements with the Resellers and Registrants. Since 2004, Brandon Gray has been successfully registering, renewing, managing and transferring dot-ca domains on behalf of over 75 Resellers and is now the Registrar for 125,155 domains, for which 3,552 are listed in the Registry.

12. Many of the dot-ca Registrants also have other domains, including dot-com and dot-net domains, which Brandon Gray manages.

13. Brandon Gray's natural geographic market includes all the Canadian provinces. Brandon Gray has spent over six (6) years marketing and developing its client base throughout Canada, and over the years, Brandon Gray has been spending its time simplifying its management system to assist the Resellers and Registrants and to alleviate the burdens of the internet on the Resellers and Registrants. Brandon Gray's Resellers and Registrants have become familiar with and have come to expect a certain level of expertise and service from Brandon Gray for all of their dot-ca domain needs.

14. Brandon Gray's revenue is solely determined by the number of Resellers and ultimately the services that it provides to the Resellers and Registrants in the Registry.

15. Pursuant to the Agreement, certification as a Registrar is valid for one (1) year; however, over the years, Brandon Gray has been re-certified every year and has had no problems with its re-certification process. The re-certification process has been fairly automatic. Brandon Gray has never had to undergo any burdensome procedure. Besides filing the annual application and paying the required fee, in accordance with the Agreement, Brandon Gray has been re-certified without any difficulty. The parties have always proceeded on the basis that CIRA would not terminate the Agreement unless it had just cause to do so.

16. Pursuant to paragraph 7.6 of the Agreement, CIRA may, in its sole discretion by giving notice thereof to the Registrar, terminate or suspend the Agreement only in specified circumstances, which circumstances consist of the following:

- a) The Registrar fails to meet the Certification Requirements or the Re-certification Requirements, as applicable (including their Canadian Presence Requirements for Registrars) at any time during the Term;
- b) The Registrar provides false or misleading information to CIRA;
- c) There are insufficient funds prepaid by the Registrar in CIRA's Deposit Account to be applied in payment of any Fees;
- d) The Registrar fails to pay when due any amount payable to CIRA under this Agreement;
- e) The Registrar breaches any other term of this Agreement, including, without limitation, any of the Registry PRP or the terms and conditions of the Legal Notice and fails, in CIRA's reasonable opinion, within five (5) Business Days after the receipt of a notice from CIRA, to remedy such breach;
- f) The Registrar or any partner, director, officer, or controlling shareholder of the Registrar is convicted of an offence under the Criminal Code (Canada);
- g) The Registrar or any partner, director, officer, or controlling shareholder of the Registrar engages in any conduct or practice that in the reasonable opinion of CIRA is detrimental or harmful to the good name, Trade-marks (as defined in Section 14.1), goodwill or reputation of CIRA or the Registry, and the Registrar continues, repeats or fails to cease and desist from such conduct, to CIRA's satisfaction, within ten (10) Business Days after CIRA gives notice of such conduct to the Registrar or such additional period as may be stated in the notice;
- h) The Registrar, in its capacity as a Registrant, breaches any agreement with CIRA;
- i) Except as permitted under Section 2.3(3) above, the Registrar requests any transaction with respect to a Domain Name Registration which has not been authorized by the particular Registrant;
- j) The Registrar disrupts or abuses CIRA's Registry services, as determined by CIRA in its sole discretion, acting reasonably;
- k) The Registrar engages in advertising or representations to the public or other behaviour which CIRA, acting reasonably, determines are false, misleading or detrimental to CIRA, the Registry, or any Registrant, registrar, or third party;
- l) Where the Registrar is also a Registrant, the Registrar applies to register a Domain Name as agent for, or on behalf of, a third party in any manner whatsoever which contravenes Section 3.1 (s), (t) or (u) of this Agreement;
- m) Where the Registrar is also a Registrant, the Registrar in its/his/her capacity as a Registrant, breaches Section 3.1(j) of the Registrant Agreement with CIRA;
- n) Where the Registrar is a Member, the Registrar in its/his/her capacity as a Member breaches any Registry PRP applicable to Members; or
- o) The Designation by the government of Canada of CIRA to manage, operate and control the Registry is terminated or CIRA is no longer recognized at the international level as having the exclusive authority to operate the Registry.

*CIRA's Refusal to Deal*

17.           Until recently, Brandon Gray had enjoyed an excellent relationship with CIRA. This changed when, on August 9, 2010, without warning or prior notice, I received a letter, dated August 6, 2010, from CIRA, advising of its decision to refuse Brandon Gray's re-certification as a CIRA certified Registrar. Brandon Gray was only given the option of either selling its dot-ca business to another certified Registrar or having its business effectively shut down on the termination date of August 24, 2010. Attached hereto and marked as **Exhibit "E"** to this my Affidavit is a true copy of the letter I received from CIRA, dated August 6, 2010.

18.           It was only after our lawyer had written a letter to CIRA on August 10, 2010 indicating that litigation was imminent and that Brandon Gray would be bringing a Motion to request an injunction that CIRA had agreed to extend the termination date to September 7, 2010, which was then extended to September 10, 2010 and further extended to October 31, 2010. Attached hereto and marked as **Exhibit "F"** to this my Affidavit is a true copy of our lawyer's letter, dated August 10, 2010.

19.           Despite repeated attempts by Brandon Gray and our lawyer to confirm the reasons for said termination, CIRA had refused to provide a valid explanation as to why it has made the unilateral decision to cease its relationship with Brandon Gray.

20.           In order to prevent CIRA from refusing to supply its product, being the Registry, to Brandon Gray on the termination date of October 31, 2010, Brandon Gray had no choice but

to commence an action against CIRA in the Ontario Superior Court of Justice, bearing Court File No. CV-10-0100675-00. Attached hereto and marked as **Exhibit "G"** to this my Affidavit is a true copy of the Statement of Claim, issued August 31, 2010.

21. Shortly thereafter, Brandon Gray brought a Motion for, among other things, an order immediately compelling CIRA to re-certify Brandon Gray as a Registrar of the Registry and for an interim, interlocutory and permanent injunction prohibiting CIRA and anyone acting on its behalf, without further Court order, from

- (i) directly or indirectly breaching, cancelling, lapsing, forfeiting or surrendering its Registrar Agreement and/or contract with the Plaintiff;
- (ii) directly or indirectly refusing and/or failing to re-certify and/or renew the Plaintiff's registration as a Registrar of the Registry; and
- (iii) directly or indirectly discontinuing its relationship with Brandon Gray.

Attached hereto and marked as **Exhibit "H"** to this my Affidavit is a true copy of Brandon Gray's Notice of Motion.

22. The Motion was returnable on October 15, 2010, and the Court has not yet released its decision. CIRA has, however, agreed to extend the expiry date of Brandon Gray's certification as a Registrar until the Court has released its decision with respect to the Motion. Attached hereto and marked as **Exhibit "I"** to this my Affidavit is a true copy of CIRA's lawyer's letter, dated October 20, 2010, allowing for the extension of the expiry date.

23. I verily believe that the injunction sought from the Superior Court of Justice is necessary to enable this Application to be heard by the Competition Tribunal because it is my belief that the Competition Tribunal has the jurisdiction to review the decisions of CIRA and declare that they are restrictive trade practices reviewable by the Competition Tribunal.

24. CIRA has still failed to itemize or communicate any complaints to Brandon Gray, even after it had served its Motion Record on September 9, 2010. CIRA, therefore, failed to provide a valid explanation as to why it has made the decision to cease its relationship with Brandon Gray.

25. In its Motion Record, CIRA suggests that it has received hundreds of complaints regarding the conduct of Internet Registry of Canada ("IROC"), Domain Registry of America ("DROA") and Domain Registry of Canada ("DROC"), but at no point in its materials did CIRA ever mention that these complaints amounted to a breach which ultimately led to CIRA's decision to terminate the Agreement. In fact, until Brandon Gray was served with the Motion Record, CIRA had never advised or notified me or anyone else at Brandon Gray that there had been any complaints against Brandon Gray. CIRA even acknowledges that when it receives a complaint about a Registrar, it normally addresses that complaint with the Registrar, by telephone or by email; yet, CIRA has never communicated a single complaint to me or, to my knowledge, to anyone else at Brandon Gray.

26. CIRA suggests that Brandon Gray, IROC, DROA and DROC are associated corporations, and that IROC, DROC and DROA were in the past involved in illegal or unethical

conduct; however, at no point in time did CIRA ever communicate or converse with me or with Brandon Gray to ask us whether there was an association or an affiliation with these companies. Even if there is, or ever was, an association between Brandon Gray and these corporations, DROC's, DROA's and/or IROC's conduct has nothing to do with Brandon Gray. CIRA has never asked Brandon Gray to not use DROC as a Reseller, and at no point in time did CIRA ever contact me or Brandon Gray to ask us to disassociate Brandon Gray with or from DROC or DROA.

27. CIRA not only suggests that Brandon Gray, IROC, DROA and DROC are associated corporations, but alleges that DROC has been soliciting dot-ca holders by sending misleading "renewal notices" to not just holders of domain names in other registries, but to dot-ca holders as well. In the more than six (6) years that Brandon Gray has been certified as a Registrar, CIRA, however, was only able to find in its system one (1) solicitation by Brandon Gray of other dot-ca domain holders.

28. CIRA also suggests that Brandon Gray is not highly respected in the internet community. CIRA's statements are based on a Google internet search containing negative comments relating to Brandon Gray. This is not a reliable source of information. It certainly ought not to be used by CIRA to oust Brandon Gray from its industry. Anyone can write and post comments on the internet, especially competitors. It is, in fact, possible for one person or entity to write hundreds of comments using false names. If Brandon Gray has been referred to in those comments, a Google search would then produce those results.

29. Further, in its Motion Record, CIRA had included a list of complaints. However, most, if not all, of the alleged complaints included in the subject lines are very misleading, as they are very general in nature and do not even provide details relating to the alleged complaints. The allegations with respect to the complaints against DROC are illusory and inaccurate. For instance, CIRA refers to two copies of Renewal Notices; however, the first Renewal Notice was sent to DROC's Customer at the time, which was carried out in strict compliance with CIRA's regulations. The second Renewal Notice was sent to a Customer of DROC's who had, just prior to receiving the notice, transferred to another Registrar. That former Customer did not provide any notice to DROC and as a result, DROC had no way of knowing that the Customer had transferred to another Registrar. DROC has always sent Renewal Notices to its Customers, and only to its Customers, which I verily believe that CIRA knew, or ought to have known.

30. I verily believe that none of the circumstances specified in the Agreement giving CIRA the ability to terminate or suspend the Agreement or its relationship with Brandon Gray were ever present, and at no time, even after serving its Motion Record, or after presenting oral arguments at the Motion, did CIRA provide a valid reason or explanation as to why it has made the unilateral decision to refuse to supply its product to Brandon Gray.

31. At all material times, Brandon Gray has been providing services on behalf of its Resellers and Registrants in accordance with the Agreement and in full compliance with CIRA's rules and regulations. All activities carried out by Brandon Gray in the Registry were performed with no improper purpose. CIRA has, therefore, failed to show any cause as to why it has made the unilateral decision to terminate its relationship with Brandon Gray.



*Substantial Detrimental Effect*

32. I verily believe that the overall effect of the termination of Brandon Gray's Registrar Agreement by CIRA will be devastating upon Brandon Gray. If CIRA fails to supply Brandon Gray with the Registry, Brandon Gray will be precluded from continuing with its business due to its inability to obtain another Registry.

33. If CIRA terminates its relationship with Brandon Gray, Brandon Gray's employees, myself included, along with its Resellers and Registrants, will suffer irreparable harm because said termination will shut down Brandon Gray's dot-ca operations, make it impossible for Brandon Gray to operate in its chosen industry, as there is no other Registry available, and will cause severe financial harm to Brandon Gray, its employees, Resellers and Customers.

34. Since its inception in 2004, Brandon Gray has been supplying resourceful, reliable and predictable internet services to its Resellers and Registrants, and Brandon Gray has always met each Reseller's and Registrant's needs and/or requirements. Brandon Gray requires the Registry in order to be able to continue to meet these needs and/or requirements. Termination of supply of the Registry by CIRA would create an immediate inability by Brandon Gray to fulfill the needs of its Resellers and Registrants. This would cause immediate damage to the relationships Brandon Gray has built with its Resellers and Registrants over the last six-and-a-half years. More specifically, this would bring about a loss of confidence, a loss of goodwill, a loss of market share and revenue and a loss of Resellers and Registrants.

35. Many of the dot-ca domain Registrants managed by Brandon Gray also have other domains, including dot-com and dot-net domains, which Brandon Gray manages. If CIRA refuses to re-certify Brandon Gray and ultimately terminates its relationship with Brandon Gray, Brandon Gray will not only lose its dot-ca registrants but many of its other domains because once the dot-ca domain Registrants are transferred to other Registrars, most, if not all, of the other domains would also be transferred to the new Registrars, as the Registrants would not want to have more than one Registrar managing their domains, and those without a dot-ca domain would lose confidence in Brandon Gray as a Registrar.

36. I verily believe that the effect of CIRA's failure to supply the Registry to Brandon Gray will deal an astounding blow to Brandon Gray's business. If CIRA terminates its relationship with Brandon Gray, Brandon Gray would not only lose its dot-ca Registrants, but it will lose many of its other domains, which will result in Brandon Gray's ouster from this industry. This will shut down Brandon Gray's operations, make it impossible for Brandon Gray to operate in its chosen industry, as there is no other Registry available, and will cause severe financial harm to Brandon Gray, its Resellers, Registrants and employees, including myself, for which, I believe, damages will not be an adequate remedy.

37. Brandon Gray's Resellers and Registrants have become familiar with and have come to expect a certain level of expertise and service from Brandon Gray for all of their dot-ca domain needs. CIRA's refusal to deal will result in Brandon Gray's being unable to fulfill its ongoing business and professional obligations and relationships with its Resellers and

Registrants. CIRA's refusal to deal will, therefore, negatively impact Brandon Gray, its Resellers and Registrants and irreparably harm its customer relationships, its business and its reputation. Even a short interruption of supply by CIRA would lead to irreparable harm for Brandon Gray.

38. Brandon Gray's reputation has already been substantially adversely affected, as prospective Resellers have already begun resorting to using other Registrars for their domain services. I verily believe that this shift to other Registrars can be directly linked to Reseller uncertainty resulting from CIRA's refusal to deal with Brandon Gray.

39. If the Registry is no longer available to Brandon Gray, Brandon Gray's Resellers, and ultimately its Registrants, will be notified by CIRA by email of CIRA's intention to transfer their domain names, without their consent, to another Registrar. In light of the level of spam currently propagating in the internet and with users' privacy at risk, however, it is unlikely that the Resellers will receive or read CIRA's notification, and as a result, the Resellers will misguidedly try to continue their business relationships with Brandon Gray, except Brandon Gray will be unable to provide the services that it has been contracted to perform for its former clients.

40. Even if some of the Resellers do read the notification with respect to transferring their domain names, these sudden and unexpected transfers would compel the Resellers to work with new Registrars who they know nothing about and who they may not even trust or want to work with. The Resellers would have very little information as to who will be registering,

renewing and managing their domains, even though much, if not most, of their businesses rely upon these domains.

41. As Brandon Gray has spent years simplifying its management system to assist the Resellers and to alleviate the burdens of the internet on the Resellers, the other Registrars may have more convoluted and complex systems, which the Resellers do not need and which systems will most likely confuse the Resellers.

42. Following the transfers, the new Registrars will then provide DNS services to the Resellers and Registrants, so none of the Resellers' and Registrants' existing information will be migrated from Brandon Gray's servers. The Resellers and Registrants will be forced to re-enter all of their information into a new system, which they will not be familiar with. As a result, the Resellers will have to invest a great deal of time and money in re-entering information into a new system. Following the transfers, there will also be a manual migration of data, which will cause all of the Resellers' and Registrants' sites and emails to go offline. This will undoubtedly cause the Resellers and Registrants a loss of business.

43. Brandon Gray has been competitive in the dot-ca industry for over six (6) years. The result of CIRA's refusal to deal with Brandon Gray will therefore not only have an adverse effect on Brandon Gray, its Resellers and Registrants, but I verily believe that it will have an adverse impact on competition in the market, as the termination of CIRA's relationship with Brandon Gray will result in reduced competition in the dot-ca industry.


44. If CIRA fails to re-certify Brandon Gray and ultimately terminates its relationship with Brandon Gray, Brandon Gray will be substantially affected in its business as it will be precluded from carrying on its business as a result of there being no availability of an alternative supply of the Registry. Accordingly, Brandon Gray will be unable to obtain another supply of the Registry, and as a result, Brandon Gray will be shut out of its industry.

45. Brandon Gray has always met and complied with CIRA's usual trade terms over the more than six (6) years that Brandon Gray has been a certified Registrar, and at all material times, Brandon Gray has always been ready and willing to meet all of CIRA's usual trade terms.

46. I verily believe that there is an ample supply of the Registry available, but I can say without a doubt that the supply is only available through CIRA.

47. I make this affidavit in support of the Application by Brandon Gray for an Order pursuant to section 103.1 of the Act granting leave to Brandon Gray to make (i) an Application for an Interim Order pursuant to section 104 of the Act, and (ii) an Application pursuant to section 75 the Act, and for no other or improper purpose.

AFFIRMED before me at the )  
 City of Vaughan, in the Regional )  
 Municipality of York, Ontario, on )  
 the 13<sup>th</sup> day of January, 2011 )

  
 A Commissioner for Taking Affidavits, etc.  
**David Brand**

  
**LARRY COKER**

Industry  
Canada Industrie  
Canada

This is Exhibit A to the Affidavit of  
Larry Coker  
Sworn before me this 13 of January  
A Commissioner, etc.  
[Signature]

Canada

Industry Canada &gt; Business Tools and Resources &gt; Corporations Canada &gt; Online Filing Centre

## Corporations Canada

**Federal Corporation Information**[Glossary of Terms used on this page](#)[Return to Search Results](#)[Start New Search](#)**Corporation  
Number**

6233457

**Business Number  
(BN)**

862235470RC0001

**Governing Legislation**Canada Business Corporations Act -  
2004-05-27**Corporate Name**

Brandon Gray Internet Services Inc.

**Status**

Active

**Registered Office Address**7100 WARDEN AVE UNIT 8  
MARKHAM ON L3R 8B5  
CanadaActive CBCA corporations are required to [update this information](#) within 15 days of any change.**Directors**

Minimum	Maximum
1	10

**Directors**

MARYLIN BENLOLO

Email or fax [Corporations Canada](#) to obtain  
addresses of directors.Active CBCA corporations are required to [update this information](#) within 15 days of any change.**Annual Filings****Anniversary Date (MM-DD)**  
05-27**Date of Last Annual Meeting**  
2010-05-03**Annual Filing Period (MM-DD)**  
05-27 to 07-26**Type of Corporation**  
Non-distributing corporation with 50 or fewer shareholders**Status of Annual Filings**2011 - Not due  
2010 - Filed  
2009 - Filed**Corporate History****Corporate Name History**

2004-05-27 to Present

Brandon Gray Internet Services Inc.

**Certificates Issued****Certificate of Incorporation**

2004-05-27

Date Modified: 2010-11-23

Industry  
Canada Industrie  
Canada

This is Exhibit 13 to the Affidavit of  
Larry Coker  
Sworn before me this 13 of January  
A Commissioner, etc.  
[Signature]

Canada

Industry Canada &gt; Business Tools and Resources &gt; Corporations Canada &gt; Online Filing Centre

## Corporations Canada

## Federal Corporation Information

[Glossary of Terms used on this page](#)[Return to Search Results](#)[Start New Search](#)**Corporation  
Number**

3574946

**Business Number  
(BN)**

Not Available

**Governing Legislation**Canada Corporations Act - Part II -  
1998-12-30**Corporate Name**CANADIAN INTERNET REGISTRATION AUTHORITY  
AUTORITÉ CANADIENNE POUR LES ENREGISTREMENTS INTERNET**Status**

Active

**Registered Office Address**Care of: CANADIAN INTERNET REGISTRATION AUTHORITY  
350 SPARKS STREET  
SUITE 306  
OTTAWA ON K1R 7S8  
CanadaActive CBCA corporations are required to [update this information](#) within 15 days of any change.**Directors**

Minimum	Maximum
10	10

**Directors**LYNNE MACKAN-ROY  
RON KAWCHUK  
ROSS RADER  
PAUL ANDERSON  
HEATHER DRYDEN  
BYRON HOLLAND  
RICK SUTCLIFFE  
BARRY SHELL  
JAMES GREY  
VICTORIA WITHERS  
JOHN DEMCO  
RICHARD ANDERSON  
KERRY BROWN  
TOM WILLIAMSEmail or fax [Corporations Canada](#) to obtain  
addresses of directors.Active CBCA corporations are required to [update this information](#) within 15 days of any change.**Annual Filings****Anniversary Date (MM-DD)**  
12-30**Date of Last Annual Meeting**  
2009-09-22



**Annual Filing Period (MM-DD)**

04-01 to 06-01

**Type of Corporation**

Not Available

**Status of Annual Filings**

2011 - Not due

2010 - Filed

2009 - Filed

**Corporate History****Corporate Name History**

1998-12-30 to Present

1998-12-30 to Present

CANADIAN INTERNET REGISTRATION AUTHORITY

AUTORITÉ CANADIENNE POUR LES ENREGISTREMENTS

INTERNET

**Incorporation**

1998-12-30

**Supplementary Letters Patent**

2006-02-10

Date Modified: 2010-11-23

## About CIRA

.ca is the most recognizable symbol of Canadian identity on the Internet.

### About CIRA Overview

The Canadian Internet Registration Authority (CIRA) is the not-for-profit corporation that manages the dot-ca domain space on behalf of all Canadians.

Its functions include:

- Managing the dot-ca domain space
- Developing and implementing domain name policy
- Facilitating dot-ca dispute resolution
- Accrediting Registrars
- Running a WHOIS service for dot-ca domains
- Representing CIRA as a member of the Internet Corporation for Assigned Names and Numbers (ICANN) and other international organizations.

A fifteen-member Board of Directors consisting of elected and appointed members oversee CIRA's operations. Board members are elected annually by CIRA Members through an online process. Membership in CIRA is free, and open to anyone who holds a dot-ca domain.

## Mission

CIRA's mission is to foster the development of .CA as a key public resource for all Canadians by providing stable, secure and trusted domain name services, and by taking a leadership role in shaping Canada's Internet for the benefit of .CA domain holders.

## Vision

CIRA's vision is to be a world-class Internet Registry that is recognized and valued by the Internet community and Canadians.

## Values

We believe that fairness, transparency and high ethical standards are the foundation of our culture.

CIRA is committed to a collaborative team environment that seeks continuous improvement and breakthrough ideas through innovation.

At CIRA we are committed to exceeding stakeholder expectations through excellence in operations, service delivery and engagement.

We believe in having a positive influence in the communities where we provide service and do business.

## History

Started by volunteers at the University of British Columbia, Canada's dot-ca registry is now managed as a key public resource for all Canadians. There are over a million dot-ca domain names and, under CIRA's management, the registry just keeps growing.

## Board of Directors

There are 15 directors on CIRA's Board of Directors. Twelve are elected and hold voting seats.

## Management Team

Byron Holland, President & CEO

Michael Stewart, General Counsel & Director of Policy

Nancy Philip, Director, Finance & Administration

David Fowler, Director, Marketing & Communications

## Resources & Useful Links

## Careers

Dreaming of a fast-paced, challenging career in a dynamic, growing organization? At CIRA we are looking for talented team players with exceptional skills in such fields as technology, operations, marketing, finance, and customer service.

ICANN  
CENTR  
ARIN

## Documents & Policies

CIRA plays a central role in the Canada's national and international Internet community and has access to a wide range of information in the form of reports, discussion papers, statistical studies and articles of interest.

[Get the Facts](#)

## Legal Documents

Find out about the legal framework CIRA uses to develop and implement domain name policy, facilitate dot-ca dispute resolution and more.

[Learn More](#)

## Membership

- [Read the Benefits](#)
- [Login as a Member](#)

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By accessing and using CIRA's website you agree that you have read, understood, and consent to the terms and conditions for the use of CIRA's website, as set out in the Website Terms of Use and Privacy Policy.

THIS IS EXHIBIT 1 of 1 of 1  
Larry Toker  
Sworn before me this 15 of January  
A Commissioner, etc.  
[Signature]

**UMBRELLA AGREEMENT FOR THE TRANSFER OF THE .CA DOMAIN NAME REGISTRY  
BETWEEN**

**UNIVERSITY OF BRITISH COLUMBIA**, a university governed in accordance with the laws of the  
Province of British Columbia ("UBC")

- and -

**CANADIAN INTERNET REGISTRATION AUTHORITY**, a corporation incorporated pursuant to the  
laws of Canada ("CIRA")

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of Industry  
("CANADA")

WHEREAS John Demco has managed the .ca domain space at UBC using the facilities and  
equipment of UBC since its inception and registration with IANA in 1987;

AND WHEREAS such management has been carried out in accordance with policies and procedures  
established by John Demco and UBC having regard to advice obtained from time to time from the  
.ca Committee;

AND WHEREAS the parties are of the view that the .ca domain space should be developed as a key  
public resource for social and economic development for all Canadians;

AND WHEREAS as early as 1997, John Demco, UBC, CANADA, representatives of the private sector,  
and other interested parties recognized the need to liberalize the policies and procedures for the .ca  
domain space in order to maximize the public benefit of the domain space;

AND WHEREAS on December 30, 1998, CIRA was incorporated as a not-for-profit corporation with  
the intention of managing the .ca domain space in the public interest;

AND WHEREAS by letter dated March 11, 1999, signed on behalf of CANADA by the Assistant  
Deputy Minister, Spectrum, Information Technologies and Telecommunications of Industry Canada  
("the March 11 Letter"), a copy of which is attached as Schedule "A", CANADA described the general  
principles and structure pursuant to which it expected CIRA to administer the .ca domain space;

AND WHEREAS the parties desire to provide for an orderly transition of the management of the .ca  
domain space from John Demco and UBC to CIRA in the public interest;

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the  
parties hereto agree as follows:

1. With effect on the Operational Transfer Date (as defined in the agreement entered into by CIRA  
and UBC as of this date, a copy of which is attached as Schedule B) UBC hereby relinquishes any  
interest arising from its operation of the .ca domain space, and CANADA in turn hereby designates  
CIRA to manage, operate, and control, or cause to be managed, operated, and controlled, the .ca  
domain space in accordance with the principles and structure set out in the March 11 Letter and in  
accordance with other principles, being in the public interest and being reasonable, as CANADA  
may, from time to time, set. CIRA shall manage, operate, and control, or cause to be managed,  
operated, and controlled, the .ca domain space in accordance with the principles and structure set  
out in the March 11 Letter and in accordance with other principles as CANADA may, from time to  
time, set.

2. Within 7 days of the signing of this Agreement, the parties shall execute all the required  
documentation to cause CIRA to be recognized as of the Operational Transfer Date at the

international level as having the exclusive authority to operate the top level domain servers for the .ca domain. All required documentation will be sent by CANADA to the appropriate third parties sufficiently in advance of the Operational Transfer Date. CANADA, with the cooperation of UBC and CIRA, shall take all the necessary steps to notify the relevant international authorities that the aforementioned recognition should take effect as of the Operational Transfer Date. However, the parties acknowledge that the exact date on which the actual change is implemented by the appropriate international authorities is not in the control of any of the parties.

3. UBC and CIRA shall cooperate in achieving an orderly transition of the management, operation, and control of the .ca domain space to CIRA in accordance with the terms and conditions of the agreement entered into by CIRA and UBC as of this date, a copy of which is attached as Schedule "B".

4. CANADA may terminate the designation of CIRA described in Article 1 upon 90 days written notice to CIRA if, in the opinion of CANADA, acting reasonably, CIRA is unable to continue to manage, operate and control, or cause to be managed, operated and controlled, the .ca domain space in accordance with the principles and structure set out in the March 11, 1999 Letter and in accordance with such other principles as CANADA may, from time to time, set.

5. CIRA may terminate the designation described in Article 1 at any time by giving 90 days written notice to CANADA.

6. In the event that the designation of CIRA described in Article 1 is terminated in accordance with Article 4 or 5:

i). CANADA, with the cooperation of CIRA, shall take all necessary steps, and CANADA and CIRA shall execute all the required documentation, to transfer the administrative and operational responsibility for the .ca domain to such party as CANADA may designate and to cause such party to be recognized at the international level as having the exclusive authority to operate the top level domain servers for the .ca domain;

ii). If the Registrar of Trade-marks has given public notice of CIRA's adoption and use of the mark .ca in relation to the development, management and operation of the .ca domain space, CIRA shall consent to the use of the .ca mark by such party as CANADA may designate and CIRA shall cease to use the mark, or at the request of CANADA, shall withdraw publication of notice of the mark; and

iii). Unless and until CIRA has discharged its obligations to UBC pursuant to Article 8 of the agreement attached hereto as Schedule "B", CANADA shall ensure that the outstanding obligations of CIRA to UBC as set forth in said agreement is assumed by such party as CANADA may designate to manage, operate and control, or cause to be managed, operated and controlled, the .ca domain space.

7. Any notice or request required or permitted to be given or made pursuant to this Agreement shall be given or made in writing by letter, facsimile or e-mail,

if to UBC addressed as follows:

The University of British Columbia  
6328 Memorial Road  
Vancouver, British Columbia V6T 1Z2  
Attention: Ted Dodds  
Associate Vice President, Information Technology  
Facsimile: (604) 822-5116  
E-mail: [Ted.Dodds@ubc.ca](mailto:Ted.Dodds@ubc.ca)

and if to CIRA addressed as follows:

Canadian Internet Registration Authority  
c/o CANARIE Inc.  
4th Floor  
110 O'Connor Street  
Ottawa, Ontario K1P 1H1  
Attention: Chair of the Board  
Telephone: (613) 943-5454  
Facsimile: (613) 943-5443  
E-mail: [COB@cira.ca](mailto:COB@cira.ca)

and if to CANADA addressed as follows:

Assistant Deputy Minister  
Spectrum Information Technologies and Telecommunications Industry Canada 300 Slater Street  
20th Floor Ottawa, Ontario Attention: Michael Binder Facsimile: (613) 952-1203 E-mail: [binder-michael@ic.gc.ca](mailto:binder-michael@ic.gc.ca)

Any such notice or request if sent by mail shall be deemed to have been given or made on the actual date of receipt, and if sent by facsimile or e-mail shall be deemed to have been given or made on the date of the facsimile or e-mail transmission. Any party may change the address for notice or request by notice to each of the other parties hereto.

8. If a dispute arises concerning this Agreement, the parties shall attempt to resolve the matter as follows:

1) first, by negotiation;

2) second, by mediation by a mutually acceptable mediator;

3) if the dispute cannot be resolved otherwise or if the parties are unable to agree on a mediator or an appointed mediator is unable to get the parties to agree to a resolution, the dispute shall be finally settled by binding arbitration in Ottawa in accordance with the Arbitration Act, S.O. 1991, c. 17, as may be amended from time to time (if the dispute is between UBC and CIRA only) or the Commercial Arbitration Act, R.S.C. 1985, c. 17, as may be amended from time to time (if the dispute involves CANADA) and judgment on the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction to do so.

9. It is a term of this Agreement that no person who is not in compliance with the provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders or the Conflict of Interest and Post-Employment Code for the Public Service, shall derive any benefit from this Agreement.

10. This Agreement operates for the benefit of the parties and is binding on their respective successors and permitted assigns.

11. Nothing in this Agreement shall constitute the parties the agent of any other party nor shall confer any authority to act for and in the name of any of the other parties.

12. This Agreement may not be assigned by any of the parties without the consent of the other parties.

13. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

IN WITNESS WHEREOF the parties hereto have signed this Agreement effective the date first set forth above.

**UNIVERSITY OF BRITISH COLUMBIA**

**CANADIAN INTERNET REGISTRATION AUTHORITY HER MAJESTY THE QUEEN IN RIGHT OF  
CANADA**





# Letter from Michael Binder, Industry Canada, to Michael Roberts, ICANN

(10 October 2000)



<http://strategis.ic.gc.ca>

OCT 10 2000

Mr. Michael Roberts  
President and Chief Executive Officer  
Internet Corporation for Assigned  
Names and Numbers  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292  
USA

Dear Mr. Roberts:

As you know, the .ca top level domain has been administered by John Demco of the University of British Columbia (UBC) since 1987, with the assistance of a committee of volunteers from across Canada. Mr. Demco and his committee, among other responsibilities, set and implemented the policies and procedures for registering domain names within the .ca domain space. Initially, these policies were appropriate for the size and role of the Internet in Canada, however with the growth of the Internet and electronic commerce, the local Internet community in Canada began contemplating a change.

In 1997, at the Canadian Internet community's annual conference, discussions of reform led to the formation of the Canadian Domain Names Consultative Committee to address the transition from the current management of the .ca domain to a "more commercial type of operation". Following a public consultation, the CDNCC recommended that a private sector, not-for-profit corporation be set up to take over the administration of the .ca from UBC and John Demco. In late December 1998, the Canadian Internet Registration Authority (CIRA) was incorporated to assume this function. On March 11, 1999, in a letter on which you were copied, the Canadian government formally recognized CIRA as the new administrator of the .ca. CIRA and UBC then engaged in discussions regarding the details of the transition of administrative responsibility for the .ca

These discussions were successfully completed in May, 2000, and CIRA, UBC and the Government of Canada entered into the attached contract, the "Umbrella Agreement". This agreement provides that the Government of Canada will designate CIRA to be the new administrator of the .ca and that CIRA will manage the .ca in accordance with principles set by the Government of Canada in the March 11, 1999 letter referred to above and any additional principles that are in the public interest and reasonable.

The Umbrella Agreement contains the communication between the Government of Canada and CIRA that is contemplated by the "Principles for the Delegation and Re-delegation of Country Code Top Level Domains" adopted by the Government Advisory Committee to ICANN (GAC Principles). This letter constitutes the "communication" between the Government of Canada and ICANN recommended in the same Principles. I am confident that ICANN and CIRA will be able to enter into the third communication contemplated in the GAC Principles. Canada's approach in this re-delegation request is therefore consistent with the GAC Principles and demonstrates the effectiveness of this system for redelegation requests.

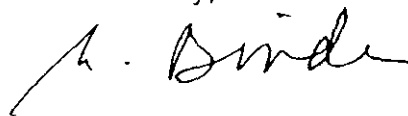
I am pleased to formally designate CIRA as the Government of Canada's designee to be the .ca delegee. I request that ICANN, through its IANA functions, effect the necessary changes to the Internet's "A" root server to accomplish this re-delegation. CIRA will be assuming its responsibilities on November 1, 2000. I would anticipate that the change in the "A" root server would occur on this date, but I would ask that ICANN and CIRA discuss directly its exact timing.

The relevant contact within the Government of Canada for matters related to this letter is:

Mr. Drew Olsen,  
Telecommunications Policy Branch  
Industry Canada  
16th Floor  
300 Slater Street,  
Ottawa, Ontario K1A 0C8  
(613) 998-3382  
[olsen.drew@ic.gc.ca](mailto:olsen.drew@ic.gc.ca)

Thank you for your attention to this request.

Yours sincerely,



Michael Binder  
Assistant Deputy Minister  
Spectrum, Information Technologies and  
Telecommunications

Enclosure

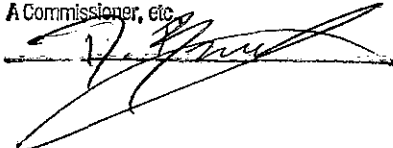
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Comments concerning the layout, construction and functionality of this site

should be sent to [webmaster@icann.org](mailto:webmaster@icann.org).

Page Updated 05-December-00

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This is Exhibit 1 to the Affidavit of  
Larry Coker  
Sworn before me this 13 of January  
A Commissioner, etc.  


**REGISTRAR AGREEMENT**  
Version 1.3

This agreement (the "Agreement") between Canadian Internet Registration Authority ("CIRA") and the Person identified on the execution page of this Agreement (the "Registrar") is dated as of the date identified on the execution page of this Agreement.

**RECITALS**

A. CIRA is responsible for the operation and control of the .ca Internet domain name registration system (the "Registry");

B. The Registrar desires to be certified by CIRA as a registrar of the Registry;

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, CIRA and the Registrar agree as follows:

**ARTICLE 1**

**CERTIFICATION AND RE-CERTIFICATION OF REGISTRAR**

**1.1 Certification of Registrar.**

(1) Requirement for Certification. The Registrar shall be required to be certified by CIRA as a registrar of the Registry. The Registrar shall not be certified as a registrar of the Registry by CIRA automatically upon execution of this Agreement by any party. The Registrar shall only be certified by CIRA upon receiving notice from CIRA of the compliance by the Registrar with the "Certification Requirements" or the "Re-certification Requirements", as applicable, all of which are set out at CIRA's website (currently at [http://www.cira.ca/en/doc\\_Registrar.html](http://www.cira.ca/en/doc_Registrar.html)), as amended by CIRA from time to time.

(2) Application for Certification. Upon execution of this Agreement by CIRA and the Registrar and payment by the Registrar to CIRA of the Application Fee, the Certification Fee and the Initial Deposit (as defined in Section 6) and all applicable Taxes (as defined in Section 3.1(i)) thereon, the Registrar shall be entitled to, and shall file an application to be certified as a registrar of the Registry (the "Application for Certification") in accordance with the Certification Requirements and the provisions of this Agreement. The Registrar shall be required to pay the Application Fee, the Certification Fee, and the Initial Deposit and all applicable Taxes thereon to CIRA prior to or concurrent with the filing with CIRA of the Application for Certification or the Application for Certification will be rejected by CIRA. Provided the Application Fee, the Certification Fee and the Initial Deposit and all applicable Taxes thereon have been paid, CIRA will process Applications for Certification in the order of receipt of each complete Application for Certification. If the Registrar's Application for Certification is incomplete or defective, then CIRA will give notice to the Registrar to complete its Application for Certification and the Registrar must provide any missing information, correct any deficiencies, and complete the Application for Certification, to the satisfaction of CIRA, within five (5) Business Days (as defined in Section 15.1(a))

of the date that the notice is sent by CIRA or such longer period as CIRA may consent to in a notice to the Registrar, failing which the Application for Certification will be deemed to have been withdrawn and abandoned and will not be processed further. CIRA will usually give notice to the Registrar within 20 Business Days of receipt of a complete Application for Certification from the Registrar or such longer period as CIRA may reasonably require to review and process the Application for Certification. Such notice shall specify whether the Registrar has been certified in accordance with the Certification or Re-certification Requirements and the provisions of this Agreement.

(3) Consequences of Not Being Certified. If CIRA gives notice to the Registrar that the Registrar has not been certified in accordance with the Certification Requirements, then this Agreement shall automatically terminate on the date that notice is given to the Registrar without any liability of CIRA to the Registrar except that CIRA shall be required to refund to the Registrar the Certification Fee and the Initial Deposit, CIRA shall retain the Application Fee and applicable Taxes. Until the Registrar receives notice from CIRA that the Registrar has been certified as a registrar of the Registry by CIRA, the Registrar shall not:

- (a) act or hold itself out as a Registrar pursuant to this Agreement or as a registrar of the Registry;
- (b) provide, offer to provide, state, or imply that it is authorized to provide, any Registrar Services (as hereinafter defined); or
- (c) identify itself as a "CIRA Certified Registrar" or "Registraire Agréé par l'ACEI" or by any term suggesting a similar reference, or use, directly or indirectly, in any manner whatsoever, CIRA's name or any other trade-mark or trade names or any other identifying *indicium* owned or used by CIRA including the Trade-marks (as defined in Section 14.1) or any other intellectual property owned by or licensed to CIRA, whether or not registered (the "CIRA Intellectual Property"), or any confusing mark or name.

(4) Rights of Registrar on Certification. Subject to Section 1.1(5), on and after the date of certification of the Registrar by CIRA (which date shall be set out in the notice given by CIRA to the Registrar pursuant to Section 1.1(2)) (the "Certification Date"), the Registrar shall be entitled, on and subject to the terms and conditions of this Agreement, to provide the following services on a non-exclusive basis (collectively, the "Registrar Services"):

- (a) to apply to CIRA to register a .ca domain name or sub-domain name (a "Domain Name") on behalf of any Person (as defined in Section 15.1(b)) who has requested the Registrar apply on behalf of such Person for the registration of such Domain Name and who meets the Canadian Presence Requirements for Registrants set forth on CIRA's website (currently at [http://www.cira.ca/en/doc\\_Registrar.html](http://www.cira.ca/en/doc_Registrar.html)) (the "Canadian Presence Requirements for Registrants"); and
- (b) to provide all associated services to such Persons who have requested the Registrar to apply to register a Domain Name on their behalf and to all Persons for whom the Registrar is the registrar of record as listed in the WHOIS (the "Registrar of Record") in the Registry for a Domain Name Registration (collectively, "Registrants" and individually a "Registrant"), including services relating to the maintenance, transfer, modification, renewal and cancellation of a registration of a Domain Name (a "Domain Name Registration").

(5) The Registrar acknowledges and agrees that:

- (a) there is no limit on the number of registrars of the Registry which may be certified by CIRA;
- (b) CIRA may begin accepting and processing requests for registrations of Domain Names and transfers, modifications, renewals, and other transactions on a date which is later than the Certification Date (the "**Activation Date**"). CIRA and the Registrar will decide on a mutually acceptable Activation Date; and
- (c) CIRA will, if requested to do so by the Registrar, post the name and contact information for the Registrar on its website in accordance with "the Listing of CIRA Certified Registrar Names on the Website" on or as soon as practicable after such date as may be specified by the Registrar to CIRA, but not, in any event, prior to the Certification Date.

## 1.2 Re-certification of Registrar

(1) Annual Re-certification. Unless the Registrar is not in compliance with any provision of this Agreement (including, without limitation, the applicable Certification Requirements), the Registrar may be re-certified annually by CIRA as a registrar of the Registry by:

- (a) filing an application (the "**Re-certification Application**") with CIRA no later than 30 days prior to the date of each anniversary of the Registrar's original Certification Date (the "**Anniversary Date**") in accordance with the Re-certification Requirements; and
- (b) paying to CIRA, prior to or concurrent with the filing of the Re-certification Application, the Re-certification Fee (as defined in Section 6.1(d)) plus all applicable Taxes thereon.

The Registrar shall be required to pay the Re-certification Fee plus all applicable Taxes thereon to CIRA prior to or concurrent with the filing of the Re-certification Application or the Re-certification Application will be rejected by CIRA. Provided the Re-certification Fee plus all applicable Taxes thereon have been paid to CIRA, CIRA may process Re-certification Applications in the order of receipt of each complete Re-certification Application. If the Registrar's Re-certification Application is incomplete or defective, then CIRA may give notice to the Registrar to complete its Re-certification Application and the Registrar must provide any missing information, correct any deficiencies and complete the Re-certification Application, to the satisfaction of CIRA, within five (5) Business Days of the date that the notice is sent by CIRA or such longer period as CIRA may consent to in a notice to the Registrar, failing which the Re-certification Application will be deemed to have been withdrawn and abandoned and will not be processed further. CIRA shall give notice to the Registrar within (twenty) (20) Business Days of receipt of a complete Re-certification Application from the Registrar or such longer period as CIRA may reasonably required to review and process the Re-certification Application. Such notice shall specify whether the Registrar has been re-certified in accordance with the Re-certification Requirements and the provisions of this Agreement.

(2) Consequences of Re-certification and Failure to be Re-certified. If CIRA gives notice to the Registrar that the Registrar has been re-certified in accordance with the Re-certification Requirements and the provisions of this Agreement, then this Agreement shall continue in full force and effect. Such re-certification shall be effective as and from the applicable Anniversary Date. Failure to be re-certified by

CIRA on or prior to the Anniversary Date will result in the automatic termination of this Agreement and the cancellation of the Registrar's certification, effective on the applicable Anniversary Date without prejudice to the Registrar's right to enter into a new Registrar Agreement with CIRA and to file a new Application for Certification in accordance with the Certification Requirements and as contemplated by Section 1.1 above. Upon such termination, CIRA shall be required to refund to the Registrar the Re-certification Fee and, after deducting any amounts payable by the Registrar to CIRA under this Agreement, any balance of the Registrar remaining in the CIRA Deposit Account (as defined in Section 6.1(c)). The provisions of Section 7.11, Section 7.13 and Section 7.14 shall apply after such termination.

**1.3 Guarantee.** CIRA may require in its reasonable commercial judgment as a condition precedent to the certification or re-certification of the Registrar pursuant to Section 1.1 or Section 1.2 hereof, that one or more of the Registrar's partners (if the Registrar is a partnership) or affiliated bodies corporate (as defined in the *Business Corporations Act* (Ontario)) execute and deliver to CIRA a guarantee of the obligations of the Registrar under this Agreement in the form of Schedule "A" attached hereto (the "Guarantee"). If CIRA requires a Guarantee or Guarantees, then CIRA shall give notice thereof to the Registrar. No Application for Certification or Re-certification Application shall be complete until CIRA receives such completed and executed Guarantee or Guarantees requested under this Section 1.3. The Registrar shall not be certified or re-certified as a Registrar until such Guarantee or Guarantees (if required by CIRA) have been provided to CIRA. The Registrar must provide any requested Guarantee within twenty (20) days of the giving of the notice requesting such Guarantee, or the Application for Certification or Re-certification Application, as the case may be, shall be deemed to have been withdrawn and abandoned and will not be processed further.

**1.4 Withdrawal and Abandonment of Application for Certification or Re-certification Application.** The Registrar may withdraw and abandon any Application for Certification or Re-certification Application at any time prior to receiving notice from CIRA that the Registrar has been certified or re-certified in accordance with this Agreement. If an Application for Certification or a Re-certification Application is withdrawn and abandoned or deemed to have been withdrawn and abandoned at any time before CIRA gives notice to the Registrar that it has been certified or re-certified in accordance with the Certification or Re-certification Requirements, then this Agreement will automatically terminate on the date the Application for Certification is withdrawn and abandoned (or deemed to have been withdrawn and abandoned), in the case of a withdrawn and abandoned (or deemed to have been withdrawn and abandoned) Application for Certification, or on the applicable Anniversary Date, in the case of a withdrawn and abandoned (or deemed to have been withdrawn and abandoned) Re-certification Application, without any liability of CIRA to the Registrar, except that CIRA shall be required to refund to the Registrar (i) the Certification Fee and the Initial Deposit, in the case of termination resulting from a withdrawn and abandoned (or deemed to have been withdrawn and abandoned) Application for Certification, or (ii) the Re-certification Fee and, after deducting any amounts payable by the Registrar under this Agreement, any balance of the Registrar remaining in the CIRA Deposit Account, in the case of a termination resulting from a withdrawn and abandoned (or deemed to have been withdrawn and abandoned) Re-certification Application.

**1.5 Right of CIRA to Verify Information and Compliance.** CIRA is entitled at any time during the Term of this Agreement (as defined in Section 7) to verify the accuracy and completeness of any information provided by the Registrar to CIRA, including without limitation, the information provided by the Registrar in its Application for Certification and Re-certification Application(s) (the "Applications") and the compliance by the Registrar with the provisions of this Agreement (including without limitation the then current Certification Requirements or Re-certification Requirements and other Registry PRP (as defined in Section 2.2(1)) as well as the terms and conditions of use of CIRA's web site set out in the Legal Notice (as defined in Section 3.1(d)). The Registrar shall cooperate with CIRA in connection with such verification (which shall be conducted in such manner as is deemed reasonable by

CIRA) and shall give CIRA and its agents and representatives such assistance and access to and copies of such information and documents in any or all media regarding, and access to the premises of, the Registrar as CIRA may reasonably request in order to enable CIRA to complete such verification. CIRA shall be responsible for its own expenses incurred in connection with any such verification and the Registrar shall be responsible for any expenses the Registrar incurs in complying with this Section 1.5. The Registrar agrees to promptly execute and deliver to CIRA any authorizations required to permit the verifications of CIRA under this Section 1.5.

## ARTICLE 2

### REGISTRATIONS

#### 2.1 Registry Operation.

(1) CIRA shall use reasonable commercial and technological efforts to operate the Registry and facilitate public access to the Registry through a web-based look-up directory system (the "WHOIS"). The Registrar acknowledges and agrees that CIRA may license, delegate, or subcontract to any Person all or any part of the operation of the Registry.

(2) The Registrar acknowledges and agrees that CIRA has the exclusive authority to manage, operate and control the Registry and, agrees not to represent to any Person that the Registrar or any Person other than CIRA is the manager, operator, or administrator of the Registry or has the authority or ability to register Domain Names or to transfer, modify, renew, or cancel Domain Name Registrations.

#### 2.2 Registrations of Domain Names.

(1) The Registrar acknowledges and agrees that applications for the registration of a Domain Name shall be made only by the Registrar on behalf of its Registrants in accordance with CIRA's Policies, Rules, and Procedures adopted by CIRA from time to time and set forth at CIRA's website (currently at [http://www.cira.ca/en/doc\\_Registrar.html](http://www.cira.ca/en/doc_Registrar.html)) as amended and supplemented by CIRA from time to time (the "Registry PRP" which shall include, but not be limited to all of CIRA's Policies, Rules, and Procedures including the Canadian Dispute Resolution Policy and Rules and the Fees Policy and Rules). Prior to the first registration by CIRA of a selected Domain Name in the name of a Registrant, the Registrant shall be required to enter into CIRA's then current form of registrant agreement such agreement, as amended and supplemented by CIRA from time to time, the ("Registrant Agreement"). CIRA's form of Registrant Agreement shall be set forth at CIRA's website (currently at [http://www.cira.ca/en/doc\\_Registrar.html](http://www.cira.ca/en/doc_Registrar.html)).

(2) Complete applications for the registration of a Domain Name shall be processed by CIRA and Domain Names shall be registered by CIRA, in each case in accordance with the Registry PRP. CIRA, in its sole discretion, shall have the right to reject any application for the registration of a Domain Name and refuse to register any Domain Name for any reason whatsoever with no liability whatsoever to any Registrant, the Registrar, or any other Person. CIRA will give notice to the Registrar by email if CIRA so rejects such application.

(3) CIRA will accept applications for the registration of new third and fourth level Domain Names under provincial and territorial sub-domains and their official municipal sub-domains in accordance with the Registry PRP.



## **2.3 Renewals, Transfers, Modifications, Cancellations and Other Transactions.**

(1) The Registrar agrees that all renewals, transfers, modifications, or cancellations of, and any other request or transaction with respect to a Domain Name Registration shall be made only by the Registrar on behalf of its Registrants with respect to a Domain Name Registration in accordance with the Registry PRP in force at the time of receipt by CIRA of any completed application or request for the renewal, transfer, modification, or cancellation of a Domain Name Registration or other request or transaction with respect to a Domain Name Registration.

(2) The registration period of any Domain Name Registration may be renewed for a period of one to ten years as selected by a Registrant through the Registrar in accordance with the Registry PRP.

(3) Provided the Registrar complies with the applicable Registry PRPs which deal with "Charge-Backs" and the Registrar is not in default hereunder, the Registrar may, without the Registrant's consent, request a refund of certain Registration Fees and request CIRA to cancel the Registrant's Domain Name Registration subject to the request.

(4) Provided the Registrar complies with the applicable Registry PRP which deals with "Cancelling a New Registration" and the Registrar is not in default hereunder, the Registrar may, without the Registrant's consent, cancel a Domain Name Registration within seven (7) days of Activation (as defined in Section 15.1(a)).

(5) Provided the Registrar complies with the applicable Registry PRP which deals with "Cancellation of Renewals" and the Registrar is not in default hereunder, the Registrar may, with the Registrant's consent, cancel a renewal term for a Domain Name Registration, provided the renewal term has not yet commenced.

**2.4 Registrant Inquiries.** The Registrar agrees to act promptly to investigate any and all Registrant inquiries and disputes. The Registrar will immediately give notice to CIRA if any Registrant requests the assistance of CIRA or the Registrar with any such inquiry or dispute and the Registrar agrees to cooperate with CIRA in connection with such inquiry or dispute.

**2.5 Representation and Solicitation of Registrants.** The Registrar shall not use information obtained from the Registry to advertise its services, solicit business from, or otherwise make contact with any Registrant, by email or otherwise, concerning the registration of a Domain Name or the transfer, modification, or renewal of, or any other request or transaction with respect to, a Domain Name Registration unless: (i) the Registrar is the CIRA Certified Registrar for such Registrant, (ii) such Registrant first contacts the Registrar or (iii) the Registrar has obtained the prior written consent of the CIRA Certified Registrar for such Registrant and the Registrant has consented in writing to the use of such information by the Registrar or the making of contact by the Registrar. The Registrar shall not apply to register a Domain Name or perform any other Registrar Services on behalf of a Registrant unless the Registrar is the Registrar of Record for such Registrant and has been requested to perform such services by such Registrant or by an agent other than another CIRA certified registrar of such Registrant.

## ARTICLE 3

### ADDITIONAL REGISTRAR OBLIGATIONS

**3.1 Additional Registrar Obligations.** Throughout the Term of this Agreement, the Registrar shall:

- (a) comply with the Certification Requirements or if the Registrar has been re-certified, the Re-certification Requirements,
- (b) submit to CIRA all information which CIRA may require be submitted in connection with the registration of a Domain Name, the renewal, transfer, cancellation, or modification of a Domain Name Registration and any other request or transaction with respect to a Domain Name Registration and CIRA membership;
- (c) comply with and abide by all Registry PRP (All of CIRA's Registry PRP are currently located at [http://www.cira.ca/en/doc\\_Registrar.html](http://www.cira.ca/en/doc_Registrar.html));
- (d) comply with and observe the terms and conditions for the use of CIRA's website as set out in the "Legal Notice" on CIRA's website (currently at <http://www.cira.ca>). All such terms and conditions, as may be amended from time to time, shall be deemed to be part of this Agreement;
- (e) obtain, maintain in good standing and renew as necessary all licences, permits, and approvals which may be required in connection with providing Registrar Services and the performance of its obligations under this Agreement;
- (f) comply with and observe all applicable international, federal, provincial, and local laws and regulations and other laws of applicable governmental authorities ("Applicable Laws");
- (g) immediately give notice to CIRA of any pending or threatened claim, demand, action, cause of action, proceeding, lawsuit, investigation, or application ("Claim") in relation to any Domain Name Registration (or any judicial requests or orders to produce documents or information obtained from or supplied to the Registry) that become known to the Registrar;
- (h) maintain or cause to be maintained adequate books and records in connection with its activity as a Registrar of Domain Names and the performance of its obligations under this Agreement;
- (i) pay to CIRA all applicable federal, provincial, local and other taxes (including goods and services tax ("GST") and harmonized sales tax ("HST")) (collectively "Taxes") exigible on the Fees and other amounts payable under this Agreement and pay and remit all Taxes in respect of all other activities of the Registrar;
- (j) not, directly or indirectly, defame or contribute to the defamation of any other Person;

- (k) not, directly or indirectly, unlawfully discriminate or contribute to the unlawful discrimination of any other Person;
- (l) not, directly or indirectly, violate or contribute to the violation of the intellectual property rights or other rights of any other Person;
- (m) not use the CIRA Intellectual Property (as defined in Section 1.1(3)(c)) without the prior written consent of CIRA other than as expressly permitted in Section 14 to identify itself as a "CIRA Certified Registrar" or "**Registraire Agréé par l'ACEI**" during the Term;
- (n) not use any of CIRA's systems or information for any purpose other than acting as a Registrar on the terms and conditions set forth in this Agreement;
- (o) not submit an application for registration of a Domain Name or the renewal, transfer, modification, or cancellation of a Domain Name Registration or any other request or transaction with respect to a Domain Name Registration or CIRA membership on behalf of any non-existent Person or on behalf of any Person that does not meet the Canadian Presence Requirements for Registrants;
- (p) subject to Sections 2.3(3) and 2.3(4), not submit an application for registration of a Domain Name or the renewal, transfer, modification or, cancellation of a Domain Name Registration or any other request or transaction with respect to a Domain Name Registration or CIRA membership on behalf of any Person which has not requested that the Registrar make such application or request on behalf of such Person;
- (q) not submit false, misleading, or, subject to Sections 2.3(3) and 2.3(4), unauthorized information for an application for registration of a Domain Name or the renewal, transfer, modification or cancellation of a Domain Name Registration or any other request or transaction with respect to a Domain Name Registration or CIRA membership;
- (r) not, directly or indirectly, either individually or in partnership or jointly or in conjunction with or through any Person or as principal, agent, consultant, contractor, investor, or shareholder or in any other manner whatsoever, accumulate or warehouse Domain Name Registrations with which the Registrar or such Person has no reasonable connection, for the purpose of removing them from availability for others, transferring them for immediate or deferred direct or indirect gain or profit or for any other reason whatsoever;
- (s) not knowingly participate with any another Person, including another CIRA certified registrar, in an activity designed to accumulate or warehouse Domain Name Registrations, with which the Registrar or such Person has no reasonable connection, for the purpose of removing them from availability for others, transferring them for immediate or deferred direct or indirect gain or profit, or for any other reason whatsoever;
- (t) not engage in any direct or indirect activity which is designed to bring, or may have the effect of bringing, the Registry into disrepute or which interferes with CIRA's operations;

- (u) not use any personal or other information of any Registrant for any purpose other than in accordance with Applicable Law, CIRA's privacy policy (at [http://www.cira.ca/en/cat\\_Registrar.html](http://www.cira.ca/en/cat_Registrar.html)) and, in conjunction with CIRA, for the registration of a Domain Name and inclusion of relevant information in the WHOIS or the transfer, renewal, modification, maintenance and cancellation of any Domain Name Registration for which the Registrar is the CIRA Certified, except as otherwise expressly consented to by such Registrant in the Registrant Agreement (which consent, for greater certainty, shall not be contained in the Registrant's application to the Registrar for registration services);
- (v) act in good faith towards CIRA and all registrants;
- (w) at all times accurately represent to registrants, the media, any governmental entity and the general public: (i) the Registry PRP; (ii) CIRA's status as the operator of the Registry; (iii) CIRA's status with the Internet Corporation for Assigned Names and Numbers; (iv) CIRA's status with the Government of Canada; (v) the Registrar's relationship with CIRA under this Agreement; and (vi) the terms and conditions of use for CIRA's website as set out in the Legal Notice on CIRA's website;
- (x) give notice to CIRA immediately if the Registrar becomes aware or has cause to believe that a Registrant is no longer entitled to a Domain Name Registration under the Registry PRP;
- (y) promptly give notice to CIRA if the Registrar becomes aware or has cause to believe that a particular Registrant is in breach of, or a particular Domain Name Registration breaches the Registry PRP;
- (z) keep CIRA informed at all times of all changes in the information supplied to CIRA by the Registrar, including information supplied on behalf of Registrants or in connection with the Registrar's Application for Certification and Re-certification Application(s), and all changes of name, telephone and fax numbers, postal and email addresses of the Registrar and the names of the correct representatives of the Registrar for the receipt of all communications from CIRA;
- (aa) not represent to any Person that the Registrar enjoys access to the Registry that is superior to that of any other CIRA Certified Registrar ;
- (bb) upon notification by a Registrant or any other Person of an inaccuracy in the information associated with a Domain Name Registration maintained by such Registrar, promptly give notice to CIRA of such inaccuracy and take reasonable steps to investigate and correct the claimed inaccuracy;
- (cc) not solicit, negotiate or conclude any agreement with a Registrant or prospective Registrant in such Person's home or anywhere else except the Registrar's normal place of business;
- (dd) not vote at a Meeting (as defined in Section 15.1(e)) or vote at CIRA Elections (as defined in Section 15.1(d)) on behalf of a registrant except when the Registrar is a Registrant the Registrar may vote on its own behalf;

- (ee) not engage in any direct or indirect activity, by itself or with or through some other Person, which is designed to, directly or indirectly, collect or accumulate votes to be cast at a Meeting or at CIRA Elections for its own or some other Person's (who is not at arm's length of the Registrar) purpose or benefit; and
- (ff) upon a request from the Registrant to the Registrar, revoking the Registrar's authority to change Administrative Contact details without having to obtain the Registrant's approval in accordance with the applicable Registry PRP (the "CWA Authority"), immediately initiate a request to CIRA to revoke said authority.

**3.2 Insurance.** The Registrar acknowledges that the Registrant has in place and will maintain during the Term the types and levels of insurance that a prudent provider of Registrar services would have in place.

## ARTICLE 4

### REGISTRAR'S AGREEMENTS WITH REGISTRANTS

**4.1 Registrant Agreement.** The Registrar shall enter into a written agreement or an electronic agreement which is equivalent at law to a written agreement with each of its Registrants of record. No such agreement shall contain any terms that are inconsistent with, or that in any way, modify, override, limit, contradict, or cancel the terms and conditions of the Registrant Agreement, nor shall any agreement between the Registrar and the Registrant contain any terms and conditions that prevent a Registrant from changing Registrars at any time or revoke the CWA Authority. To the extent that any provision of an agreement between the Registrar and a Registrant contravenes the provisions of this Section 4.1, the Registrar hereby agrees that the requirements of this Section 4.1 shall prevail and be binding on the Registrar for the benefit of the Registrant. Where the Registrar is also a Registrant, and uses the services of the Registrar to register a Domain Name, the Registrar shall not be required to enter into such agreement with itself, but shall as a Registrant be deemed to have covenanted and agreed with CIRA as provided in Section 4.2, and shall enter into a Registrant Agreement with CIRA as required by the Registry PRP.

**4.2 Provisions in the Agreement Between the Registrant and the Registrar.** The following provisions shall be included in any agreement between the Registrar and any such Registrant:

- (a) CIRA may, at its option, extend any period for the registration of a Domain Name at no charge to the Registrar or the Registrant for such further period of time as CIRA may determine, in its sole discretion;
- (b) The Registrant acknowledges and agrees that CIRA shall not be liable to the Registrant for any loss, damage, or expense arising out of CIRA's failure or refusal to register a Domain Name, CIRA's failure or refusal to renew a Domain Name Registration, CIRA's registration of a Domain Name, CIRA's failure or refusal to renew a Domain Name Registration, CIRA's renewal of a Domain Name Registration, CIRA's failure or refusal to transfer a Domain Name Registration, CIRA's transfer of a Domain Name Registration, CIRA's failure or refusal to maintain or modify a Domain Name Registration, CIRA's maintenance

of a Domain Name Registration, CIRA's modification of a Domain Name Registration, CIRA's failure to cancel a Domain Name Registration or CIRA's cancellation of a Domain Name Registration from the Registry;

- (c) In no event shall the Registrant pursue any Claim against CIRA and in no event shall CIRA be liable for any direct, indirect, special, punitive, exemplary or consequential damages including, but not limited to, damages resulting from loss of use, lost profits, lost business revenue, or third party damages or arising from any breach by the Registrar of its obligations under any agreement between the Registrar and a Registrant or the Registrar Agreement between CIRA and the Registrar;
- (d) Registration of the Registrant's selected Domain Name in its first application to CIRA shall not be effective until the Registrant has entered into and agreed to be bound by CIRA's Registrant Agreement;
- (e) The Registrar shall immediately give notice to the Registrant in the event that the Registrar is no longer a CIRA Certified Registrar, has had its certification as a CIRA Certified Registrar suspended or terminated, or the Registrar Agreement between CIRA and the Registrar is terminated or expires. CIRA may post notice of such suspension, termination, or expiry on its website and may, if CIRA deems appropriate, give notice to the Registrants thereof;
- (f) In the event that the Registrar is no longer a CIRA Certified Registrar, has had its certification as a CIRA Certified Registrar suspended or terminated or in the event the Registrar Agreement between CIRA and the Registrar is terminated or expires, each Registrant shall be responsible for changing its Registrar of Record to a new CIRA Certified Registrar within thirty (30) days of the earlier of notice thereof being given to the Registrant by (i) the Registrar or (ii) CIRA in accordance with CIRA's then current Registry PRP; provided, however, that if any of the Registrant's Domain Name Registration(s) is scheduled to expire within thirty (30) days of the giving of such notice, then the Registrant shall have thirty (30) days from the anniversary date of the registration(s), to register with a new CIRA certified registrar and to renew such Domain Name Registration(s) in accordance with the Registry PRP;
- (g) The Registrant acknowledges and agrees that, should there be insufficient funds prepaid by the Registrar in the CIRA Deposit Account to be applied in payment of any Fees, CIRA may in its sole discretion stop accepting applications for Domain Name Registrations from the Registrar, stop effecting registrations of Domain Names and transfers, renewals, modifications, and cancellations of Domain Name Registrations requested by the Registrar and stop performing other billable transactions requested by the Registrar not paid in full and CIRA may terminate the Registrar Agreement between CIRA and the Registrar;
- (h) The Registrant shall not, directly or indirectly, through registration or use of its Domain Name or otherwise:
  - (i) violate or contribute to the violation of the intellectual property rights or other rights of any other Person;

- (ii) defame or contribute to the defamation of any other Person; or
  - (iii) unlawfully discriminate or contribute to the unlawful discrimination of any other Person;
- (i) The Registrant agrees that CIRA shall not be responsible for the use of any Domain Name in the Registry and that CIRA shall not be responsible in any way whatsoever for any conflict or dispute with or any actual or threatened Claim against a Registrar or a 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 *indicium* of an individual or any other intellectual property rights of a third party or relating to the defamation of or unlawful discrimination with respect to any other Person;
- (j) CIRA shall have the right, at any time and from time to time, acting reasonably, to amend the Registrar Agreement between CIRA and the Registrar, and any or all of the Registry PRP and to adopt new Registry PRP not yet in effect. Any such amendment will be binding and effective on the Registrar thirty (30) days after CIRA gives notice of such amendment by email to the Registrar. The Registrar and the Registrant agree to promptly amend the agreement between the Registrar and the Registrant to reflect any amendments to Section 4.2 of the Registrar Agreement between CIRA and the Registrar;
- (k) The Registrant acknowledges and agrees that registration of a Domain Name does not create any proprietary right for any Registrant, the Registrar, or any other Person in the name used as a Domain Name or the Domain Name Registration and that the entry of a Domain Name in the Registry or in the WHOIS shall not be construed as evidence or ownership of the Domain Name registered as a Domain Name. The Registrant shall not in any way transfer or purport to transfer a proprietary right in any Domain Name Registration or grant or purport to grant as security or in any other manner encumber or purport to encumber a Domain Name Registration;
- (l) The Registrant further acknowledges and agrees that the Registrar may make changes to the Administrative Contact details at any time without having to comply with the change of critical information approval process (as set out in the applicable Registry PRP), provided the Registrant has granted the Registrar the authority to do so and has not revoked said authority. If the Registrant has two or more Registrars, only one of the Registrant's Registrars may be granted said authority. The Registrant may at any time revoke said authority or provide said authority to another of the Registrant's Registrars;
- (m) The Registrant acknowledges and agrees that the Registrant's Registrar may, in accordance with the applicable Registry PRP, cancel the Registrant's Domain Name Registrations within seven (7) days of Activation and cancel the renewal of the Registrant's Domain Name Registration provided that the renewal term has not yet commenced; and
- (n) The Registrant acknowledges and agrees that, provided the Registrar complies with the Registry PRP which deals with "Charge-Backs" and the Registrar is not in default under its Registrar Agreement, the Registrar may, without the

Registrant's consent, request a refund of certain Registration Fees and request CIRA to cancel the Registrant's Domain Name Registration that is subject to the request.

## ARTICLE 5

### CHANGES OF REGISTRARS

- 5.1 **Changes of Registrars.** The Registrar acknowledges and agrees that any Registrant shall be permitted to change its Registrar of Record for a Domain Name Registration at any time in accordance with the Registry PRP.

## ARTICLE 6

### FEES

- 6.1 **Payment.** The following fees and amounts shall be payable by the Registrar to CIRA:

- (a) a non-refundable application fee, to be paid by the Registrar to CIRA in accordance with Section 1.1(2) (the "Application Fee");
- (b) a certification fee, to be paid by the Registrar to CIRA in accordance with Section 1.1(2) (the "Certification Fee") and which is refundable if the Registrar's Application for Certification is rejected;
- (c) an initial deposit (the "Initial Deposit") to be deposited in a CIRA account that has been designated for use by CIRA to receive prepayments from registrars of Fees (the "CIRA Deposit Account") to be paid by the Registrar to CIRA in accordance with Section 1.1(2), which Initial Deposit is refundable if the Registrar's Application for Certification is rejected;
- (d) a re-certification fee to be paid by the Registrar to CIRA in accordance with Section 1.2(1) and which is refundable if the Registrar's Re-certification Application is rejected (the "Re-certification Fee");
- (e) a fee in respect of a change of Registrar of Record;
- (f) a fee for each registration of a Domain Name and a fee for the renewal of a Domain Name Registration;
- (g) a fee for the late renewal of a Domain Name Registration;
- (h) a fee for a change of Registrant on a transfer of a Domain Name Registration;
- (i) a fee for the failure by any Registrant to accept the Registrant Agreement; and



- (j) such other fees as may be stipulated by CIRA from time to time.

The amount of such fees (the "Fees") are set forth at CIRA's website (currently at [http://www.cira.ca/en/doc\\_Registrar.html](http://www.cira.ca/en/doc_Registrar.html)). All amounts payable by the Registrar to the CIRA Deposit Account shall be paid by certified cheque, bank draft, or any other method that provides immediately available funds. The amounts of such Fees do not include any applicable Taxes. The Fees listed in Sections 6.1(e), (f), (g), (h), (i), and (j) (the "Registration Fees") plus any applicable Taxes on such fees will be charged against the Registrar's balance in the CIRA Deposit Account. If applicable, the GST and HST (in those HST provinces) will be charged in addition to any Fee payable pursuant to this Agreement. The GST will be refunded to any Person eligible under law for a refund of GST, including a provincial government, which provides to CIRA a completed and executed certificate in prescribed form. The Registrar agrees to maintain sufficient funds in the CIRA Deposit Account to cover the payment of all Registration Fees. CIRA shall, upon request from the Registrar, email to the Registrar a daily, weekly or monthly statement (as specified by the Registrar) of the transactions processed through the CIRA Deposit Account in respect of such Registrar or, alternatively, the Registrar may obtain such information from CIRA's website in accordance with the Technical Procedures. Any interest or other income earned on the funds held in the CIRA Deposit Account shall be for CIRA's account. The Registrar shall not be entitled to receive any interest on any Fees which are prepaid by the Registrar, including any Fees which may be refunded by CIRA to the Registrar. CIRA reserves the right at any time to increase or decrease any of the Fees or prescribe additional Fees in accordance with the amendment procedure set out in Section 13. Subject to Section 4.2(n), in no event will the Registrar be entitled to a refund of any Fee paid for the registration of a Domain Name or the renewal of a Domain Name Registration if the Domain Name is cancelled, transferred, or suspended in accordance with the Registrant Agreement.

**6.2 Insufficiency in CIRA Deposit Account.** Should there be insufficient funds prepaid by the Registrar in the CIRA Deposit Account to be applied in payment of any Fees, CIRA may, in its sole discretion, stop accepting applications for Domain Name Registrations from the Registrar, stop effecting registrations of Domain Names and transfers, renewals, modifications, and cancellations of Domain Name Registrations requested by the Registrar and stop performing other billable transactions requested by the Registrar and not paid in full and may give written notice of termination of this Agreement pursuant to Section 7.6. The Registrar agrees that, in such event, CIRA shall have no liability whatsoever to the Registrar or any Registrant.

**6.3 No Fees.** The Registrar shall not be permitted to charge any fees to the Registrant for whom it is the Registrar:

- (a) for the revocation of CWA Authority; and/or
- (b) subject to the Registry PRP, transfers of Domain Name Registrations from the Registrar to another CIRA Certified Registrar.

## ARTICLE 7

### TERM, TERMINATION, AND SUSPENSION

**7.1 Term.** The term of this Agreement (the "Term") shall commence on the date hereof and shall continue in force and effect until the Anniversary Date and shall be renewed pursuant to Section 7.2, unless otherwise terminated as set out in this Agreement.

**7.2 Renewal.** Unless this Agreement is terminated as set out in this Agreement, the Term of this Agreement shall be automatically extended for successive periods of one year commencing on the Anniversary Date upon re-certification of the Registrar by CIRA in accordance with Section 1.2.

**7.3 Termination Due to Dissolution, Bankruptcy, etc.** In the event that:

- (a) either party is insolvent or bankrupt or subject to the provisions of the *Bankruptcy and Insolvency Act* (Canada) or any other similar federal or provincial legislation, or makes a proposal under such legislation, or goes into liquidation, either voluntarily or under an order of a court of competent jurisdiction, or makes a general assignment for the benefit of its creditors;
- (b) either party ceases to carry on business in the normal course, dissolves, or is wound up; or
- (c) a receiver or other official having similar functions is appointed over a substantial portion of either party's assets;

then the party subject to Sections 7.3(a), (b), or (c) shall, within 48 hours of the occurrence of the event, notify the other party of the occurrence. The other party may, at any time, in its sole discretion and at its sole option terminate this Agreement by giving five (5) days notice to the party subject to Sections 7.3(a), (b), or (c).

**7.4 Termination or Suspension Due to Death or Incapacity.** Where the Registrar is a natural Person and the Registrar dies or becomes legally incapacitated during the Term of this Agreement, the legal representatives of the Registrar shall, within a period of 15 days from the date of such occurrence, give notice to CIRA and all of the Registrar's Registrants of such event. Upon receipt of notice of the Registrar's death or incapacity, or upon becoming aware of any such event if the legal representative of the Registrar fails to properly give notice to CIRA, CIRA may, at its absolute discretion, terminate this Agreement. The personal representative of the Registrar shall do all such acts and things and execute all such documents as may be necessary to give effect to the obligations set out in this Agreement if so requested by CIRA and shall take all actions necessary to preserve the rights of the Registrar's Registrants.

**7.5 Termination due to breaches of Sections 3.1(dd) and (ee).** If in CIRA's reasonable view, a Registrar has breached Section 3.1(dd) and/or 3.1(ee), CIRA will notify the Registrar. If the Registrar fails, within five (5) Business Days after the receipt of the notice to satisfy CIRA, acting reasonably, that the Registrar has not breached Section 3.1(dd) and/or 3.1(ee), the Agreement will be automatically terminated.

**7.6 Suspension and Termination of Registrar.** CIRA may, in its sole discretion by giving notice thereof to the Registrar, terminate this Agreement (such termination to be effective on the date specified by CIRA in the notice) or suspend the Registrar's certification for such time period as CIRA may determine, in the event that:

- (a) the Registrar fails to meet the Certification Requirements or the Re-certification Requirements, as applicable (including the Canadian Presence Requirements for Registrars) at any time during the Term;
- (b) the Registrar provides false or misleading information to CIRA;

- (c) there are insufficient funds prepaid by the Registrar in CIRA's Deposit Account to be applied in payment of any Fees;
- (d) the Registrar fails to pay when due any amount payable to CIRA under this Agreement;
- (e) the Registrar breaches any other term of this Agreement, including, without limitation, any of the Registry PRP or the terms and conditions of the Legal Notice and fails, in CIRA's reasonable opinion, within five (5) Business Days after the receipt of a notice from CIRA, to remedy such breach;
- (f) the Registrar or any partner, director, officer, or controlling shareholder of the Registrar is convicted of an offence under the *Criminal Code* (Canada);
- (g) the Registrar or any partner, director, officer, or controlling shareholder of the Registrar engages in any conduct or practice that in the reasonable opinion of CIRA is detrimental or harmful to the good name, Trade-marks (as defined in Section 14.1), goodwill or reputation of CIRA or the Registry, and the Registrar continues, repeats or fails to cease and desist from such conduct, to CIRA's satisfaction, within ten (10) Business Days after CIRA gives notice of such conduct to the Registrar or such additional period as may be stated in the notice;
- (h) the Registrar, in its capacity as a Registrant, breaches any agreement with CIRA;
- (i) except as permitted under Sections 2.3(3) and 2.3(4) above, the Registrar requests any transaction with respect to a Domain Name Registration which has not been authorized by the particular Registrant;
- (j) the Registrar disrupts or abuses CIRA's Registry services, as determined by CIRA in its sole discretion, acting reasonably;
- (k) the Registrar engages in advertising or representations to the public or other behaviour which CIRA, acting reasonably, determines are false, misleading or detrimental to CIRA, the Registry, or any Registrant, registrar, or third party;
- (l) where the Registrar is also a Registrant, the Registrar applies to register a Domain Name as agent for, or on behalf of, a third party in any manner whatsoever which contravenes Section 3.1 (r), (s) or (t) of this Agreement;
- (m) where the Registrar is also a Registrant, the Registrar in its/his/her capacity as a Registrant, breaches Section 3.1(j) of the Registrant Agreement with CIRA; or
- (n) the designation by the government of Canada of CIRA to manage, operate and control the Registry is terminated or CIRA is no longer recognized at the international level as having the exclusive authority to operate the Registry.

The Registrar agrees to promptly give notice to CIRA of the occurrence of any of the events listed in Section 7.6(a) - (m). CIRA agrees to promptly give notice to the Registrar of the occurrence of the event listed in Section 7.6(n).

**7.7 Fines and Decertification Points.** CIRA may, before suspending or terminating a Registrar, following procedures CIRA deems appropriate from time to time, impose certain Fines and/or Decertification Points upon Registrars.

**7.8 Integrity of Registry.** CIRA may, in its sole discretion following procedures CIRA deems appropriate from time to time, stop processing requests of the Registrar for the registration of Domain Names or the transfer, modification, renewal, or cancellation of Domain Name Registrations and other requests for such temporary periods of time as CIRA may determine in the event that CIRA, acting reasonably, considers that such action is necessary to preserve and protect the integrity, rights, and interests of any of the Registry, any Registrant, the Registrar, any other registrar, and/or any other Person.

**7.9 Termination by Registrar.** The Registrar may terminate this Agreement at any time by giving thirty (30) days' written notice to CIRA.

**7.10 Suspension of Activities by Registrar.** The Registrar may at any time request CIRA to stop accepting and processing transactions submitted by the Registrar, including for the registration of Domain Names and the renewal, transfer, modification, and cancellation of Domain Name Registrations. CIRA shall stop accepting and processing such transactions as soon as practicable after receiving such request and shall resume accepting and processing such transactions only upon being directed to do so by the Registrar.

**7.11 Obligations to Notify Registrants.** In the event that the Registrar's certification is suspended or this Agreement expires or is terminated in accordance with the provisions of this Agreement:

- (a) the Registrar shall immediately give notice to the Registrants for whom the Registrar maintains any Domain Name Registration and to any Person for whom the Registrar is in the process of applying for a Domain Name Registration of such suspension or termination, as the case may be;
- (b) CIRA shall post notice of such suspension or termination on its website and may, if it deems appropriate, give notice to the Registrants for whom the Registrar maintains any Domain Name Registration of such suspension, termination or expiry, as the case may be; and
- (c) the Registrar shall take all actions necessary to preserve the rights of its Registrants.

**7.12 Effect of Suspension.** Upon the suspension by CIRA of the Registrar's certification, the Registrar shall cease to provide Registrar Services to Registrants until CIRA gives notice to the Registrar that the Registrar's certification has been reinstated. During such period of suspension:

- (a) CIRA shall reject all transactions requested by the Registrar including any applications for registration of a Domain Name or any modification, transfer, renewal or cancellation of a Domain Name Registration; and
- (b) the Registrar shall cease to use, and shall not at any time in the future use, directly or indirectly, in advertising or in any other manner whatsoever, any CIRA Intellectual Property including, without limitation, "CIRA Certified Registrar", "Registraire Agréé par l'ACEI" or any other Trade-marks, or any confusing marks or names.

**7.13 Post-Termination Rights and Obligations of CIRA.** Upon the termination or expiry of this Agreement:

- (a) CIRA may disable any passwords or other security measures that permit a Registrar to establish a connection to the Registry;
- (b) CIRA may cease to accept from the Registrar any transaction requested by the Registrar, including any applications for registration of a Domain Name or any modification, transfer, renewal or cancellation of a Domain Name Registration; and
- (c) after deducting any amounts payable by the Registrar to CIRA under this Agreement including any applicable Taxes, CIRA shall refund to the Registrar any balance of the Registrar remaining in the CIRA Deposit Account and refund to the Registrar any other Fees required to be refunded by CIRA pursuant to Section 1 or Section 6.

**7.14 Post-Termination Obligations of Registrar.** Upon the termination or expiry of this Agreement, the Registrar shall:

- (a) cease to hold itself out as a CIRA Certified Registrar of CIRA or as a Registrar of the Registry;
- (b) not provide or offer to provide or state or imply that it is authorized to provide any Registrar Services;
- (c) pay any outstanding amounts payable by the Registrar to CIRA under this Agreement including any applicable Taxes;
- (d) cease to use, and shall not at any time in the future use, directly or indirectly, in advertising (including any signage or telephone directory listing (including an Internet telephone directory listing)) or in any other manner whatsoever, any trade-marks or trade names owned or used by CIRA, including, without limitation, "CIRA Certified Registrar", "Registraire Agréé par l'ACEI" or any other Trade-marks, or any confusing marks or names;
- (e) at the Registrar's cost and expense, forthwith deliver to CIRA everything in the Registrar's possession or control, including, without limitation, all stationery and other materials referring in any way, and remove from its websites all references, to CIRA or bearing or displaying any trade-marks or trade-names owned or used by CIRA, including the Trade-marks, or any semblance of the same or any trade-marks or trade-names which are confusing with any trade-marks or trade-names of CIRA, including without limitation, the Trade-marks;
- (f) relinquish possession of and deliver to CIRA all copies of all material of every nature and character which has been received by the Registrar from CIRA; and
- (g) take all necessary action to preserve the rights of its Registrants.

**7.15 Entry.** In the event the Registrar fails to comply with the provisions of Section 7.14(e) or (f), CIRA shall have the right to enter upon the premises of the Registrar during normal business hours

and remove all such materials referred to in Section 7.14(e) or (f) without liability to the Registrar and the Registrar shall reimburse CIRA for any reasonable costs and expenses incurred in connection therewith, including reasonable solicitors' fees.

**7.16 Injunction.** The Registrar acknowledges and agrees that the covenants in Section 7.14(a) - (g) are reasonable and necessary and that CIRA would suffer immediate irreparable harm without such covenants. The Registrar also acknowledges and agrees that these covenants are enforceable by injunction, including an interim or interlocutory injunction, by any court of competent jurisdiction.

## ARTICLE 8

### LIMITATIONS ON WARRANTIES, CONDITIONS, LIABILITY; INDEMNIFICATION

**8.1 LIMITATION ON WARRANTIES AND CONDITIONS.** EXCEPT AS EXPRESSLY SET OUT IN SECTION 10, CIRA MAKES NO REPRESENTATION, WARRANTY OR CONDITION, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR CONDITION OF QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR THAT THE REGISTRY WILL BE AVAILABLE AT ALL TIMES DURING THE TERM OR WITH RESPECT TO FUNCTIONALITY, FREEDOM FROM BUGS OR VIRUSES, COMPATIBILITY OR INTEROPERABILITY OF THE REGISTRY OR THE SYSTEMS ACCESSED BY THE REGISTRAR AND/OR REGISTRANTS OR WITH RESPECT TO THE SECURITY OF THE REGISTRY OR ANY SYSTEMS ACCESSED BY THE REGISTRAR AND/OR REGISTRANTS, INCLUDING WITHOUT LIMITATION, THOSE PROVIDED BY THIRD PARTY SOFTWARE, HARDWARE, INTERNET AND/OR TELECOMMUNICATIONS OR OTHER SERVICE PROVIDERS OR OTHERWISE WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER.

**8.2 USE OF DOMAIN NAMES.** THE REGISTRAR AGREES THAT CIRA SHALL NOT BE RESPONSIBLE FOR THE USE OF OR RIGHT TO USE ANY DOMAIN NAME REGISTERED IN THE REGISTRY AND THAT CIRA SHALL NOT BE RESPONSIBLE IN ANY WAY WHATSOEVER FOR ANY CONFLICT OR DISPUTE WITH OR ANY CLAIM AGAINST A REGISTRAR OR A 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 INDICIUM OF AN INDIVIDUAL OR ANY OTHER INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, OR RELATING TO DEFAMATION OR UNLAWFUL DISCRIMINATION WITH RESPECT TO ANY OTHER PERSON. THE REGISTRAR ACKNOWLEDGES AND AGREES THAT THE REGISTRATION OF A DOMAIN NAME DOES NOT CREATE ANY PROPRIETARY RIGHT FOR THE REGISTRAR, REGISTRANTS OR ANY OTHER PERSON IN ANY NAME USED AS A DOMAIN NAME OR ANY DOMAIN NAME REGISTRATION AND THE ENTRY OF A DOMAIN NAME IN THE "WHOIS" DATABASE SHALL NOT BE CONSTRUED AS EVIDENCE OF OWNERSHIP OF THE DOMAIN NAME REGISTERED AS A DOMAIN NAME.

**8.3 LIMITATION OF LIABILITY.** CIRA'S AGGREGATE LIABILITY TO THE REGISTRAR, INCLUDING FOR ALL BREACHES BY CIRA OF THIS AGREEMENT, SHALL BE LIMITED TO THE TOTAL AMOUNT OF ALL CERTIFICATION FEES AND RE-CERTIFICATION FEES PAID BY THE REGISTRAR TO CIRA.

8.4

**ADDITIONAL LIMITATIONS OF LIABILITY.**

- (1) IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, TORT LIABILITY (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL CIRA OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES BE LIABLE TO THE REGISTRAR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ECONOMIC LOSS OR RESULTING FROM LOSS OF USE, LOST BUSINESS REVENUE, LOST PROFITS OR THIRD PARTY DAMAGES.
- (2) IN NO EVENT SHALL CIRA BE LIABLE FOR ANY LOSS, DAMAGE OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ECONOMIC LOSS OR DAMAGES RESULTING FROM LOSS OF USE, LOST PROFITS, LOST BUSINESS REVENUE OR THIRD PARTY DAMAGES) ARISING OUT OF, RESULTING FROM OR IN ANY WAY CONNECTED WITH:
  - (a) ANY ACCESS DELAY OR ACCESS INTERRUPTION;
  - (b) ANY DATA NON-DELIVERY OR DATA MISDELIVERY;
  - (c) ANY UNAUTHORIZED USE OR MISUSE OF ANY CUSTOMER NUMBER OR PASSWORD PROVIDED TO THE REGISTRAR BY CIRA;
  - (d) ANY ERROR, OMISSION OR MISSTATEMENT IN ANY INFORMATION OR SERVICE PROVIDED UNDER THIS AGREEMENT;
  - (e) THE DELETION OF OR FAILURE TO STORE EMAIL MESSAGES;
  - (f) A COMPUTER BUG OR VIRUS OR OTHER SYSTEM MALFUNCTION;
  - (g) CIRA'S FAILURE OR REFUSAL TO REGISTER A DOMAIN NAME, CIRA'S FAILURE OR REFUSAL TO RENEW A DOMAIN NAME REGISTRATION, CIRA'S REGISTRATION OF A DOMAIN NAME, CIRA'S FAILURE OR REFUSAL TO RENEW A DOMAIN NAME REGISTRATION, CIRA'S RENEWAL OF A DOMAIN NAME REGISTRATION, CIRA'S FAILURE OR REFUSAL TO TRANSFER A DOMAIN NAME REGISTRATION, CIRA'S TRANSFER OF A DOMAIN NAME REGISTRATION, CIRA'S FAILURE OR REFUSAL TO MAINTAIN OR MODIFY A DOMAIN NAME REGISTRATION, CIRA'S MAINTENANCE OF A DOMAIN NAME REGISTRATION, CIRA'S MODIFICATION OF A DOMAIN NAME REGISTRATION, CIRA'S FAILURE TO CANCEL A DOMAIN NAME REGISTRATION OR CIRA'S CANCELLATION OF A DOMAIN NAME REGISTRATION FROM THE REGISTRY;
  - (h) ANY BREACH BY ANY REGISTRANT OR THE REGISTRAR OF ITS OBLIGATIONS UNDER ANY AGREEMENT BETWEEN ANY REGISTRANT AND THE REGISTRAR OR ANY OTHER ACTION OR OMISSION OF THE REGISTRAR OR ANY REGISTRANT;

- (i) THE PROCESSING BY CIRA OF ANY REGISTRANT'S APPLICATION FOR REGISTRATION OR ANY OTHER APPLICATION OR REQUEST, CIRA'S PROCESSING OF ANY AUTHORIZED OR UNAUTHORIZED CHANGES TO ANY REGISTRANT'S DOMAIN NAME REGISTRATION RECORD;
- (j) THE APPLICATION OF CIRA'S DISPUTE RESOLUTION PROCEDURE OR THE COMPLIANCE WITH ANY ORDER, RULING, DECISION OR JUDGMENT MADE THEREUNDER OR BY ANY COURT, TRIBUNAL, BOARD, ADMINISTRATIVE BODY, COMMISSION OR ARBITRATOR AND ANY ACTIONS TAKEN IN CONSEQUENCE THEREOF; OR
- (k) THE USE OF ANY DOMAIN NAME IN THE REGISTRY AND ANY CONFLICT OR DISPUTE WITH OR ANY CLAIM (AS DEFINED IN SECTION 3.1(g)) AGAINST THE REGISTRANT OR THE REGISTRANT'S REGISTRAR, INCLUDING ONE RELATING TO:
  - (i) REGISTERED OR UNREGISTERED TRADE-MARKS;
  - (ii) BUSINESS NAMES, PARTNERSHIP NAMES, CORPORATE NAMES AND OTHER TRADE NAMES;
  - (iii) NAMES OR INDICIA OF INDIVIDUALS OR GROUPS OR INDIVIDUALS;
  - (iv) ANY OTHER INTELLECTUAL PROPERTY RIGHTS;
  - (v) DEFAMATION OF ANY PERSON; OR
  - (vi) UNLAWFUL DISCRIMINATION WITH RESPECT TO ANY PERSON.

**8.5 Indemnity.** The Registrar agrees to indemnify and save CIRA and its contractors, agents, employees, officers, directors, members, affiliates, and assigns harmless from and against any and all damages, liabilities, obligations, losses, claims, demands, actions, causes of action, lawsuits, penalties, costs, and expenses (including, without limitation, reasonable legal and other related costs) arising out of or in any way connected with:

- (a) any breach of or non-fulfillment of any covenant or agreement on the part of the Registrar under this Agreement; or
- (b) any incorrectness in or breach of any representation or warranty of the Registrant contained in this Agreement; or
- (c) the services of CIRA provided hereunder or the use by the Registrant of CIRA's services, including without limitation violation by the Registrant of any intellectual property or other right of any Person and any defamation of or unlawful discrimination against any Person or any violation of any of the Registry PRP relating to the services provided; or
- (d) the actions or omissions of the Registrar or the Registrant.



## ARTICLE 9

### COVENANTS, REPRESENTATIONS AND WARRANTIES OF REGISTRAR

**9.1 Individuals.** Where the Registrar is a natural Person, the Registrar covenants, represents, and warrants to CIRA as follows:

- (1) Capacity. The Registrar has the legal capacity to execute and deliver this Agreement and all other documents and instruments contemplated by this Agreement and to perform his/her obligations under this Agreement and such other documents and instruments.
- (2) Enforceability. This Agreement constitutes a legal, valid and binding obligation of the Registrar, enforceable against him/her by CIRA in accordance with its terms; subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

**9.2 Corporations.** Where the Registrar is a corporation, the Registrar covenants, represents and warrants to CIRA as follows:

- (1) Incorporation and Power. The Registrar is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized, validly subsisting and in good standing under such laws.
- (2) Authorization. The Registrar has all necessary corporate power, authority, and capacity to enter into this Agreement and all other documents and instruments contemplated by this Agreement and to carry out its obligations under this Agreement and such other documents and instruments. The execution and delivery of this Agreement and all other documents and instruments contemplated by this Agreement and the performance by the Registrar of its obligations under this Agreement and such other documents and instruments have been duly authorized by all necessary corporate action on the part of the Registrar.
- (3) Enforceability of Obligations. This Agreement constitutes a valid and binding obligation of the Registrar, enforceable against the Registrar in accordance with its terms subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, re-organization or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

**9.3 Partnerships, Educational Institutions or Governments.** Where the Registrar is a partnership, an educational institution or a government, the Registrar represents and warrants as follows:

- (1) Existence. The Registrar is duly formed, organized, established, and validly existing under the laws of the jurisdiction in which it was formed, organized and established.

- (2) Authorization. The Registrar has the power, authority, and capacity to enter into this Agreement and all other documents and instruments contemplated by this Agreement and to carry out its obligations under this Agreement and such other documents and instruments. The execution and delivery of this Agreement and all other documents and instruments contemplated by this Agreement and the performance by the Registrar of its obligations under this Agreement and such other documents and instruments have been duly authorized by all necessary action on the part of the Registrar.
- (3) Enforceability of Obligations. This Agreement constitutes a valid and binding obligation of the Registrar, enforceable against the Registrar in accordance with its terms subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, reorganization, or other laws affecting creditors' rights generally, and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

**9.4 Additional Covenants, Representations and Warranties.** The Registrar covenants, represents and warrants to CIRA as follows:

- (1) Authority. The Registrar has or will have the authority from each Registrant for whom the Registrar is the Registrant's Registrar of Record to apply on behalf of such Registrant for the registration of a Domain Name and to apply on behalf of the Registrant to transfer, renew, modify, maintain, or cancel a Domain Name Registration and to complete all transactions with respect to such Domain Name Registration on behalf of and in the name of that Registrant.
- (2) Information. All information provided by the Registrar to CIRA on its own behalf, including in connection with its Application for Certification, its Re-certification Application(s), or otherwise is true and accurate in all respects. All information provided by the Registrar to CIRA on behalf of a Registrant, including in connection with any application for registration of a Domain Name and the registration, transfer, renewal, modification, maintenance, or cancellation of a Domain Name Registration or any other request or transaction shall be, to the best of the knowledge of the Registrar, true and accurate in all respects and is provided in accordance with Applicable Laws or the consent of the Registrant.
- (3) Insolvency. The Registrar is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) nor has made an assignment in favour of its creditors nor a proposal in bankruptcy to its creditors or any class thereof nor had any petition for a receiving order presented in respect of it. The Registrar has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding-up, liquidation or dissolution. No receiver has been appointed in respect of the Registrar or any of its assets and no execution or distress has been levied upon any of its assets.
- (4) No Criminal Code Convictions. Neither the Registrar nor any partner, director, officer, or controlling shareholder of the Registrar have ever been convicted of an offence under the *Criminal Code* (Canada).
- (5) Compliance. The Registrar has the capacity, including all requisite systems required under the Registry PRP, and has the ability to comply with its responsibilities to Registrants hereunder, including pursuant to Section 3.1(b).

- (6) Qualification. The Registrar meets the Canadian Presence Requirements as set out in the applicable Registry PRP for Registrars.
- (7) Independent Legal Advice. The Registrar has obtained independent legal advice with respect to its obligations under this Agreement.

**9.5 Survival and Reasonableness.** The Registrar acknowledges and agrees that the limitations on warranties, conditions, and liabilities, the representations and warranties of the Registrar contained in Section 9 and the restrictions and indemnities set forth in Sections 8 and 9 shall forever survive the expiry or termination of this Agreement and any suspension or termination of the Registrar's certification by CIRA. The Registrar acknowledges and agrees that such provisions are reasonable in the context of CIRA's status as a not-for-profit organization that is performing a public service on a cost-recovery basis.

## ARTICLE 10

### REPRESENTATIONS AND WARRANTIES OF CIRA

**10.1 Representations and Warranties of CIRA.** CIRA represents and warrants to the Registrar as follows:

- (1) Incorporation and Power. CIRA is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized, validly subsisting and in good standing under such laws.
- (2) Authorization. CIRA has all necessary corporate power, authority, and capacity to enter into this Agreement and all other documents and instruments contemplated by this Agreement and to carry out its obligations under this Agreement and such other documents and instruments. The execution and delivery of this Agreement and all other documents and instruments contemplated by this Agreement and the performance by CIRA of its obligations under this Agreement and such other documents and instruments have been duly authorized by all necessary corporate action on the part of CIRA.
- (3) Enforceability of Obligations. This Agreement constitutes a valid and binding obligation of CIRA enforceable against CIRA in accordance with its terms subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, reorganization, or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.
- (4) GST. CIRA is a "registrant" under Part IX of the *Excise Tax Act* (Canada). CIRA's GST registration number is 87300 8023 RT0001.

## ARTICLE 11

### CONFIDENTIALITY

**11.1 Registrant Information.** Personal information pertaining to Registrants belongs to the Registrants and shall not be collected, used, or disclosed by CIRA or the Registrar except for the reasonable purposes of the operation of the Registry in accordance with Applicable Laws, CIRA's privacy policy (at <http://www.cira.ca/en/privacypolicy.html>), and as a Registrant may consent in its agreement with the Registrar or CIRA, as the case may be. The Registrar acknowledges and agrees that he/she/it will not, in any way whatsoever, use, disclose, or collect any personal information of a registrant other than the Registrar's Registrant in accordance with this Section 11.1.

**11.2 Additional Information.** CIRA and the Registrar shall take all reasonable steps to protect all non-published information stored in their respective systems. Both parties agree to keep confidential any information belonging to the other party that has been clearly identified as confidential. CIRA shall have the right to identify and publish the name of the Registrar in connection with each of its Registrants in the WHOIS.

## ARTICLE 12

### LEGAL RELATIONSHIP

**12.1 Independent Contractors.** The legal relationship between CIRA and the Registrar is that of independent contractors. Under no circumstances shall this Agreement be construed to create a partnership, agency or joint venture between CIRA and the Registrar. In providing Registrar Services, the Registrar acknowledges that it is not selling services on behalf of CIRA. The Registrar agrees and acknowledges that CIRA has no obligation to, and will not, provide significant assistance in, or exercise significant control over, the Registrar's method of operation of its business, except as reasonably necessary or desirable for CIRA to ensure compliance with the Registrar's obligations pursuant to this Agreement, the Registry PRP, the standards imposed thereby and the integrity of the Registry.

**12.2 No Agency.** Except as provided in Section 12.3, neither party shall have any right, power or authority to act on behalf of the other party and neither party shall create any express or implied obligations or financial commitments on behalf of the other party.

**12.3 Appointment of CIRA as Attorney-in-Fact.** The Registrar constitutes and appoints CIRA and any officer or agent of CIRA, with full power of substitution, as the Registrar's true and lawful attorney-in-fact with full power and authority in the place of the Registrar and in the name of the Registrar or in its own name, from time to time in CIRA's discretion after the occurrence of any event listed in Sections 7.3, 7.4, 7.5, 7.6, 7.8, 7.9 and 7.10 to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney acting reasonably, may be necessary or desirable to accomplish the purposes of this Agreement including, without limitation, to preserve the rights of Registrants and the integrity of the Registry. These powers are coupled with an interest and are irrevocable until this Agreement is terminated or expires.

## ARTICLE 13

### AMENDMENT OF AGREEMENT

#### 13.1 Amendment by CIRA.

- (1) CIRA shall have the right, at any time and from time to time, acting reasonably, to amend the terms and conditions of this Agreement, any and all of the Registry PRP and to adopt new Registry PRP not yet in effect, provided that any such amendment or new Registry PRP shall be applicable to all CIRA Certified Registrars. Any such amendment to this Agreement or the Registry PRP or the adoption of one or more new Registry PRP will be binding and effective 30 days after CIRA gives notice of such amendment to the Registrar by email.
- (2) If the Registrar does not agree with any such amendment or new Registry PRP, then the Registrar may terminate this Agreement in accordance with Section 7.9. By continuing to act as Registrar in accordance with this Agreement, the Registrar agrees to be bound by such amendments and any new Registry PRP after they become binding and effective.

## ARTICLE 14

### INTELLECTUAL PROPERTY RIGHTS

14.1 **License.** CIRA grants, and the Registrar accepts, a non-exclusive license to use certain trade-marks designated by CIRA from time to time in the Registry PRP for use by all Registrars (the "Trade-marks") during the Term upon and subject to the terms and conditions set out in this Agreement and the reasonable standards imposed from time to time by CIRA on the Registrar. The Registrar shall be entitled to use and display the Trade-marks worldwide only in association with the performance of the Registrar Services. The Registrar acknowledges and agrees that all CIRA Intellectual Property remains, vis-à-vis the Registrar, the exclusive property of CIRA, and shall not be used by the Registrar except with the prior written authorization of CIRA.

14.2 **Trade-mark Use.** The Registrar acknowledges and agrees that CIRA is the exclusive owner of the Trade-marks and that any unauthorized use of the Trade-marks, or the use of a trade-mark, trade-name, design, logo, or symbol which is confusing with any of the Trade-marks or any other trade-mark, trade-name, design, logo, or symbol of CIRA, is and shall be deemed an infringement of the rights of CIRA. The Registrar shall not acquire any right, title, or interest in the Trade-marks. Any and all goodwill associated with the Trade-marks shall enure exclusively to the benefit of CIRA and, upon the suspension or revocation of the Registrar's certification and upon the expiration or termination of the Term, no compensation shall be payable by CIRA to the Registrar in connection therewith. Throughout the Term and after termination or expiration thereof, the Registrar shall not directly or indirectly:

- (a) dispute or contest, for any reason whatsoever, CIRA's ownership of the Trade-marks or the validity or enforceability of any registration or public notice of adoption of the Trade-marks;

- (b) oppose any application by CIRA for registration or attack any registration of CIRA of the Trade-marks;
- (c) interfere with the use of the Trade-marks by CIRA or its licensees or successors in title;
- (d) depreciate or dilute the value of the goodwill attaching to the Trade-marks; or
- (e) counsel, procure, or assist anyone else to do the same.

The Registrar shall, without charge to CIRA, do all things and execute all documents that may at any time be necessary or desirable to register or otherwise protect the Trade-marks and the validity of the registrations therefore and to ensure the title of CIRA thereto. Other than as expressly permitted in this Agreement, the Registrar shall not use or register any of the Trade-marks, any other trade-mark of CIRA or any word or words likely to be confused therewith, as, or as a component of, a trade-mark, corporate name or business name or any other trade-name or as an Internet domain name or a component thereof of the Registrar or of any corporation, partnership or other entity in which the Registrar or any of the principals of the Registrar has a direct or indirect interest. The Registrar shall not hold out or otherwise employ the Trade-marks to perform any activity or to incur any obligation or indebtedness in such manner as could reasonably result in making the Registrar or any other registrar liable therefore. The Registrar shall spatially separate the Trade-marks from any of its own trade-marks, corporate name or business name. The Registrar shall use, advertise and display the Trade-marks in such manner as is prescribed from time to time by CIRA and in no other manner. The Registrar shall, in all advertising and other displays of any of the Trade-marks, include a prominent notice in such precise form as may be prescribed by CIRA from time to time, including without limitation, indicating that such Trade-marks are the trade-marks and property of CIRA and that the Registrar is a licensee of the Trade-marks. The Registrar agrees that for the purpose of protecting and enhancing the value and goodwill of the Trade-marks, the continued right to display the Trade-marks is subject to the continued compliance by the Registrar with the provisions of this Agreement.

**14.3 Litigation.** The Registrar shall give notice to CIRA of any Claim involving the Trade-marks that is threatened or instituted by any Person against the Registrar or any actual, threatened, or suspected violation of the rights of CIRA relating to the Trade-marks of which the Registrar becomes aware. CIRA shall have the right, but no obligation, to defend or settle such Claim on behalf of the Registrar, at the cost of CIRA, or to make any Claim or institute and control any Claim relating to such violation, at the cost of CIRA. CIRA may give notice to the Registrar of the intention of CIRA to exercise any such right. If CIRA exercises such right, the Registrar shall, at the expense of CIRA, execute any documents and do such acts and things as in the opinion of CIRA may be necessary to effectively carry out such defence or Claim. The Registrar shall not make or institute any Claim relating to any such violation unless CIRA gives notice to the Registrar that CIRA does not intend to institute a Claim or, if after ninety (90) days from the date on which such violation otherwise comes to the attention of CIRA, CIRA has not made or instituted any Claim relating to such violation, in which case the Registrar may do so at its own cost. In that event, CIRA shall, at the expense of CIRA, execute any documents and do such acts and things as in the opinion of the Registrar may be necessary to effectively carry out such Claim. Any monetary benefits accruing from any such Claim or the defence of any such Claim shall accrue to the party who bears the costs of the defence or Claim.

## ARTICLE 15

### GENERAL TERMS

#### 15.1 Definitions. In this Agreement:

- (a) **"Activation"** or **"Activated"** means the activation of a Domain Name Registration which shall be deemed to occur upon the activation time and date stated in the confirmation email sent by CIRA to the Applicant or Registrant confirming the activation of the Domain Name in the CIRA system;
- (b) **"Administrative Contact"** means the person identified in the Registration Information as the Registrant's administrative contact;
- (c) **"Business Day"** means any day other than a Saturday, a Sunday or any day on which banks are generally not open for business in the City of Ottawa, Ontario, Canada;
- (d) **"CIRA Elections"** means online CIRA elections where Registrants who are also members of CIRA vote for individuals to become CIRA Board of Director members;
- (e) **"Meeting"** means a meeting of the members of CIRA, called for any purpose;
- (f) **"Person"** includes an individual, a corporation, a partnership, a trust, an unincorporated organization, association or club, the government of a country or any political subdivision thereof, or any agency or department of any such government, any of the individuals or entities listed in the Canadian Presence Requirements for Registrants and the executors, administrators or other legal representatives of an individual in any of such capacities;
- (g) **"CIRA Certified Registrar", "CIRA certified registrar"** and similar expressions means a Person who has been certified or re-certified to act as a registrar of the Registry in accordance with the Registrar Agreement with CIRA; and
- (h) **"Registration Information"** means all information which the Registry PRP require the Registrant to submit to CIRA or the Registrant's Registrar to obtain a Domain Name Registration, any renewal, transfer, cancellation or modification of a Domain Name Registration or any other request or transaction with respect to a Domain Name Registration.

**15.2 Headings and Table of Contents.** The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

**15.3 Number and Gender.** Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

**15.4 Currency.** Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement (including, in particular, the Fees) are stated in Canadian dollars.

**15.5 Statute References.** Any reference in this Agreement to any statute or any section thereof will, unless otherwise expressly stated, be deemed to be a reference to such statute or section as re-enacted from time to time.

**15.6 Notices.**

- (1) Any notice, consent or determination (other than any communications between CIRA and the Registrar with respect to the usual operations of, and usual activities relating to, the Registry including communications regarding registrations of Domain Name Registrations and modifications, renewals, transfers and cancellations of, and other requests with respect to, Domain Name Registrations and communications regarding Fees) ("**Registry Communications**") required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered by email, (ii) sent by prepaid courier service or mail, (iii) delivered personally, or (iv) sent prepaid by facsimile transmission, in each case as follows:

- (a) if to CIRA, to:

Canadian Internet Registration Authority  
Delta Office Towers  
350 Sparks Street  
Suite 1110  
Ottawa, Ontario  
K1R 7S8  
Attention: Director, Registrar Services

Facsimile: (613) 237-5335  
Email: [regsupport@cira.ca](mailto:regsupport@cira.ca)

- (b) if to the Registrar, to the last post office, facsimile or email address provided by the Registrar to CIRA.
- (2) Any such notice, consent or determination so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered personally, or on the day of facsimile transmission or sending by email, provided that such day is a Business Day and the communication is so delivered, transmitted by facsimile or sent prior to 4:30 p.m. (Ottawa, Ontario, Canada time) on such day. Otherwise, such communication will be deemed to have been given and made and to have been received on the third Business Day following the mailing thereof; provided that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any notice or other communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.
- (3) The Registrar may from time to time change its address under this Section 15.6 by notice to CIRA in a Re-certification Application or by notice given in the manner provided by this Section. CIRA may from time to time change its address under this Section 15.6 by notice to the Registrar given in the manner provided in this Section.



- (4) All Registry Communications shall be made in accordance with the Registry PRP set out at CIRA's website (currently at [http://www.cira.ca/en/doc\\_Registrar.html](http://www.cira.ca/en/doc_Registrar.html)) as amended by CIRA from time to time.

**15.7 Time of Essence.** Time will be of the essence of this Agreement in all respects.

**15.8 Further Assurances.** Each party will promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things in connection with this Agreement that the other party may reasonably require, for the purposes of giving effect to this Agreement.

**15.9 Successors and Assigns.** This Agreement will enure to the benefit of, and be binding on, the parties and their respective administrators, executors, successors and permitted and qualifying assigns. CIRA may assign or transfer all or any part of its rights and obligations under this Agreement to any Person. CIRA shall provide the Registrar with 30 days prior notice of any such assignment or transfer. The Registrar shall not assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement without the prior written consent of CIRA, which consent may be arbitrarily and unreasonably withheld and any such purported assignment or transfer, or attempt to so assign and transfer without CIRA's prior written consent, shall be of no force and effect. In no event shall the Registrar or the Registrar's administrators, executors or other legal representatives be permitted to assign or transfer the rights or obligations of the Registrar under this Agreement to any Person who does not meet the Certification and Re-certification Requirements including the Canadian Presence Requirements for Registrars.

**15.10 Entire Agreement.** This Agreement (including the Registry PRP and the Legal Notice in effect from time to time, all of which are incorporated by reference herein and any schedule attached hereto) constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There is no condition, warranty, representation or other agreement between the parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this Agreement.

**15.11 Waiver.** A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the party to be bound by the waiver. No waiver will be inferred from or implied by any failure to act or delay in acting by a party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other party. The waiver by a party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

**15.12 Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

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

**15.14 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province and will be treated, in all respects, as an Ontario contract.

**15.15 Attornment.** The Registrar agrees that: (a) any action or proceeding instituted by the Registrant relating to this Agreement or its dealings with CIRA shall be brought in a court of competent jurisdiction in the City of Ottawa in the Province of Ontario and, for that purpose, the Registrant now irrevocably and unconditionally attorns and submits to the jurisdiction of such Ontario court; and (b) the Registrar will not oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from an Ontario court as contemplated by this Section 15.15. The Registrar agrees that CIRA may, in CIRA's sole discretion, bring any action or proceeding relating to this Agreement in a court of competent jurisdiction in any jurisdiction in which the Registrar is incorporated, registered or resident or in which the Registrar has a place of business or in which the Registrar services Registrants or in any court of competent jurisdiction in the City of Ottawa in the Province of Ontario. In any such event, the Registrar agrees that (i) it irrevocably waives any right to, and will not, oppose any such action or proceeding on any jurisdictional basis, including *forum non conveniens*; and (ii) it will not oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from any such court as contemplated by this Section 15.15.

**15.16 Force Majeure.**

- (1) If, as a result (in whole or in part) of *Force Majeure* (as defined below), either party fails to perform or comply with any of its obligations under this Agreement, such failure will not constitute a default under or breach of this Agreement or give rise to any liability. The time for performing or complying with the obligation in question will be extended by a period equal to the period during which the *Force Majeure* operates to prevent (in whole or in part) compliance. The party whose performance is affected by the event of *Force Majeure* will promptly give notice to the other party of the occurrence of any *Force Majeure* which prevents performance or compliance with an obligation under this Agreement.
- (2) For the purposes of this Agreement, "*Force Majeure*" means any cause beyond the reasonable control of the party seeking to take advantage of such *Force Majeure*, including, without limitation, any strike, lock-out, labour dispute, act of God, inability to obtain labour, utilities or services, acts of any government authority, enemy or hostile actions, sabotage, war, blockades, insurrections, riots, epidemics, washouts, nuclear and radiation activity or fallout, civil disturbances, explosions, fire or other casualty, unanticipated loads or transactions in the Registry System, breaches of security, computer viruses, faults in third party software and equipment and degradation or failure of telecommunications services; provided that if any such event is reasonably foreseeable by the party seeking to take advantage of such *Force Majeure*, such party shall have taken all reasonable steps within its reasonable control to avoid the occurrence of such *Force Majeure*.

**15.17 Remedies Cumulative.** The rights and remedies of CIRA under this Agreement are cumulative and no exercise or enforcement by CIRA of any right or remedy hereunder shall preclude the exercise or enforcement by CIRA of any other right or remedy hereunder or to which it is otherwise entitled by law to enforce.

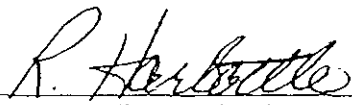
**15.18 Language.**

- (1) The parties to this Agreement have required that this Agreement and all deeds, documents and notices relating to this Agreement, be drawn up in the English language. *Les parties aux présentes ont exigé que le présent contrat et tous autres contrats, documents ou avis afférents aux présentes soient rédigés en langue anglaise.*

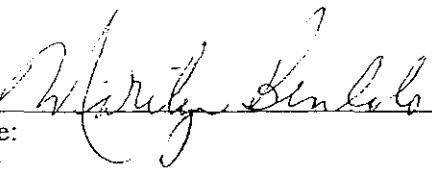
IN WITNESS WHEREOF the parties have executed this Agreement as of the 19 day of May, 2004.

**CANADIAN INTERNET REGISTRATION  
AUTHORITY**

By:   
Name: Kim von Arx

By:   
Name: Ron Harbottle

**REGISTRAR:**

By:   
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**Full Legal Name of Registrar**

Brandon Gray Internet Services Inc

**Address**

7100 Warden Ave., Ste. 8  
Markham, ON, L3R 8B5

**Telephone No.**

416-562-7288

**FAX No.**

905-479-2510

**Email Address**

pkuryliw@namejuice.com

**Registrar number:** 985491

## SCHEDULE "A"

### GUARANTEE AND INDEMNITY

**TO:** Canadian Internet Registration Authority  
Delta Office Towers  
350 Sparks Street  
Suite 1110  
Ottawa, Ontario  
K1R 7S8

Attention: Director, Registrar Services

Facsimile: (613) 237-5335  
Email: [registrar-notices@cira.ca](mailto:registrar-notices@cira.ca)

#### RECITALS:

- A. [Full Legal Name of Registrar] (the "Registrar") and Canadian Internet Registration Authority ("CIRA") are parties to a Registrar Agreement dated as set out below (such registrar agreement, as amended or supplemented from time to time, the "Registrar Agreement");
- B. Pursuant to the Registrar Agreement, the Registrar has applied to CIRA to be certified as a registrar of the .ca Internet domain name registry;
- C. It is a condition precedent of such certification by CIRA that the Person identified below (the "Guarantor") execute and deliver this Guarantee to CIRA;
- D. It is in the interests of the Guarantor that CIRA certify the Registrar as a registrar of the .ca Internet domain name registry, and therefore the Guarantor is prepared to guarantee the payment and performance by the Registrar of its obligations under the Registrar Agreement;

For valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged by the Guarantor, the Guarantor hereby agrees in favour of CIRA as follows:

1. **Guarantee.** The Guarantor hereby unconditionally and irrevocably guarantees the prompt payment and performance to CIRA, forthwith upon demand by CIRA, of, and agrees to indemnify and hold CIRA harmless against, all indebtedness, liabilities and obligations of any kind whatsoever (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) which the Registrar has incurred or is under or may hereafter incur or be under to CIRA under the Registrar Agreement (collectively, the "Obligations").
2. **Guarantee Unconditional.** The obligations of the Guarantor under this Guarantee are continuing, unconditional and absolute and, without limiting the generality of the foregoing, will not be released, discharged, diminished, limited or otherwise affected by (and the Guarantor hereby consents to or waives, as applicable, to the fullest extent permitted by applicable law): (a) any extension, other indulgence, renewal, settlement, discharge, compromise, waiver, subordination or release in respect of any Obligation or otherwise; (b) any modification or amendment of or supplement to the Obligations; (c)

any change in the existence, structure, constitution, name, objects, powers, business, control or ownership of the Registrar or any other person, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Registrar or any other person or its assets; (d) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Registrar, CIRA, or any other person, whether in connection herewith or any unrelated transactions; (e) any release, substitution or addition of any co-signer, endorser or other guarantor of the Obligations; (f) any defence arising by reason of any failure of CIRA to proceed against the Registrar or any other person, or to pursue any other remedy in the power of CIRA whatsoever; (g) any defence arising by reason of any incapacity, lack of authority, or other defence of the Registrar or any other person, or by reason of any limitation, postponement or prohibition on CIRA's right to the payment or performance of the Obligations or any part thereof, or by reason of the cessation from any cause whatsoever of the liability of the Registrar or any other person with respect to all or any part of the Obligations, or by reason of any act or omission of CIRA or others which directly or indirectly results in the discharge or release of the Registrar or any other person or all or any part of the Obligations or any security or guarantee therefor, whether by contract, operation of law or otherwise; or (h) any other act or omission to act or delay of any kind by the Registrar, CIRA, or any other person or any other circumstance whatsoever, whether similar or dissimilar to the foregoing, which might, but for the provisions of this Section 2, constitute a legal or equitable discharge, limitation or reduction of the Guarantor's obligations hereunder (other than the payment and performance in full of all of the Obligations). The foregoing provisions apply (and the foregoing waivers will be effective) even if the effect of any action (or failure to take action) by CIRA is to destroy or diminish any right or remedy of the Guarantor.

3. Assumption of Authority. CIRA is entitled to assume, notwithstanding any investigation by or on behalf of CIRA, the power and authority of the officers, directors, agents or other persons acting or purporting to act on behalf of the Registrar or the Guarantor, and any Obligations made or created in reliance upon the exercise of such power or authority will be guaranteed hereunder.

4. Recourse against Registrar. CIRA is not required to exhaust its recourse against the Registrar or others or under any other security or guarantee before being entitled to payment and performance of the Obligations by the Guarantor under this Guarantee.

5. No Waiver. No delay on the part of CIRA in exercising any of its options, powers or rights, or partial or single exercise thereof, will constitute a waiver thereof. No waiver of any of its rights hereunder, and no modification or amendment of this Guarantee, will be deemed to be made by CIRA unless the same will be in writing, duly signed on behalf of CIRA, and each such waiver, if any, will apply only with respect to the specific instance involved, and will in no way impair the rights of CIRA or the liabilities of the Guarantor to CIRA in any other respect at any other time.

6. No Subrogation. Notwithstanding any payment made by the Guarantor under this Guarantee or any setoff or application of funds of the Guarantor by CIRA, the Guarantor will have no right of subrogation to, and waives, to the fullest extent permitted by law, any right to enforce any remedy which CIRA now has or may hereafter have against the Registrar, until all of the Obligations have been indefeasibly paid and performed in full.

7. Payment of Expenses; Indemnification. The Guarantor will pay on demand, and will indemnify and save CIRA harmless from, any and all liabilities, costs and expenses (including legal fees and expenses on a solicitor and own client basis and any sales, goods and services or other similar taxes payable to any governmental authority with respect to any such liabilities, costs and expenses) (a) incurred by CIRA in the administration or enforcement of this Guarantee, (b) with respect to, or resulting from, any failure or delay by the Guarantor in performing or observing any of its obligations under this

Guarantee, or (c) incurred by CIRA in performing or observing any of the other covenants of the Guarantor under this Guarantee.

8. **Additional Security.** This Guarantee is in addition and without prejudice to any security of any kind (including other guarantees) now or hereafter held by CIRA and any other rights or remedies that CIRA might have.

9. **Corporate Changes.** If the Guarantor is a corporation, the Guarantor will not engage in any fundamental corporate change including, without limitation, any amalgamation, continuation, reorganization, arrangement, reduction in capital, liquidation, dissolution or winding-up, without CIRA's prior written consent.

10. **Release of Information.** The Guarantor authorizes CIRA to provide a copy of this Guarantee and such other information as may be requested of CIRA by persons entitled thereto pursuant to any applicable legislation, and otherwise with the consent of the Registrar.

11. **Governing Law.** This Guarantee will be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated, in all respects, as an Ontario contract.

12. **Attornment.** The Guarantor agrees that: (a) any action or proceeding instituted by the Guarantor relating to this Guarantee shall be brought in a court of competent jurisdiction in the City of Ottawa in the Province of Ontario and, for that purpose, the Guarantor now irrevocably and unconditionally attorns and submits to the jurisdiction of such Ontario court; and (b) it will not oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from an Ontario court as contemplated by this Section 12. The Guarantor agrees that CIRA may, in CIRA's sole discretion, bring any action or proceeding relating to this Agreement in a court of competent jurisdiction in any jurisdiction in which the Guarantor is incorporated, registered or resident or in which the Guarantor has a place of business or in any court of competent jurisdiction in the City of Ottawa in the Province of Ontario. In any such event, the Guarantor agrees that (i) it irrevocably waives any right to, and will not, oppose any such action or proceeding on any jurisdictional basis, including forum non conveniens; and (ii) it will not oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from any such court as contemplated by this Section 12.

13. **Successors and Assigns.** This Guarantee will extend and enure to the benefit of CIRA and its successors and assigns and will be binding upon the Guarantor and its successors. The Guarantor's obligations hereunder will not be assigned or delegated. CIRA may from time to time, and without notice to or the consent of the Guarantor, assign or transfer all or any of the Obligations or any interest therein; and, notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, any such Obligation or part thereof so transferred or assigned will remain an "Obligation" for the purposes of this Guarantee and any immediate and successive assignee or transferee of any Obligation or any interest therein will, to the extent of the interest so assigned or transferred, be entitled to the benefit of, and the right to enforce, this Guarantee to the same extent as if such person were CIRA.

14. **Time of Essence.** Time is of the essence with respect to this Guarantee and the time for performance of the obligations of the Guarantor under this Guarantee may be strictly enforced by CIRA.

15. **Severability.** If any provision of this Guarantee is determined to be illegal, unconscionable or unenforceable, all other terms and provisions hereof will nevertheless remain effective and will be enforced to the fullest extent permitted by law.

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16. Communication. Any communication required or permitted to be given under this Guarantee will be in writing and will be effectively given if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent prepaid by facsimile transmission or other similar means of electronic communication, in each case to the address or facsimile number of the Guarantor or CIRA set out in this Guarantee. Any communication so given will be deemed to have been given and to have been received on the day of delivery if so delivered, or on the day of facsimile transmission or sending by other means of recorded electronic communication provided that such day is a business day and the communication is so delivered or sent prior to 4:30 p.m. (local time at the place of receipt). Otherwise, such communication will be deemed to have been given and to have been received on the following business day. Any communication sent by mail will be deemed to have been given and to have been received on the fifth business day following mailing, provided that no disruption of postal service is in effect. The Guarantor and CIRA may from time to time change their respective addresses or facsimile numbers for notice by giving notice to the other in accordance with the provisions of this Section.

17. Representations and Warranties. The Guarantor represents and warrants to CIRA, upon each of which representations and warranties CIRA specifically relies, as follows:

(1) Subsistence. If the Guarantor is a corporation, the Guarantor is duly incorporated under the laws of its jurisdiction of incorporation. The Guarantor is validly subsisting under the laws of its jurisdiction of incorporation and is duly authorized and licensed to own its properties and to carry on its businesses as presently owned and carried on by it. If the Guarantor is a partnership, a trust or other entity, the Guarantor is duly formed, organized, established validly subsisting under the laws of the jurisdiction in which it was formed, organized and established.

(2) Legal Capacity and Authorization. The Guarantor has all necessary power, authority and capacity to enter into this Guarantee and to carry out its obligations hereunder. The execution and delivery of this Guarantee and the performance of the Guarantor's obligations hereunder have been duly authorized by all necessary action on the part of the Guarantor.

(3) Enforceability. This Guarantee constitutes a valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, reorganization, or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

18. Interpretation. Unless otherwise expressly provided in this Guarantee, if any matter in this Guarantee is subject to the consent or approval of CIRA or is to be acceptable to CIRA, such consent, approval or determination of acceptability will be in the sole discretion of CIRA. If any provision in this Guarantee refers to any action taken or to be taken by the Guarantor, or which the Guarantor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. The division of this Guarantee into sections and paragraphs, and the insertion of headings, is for convenience of reference only and will not affect the construction or interpretation of this Guarantee. Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. When used in this Guarantee, the word "including" (or includes) means "including (or includes) without limitation". Any reference in this Guarantee to a "Section" means the relevant Section of this Guarantee. If more than one person executes this Guarantee, their obligations under this Guarantee are joint and several. Any reference in this Guarantee to a "person" will be deemed to include an individual, corporation, partnership, trust, unincorporated organization, government and the heirs, executors, administrators or other legal representatives of an individual. Any reference to a "business day" will be deemed to include any day

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which is not a Saturday, Sunday or a statutory holiday in the jurisdiction referred to in the Province of Ontario.

19. Copy of Guarantee. The Guarantor acknowledges receipt of an executed copy of this Guarantee.

20. Language.

(1) The parties to this Guarantee have required that this Guarantee and all deeds, documents and notices relating to this Guarantee, be drawn up in the English language. Les parties aux présentes ont exigé que le présent contrat et tous autres contrats, documents ou avis afférents aux présentes soient rédigés en langue anglaise.

(2) The parties to this Guarantee acknowledge that this Guarantee has been drafted in the English language and in the French language and that each of these two versions is valid. However, the parties agree that in the event of any inconsistency or discrepancy between the English and the French versions of this Guarantee, the English version will prevail and will be the only applicable version to resolve any issue related to the interpretation or execution thereof.

Date of Registrar Agreement: May 19, 2024

DATED: June 3, 2004

ADDRESS:

7100 Warden Avenue Suite 8  
Mackham, ON  
L3R 8B5

[FULL LEGAL NAME OF GUARANTOR]

By: Marcio Benfalo

Name: Marcio Benfalo

Title Chief Executive Officer

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

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

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





August 6, 2010

Via Electronic Mail and Overnight Courier

Brandon Gray Internet Services Inc  
7100 Warden Ave  
Suite 8  
Markham, ON  
L3R 8B5

Attention: Larry Coker

Dear Mr. Coker,

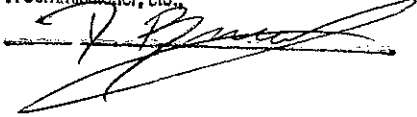
Re-certification as CIRA Certified Registrar

According to our records, Brandon Gray Internet Services Inc. ("Brandon Gray") certification as a CIRA Certified Registrar ends on August 24, 2010. This notice is to inform you that, upon expiry of your current certification term, CIRA has determined not to accept re-certification of Brandon Gray as a CIRA Certified Registrar. We are providing you with advance notice so that you may decide how you wish to proceed.

While Brandon Gray has been a CIRA Certified Registrar for a number of years, its close association with the Domain Registry of Canada ("DROC") has been an on-going source of concern for CIRA. As you are no doubt aware, many in the Internet community feel strongly that the activities of DROC are highly unethical and problematic. CIRA regularly receives concerns and/or complaints about their activities. Recently, we have noted that DROC has been begun to send misleading "renewal notices" not just to holders of domain names in other registries, but to dot-ca holders as well.

This is of particular concern to CIRA, as the disreputable behavior of DROC is now affecting CIRA's Registrants directly. It also suggests that DROC may have obtained access to CIRA's confidential WHOIS information, and/or is misusing CIRA's WHOIS tool. Either would be a violation of CIRA's *Website Terms of Use, Privacy Policy and/or Registrar Agreement*.

This latest development has lead CIRA to conclude that it needed to exercise its discretion, and not re-certify of Brandon Gray. We would also note that Brandon Gray's association with DROC appears to constitute, in our view, a violation of Section 3.1(u) of the *Registrar Agreement*. Having a CIRA Certified Registrar so closely associated with DROC brings CIRA and the Registry itself into disrepute.

This is Exhibit E to the Affidavit of  
Larry Coker  
Sworn before me this 13 of January  
A Commissioner, etc.  


Accordingly, Brandon Gray will no longer be a CIRA certified registrar as of August 24, 2010 at 08:00 (EST) and you will no longer have access to your Registrar account or to the Registry. In the interim, if you should decide to sell your .ca business to another CIRA Certified Registrar, please let us know. CIRA can also try and help facilitate such a sale, if you wish. If no such sale occurs before August 24<sup>th</sup>, CIRA will subsequently notify the Registrants of Brandon Gray that they must transfer their .CA domain name registrations to another CIRA Certified Registrar. CIRA shall refund to you any balance remaining in the Registrar deposit account within 30 days of the end of your certification period.

If you have any questions regarding the above, please do not hesitate to contact us.

Sincerely,

  
Donna Cunningham  
Compliance Officer

This is Exhibit F to the Affidavit of  
Larry Coker  
Sworn before me this 13 of January  
A Commissioner, etc.  
*[Signature]*

Domenic Rotundo, B.Comm., LL.B.  
Enzo Di Iorio, LL.B.  
John A. Quaglietta, LL.B.  
Lou Ciotoli, B.A. (Hons), LL.B.  
Tina Ricci Zulli, B.A. (Hons), LL.B.  
Jonathan A. Hacohen, B.B.A., LL.B.  
Melissa Mackovski, B.A. (Hons), LL.B., LL.M.  
David Brand, B.A. (Hons), LL.B.

**!!URGENT!!**

August 10, 2010

**VIA FAX & COURIER**

Reply to: Enzo Di Iorio, Ext. 223  
E-mail: [ediiorio@rdqlaw.com](mailto:ediiorio@rdqlaw.com)

**Canadian Internet Registry Authority ("CIRA")**  
350 rue Sparks Street, Suite 306  
Ottawa, Ontario  
K1R 7S8

**Attention: Donna Cunningham/Legal Department**

Dear Madam:

**Re: Termination of Certification as a CIRA Certified Registrar**  
**Our Client: Brandon Gray Internet Services Inc.**

We are the lawyers for Brandon Gray Internet Services Inc. ("Brandon Gray") and have been retained to act on its behalf in connection with the above-noted matter.

On August 6, 2010, a letter was sent via electronic mail and overnight courier to Larry Coker of Brandon Gray advising him of your decision to not accept re-certification of Brandon Gray as a CIRA Certified Registrar. I have reviewed the correspondence delivered terminating your relationship with Brandon Gray, and both my client and I are at a loss to understand the basis upon which CIRA feels that it can do so without proper notice and without proper justification.

You allege that Domain Registry of Canada ("DROC"), only one of many of our clients' resellers, has been sending "misleading "renewal notices" not just to holders of domain names in other registries, but to dot-ca holders as well." My client advises that DROC has given Brandon Gray assurances that DROC has never solicited the transfer and/or renewal of any dot-ca domain name. Furthermore, with respect to your allegation that DROC **may have** obtained access to CIRA's confidential WHOIS information and/or is misusing CIRA's WHOIS tool, my client advises that DROC has also assured it that it has never done so and that it does not even have the ability to do so, as the WHOIS information for most domains are privacy protected. Brandon Gray has been monitoring DROC's actions and verily believes that DROC has been operating in a professional, ethical and lawful manner.

Moreover, your decision to terminate your relationship with our client is based upon the alleged actions of DROC; however, what you fail to take into account is that DROC is only one of about twenty-five (25) resellers that Brandon Gray operates with. Brandon Gray's account history shows no unusual activity. Brandon Gray has been a reputable CIRA accredited Registrar for over five (5) years and a valuable member of the internet community for well over eight (8) years. Our client has been servicing small to large business for years. You have basically made this unilateral decision without giving much thought or consideration to how this decision will affect my client. What CIRA is now purporting to do is refuse to accept re-certification of Brandon Gray as a CIRA Certified Registrar without providing any justification or explanation to support your actions. This conduct is unlawful and unreasonable.

The effect of what you have done is to shut down my clients' operations. My client will suffer irreparable harm as a result of your decision. The damages will be in the hundreds of thousands of dollars. We have not yet quantified our losses and hope not to be in a position where we need to do so.

We are writing to request that CIRA reconsider its decision to refuse to accept re-certification of Brandon Gray as a CIRA Certified Registrar. If you insist on the termination of your relationship with our client, then we insist that you provide a valid reason for the termination and proof of your allegations against DROC. Please make no mistake about the fact that my client intends to hold CIRA liable for any and all damages it sustains as a result of this improper termination. You would be well advised to reconsider your decision to refuse to accept Brandon Gray's re-certification.

I must hear from you by no later than 12:00 p.m. on Wednesday, August 11, 2010, failing which I will presume that your decision remains the same. We will then proceed without further notice to seek emergency injunctive relief by this Friday, August 13, 2010, to prevent CIRA from engaging in what we view as unlawful, unreasonable and unjustifiable behaviour. We may then proceed to commence a claim against CIRA for damages.

Please be advised that this firm does not engage in the practice of delivering numerous demand letters. This will be your only notice prior to the commencement of legal proceedings.

Govern yourself accordingly.

Yours very truly,

**ROTUNDO DI IORIO QUAGLIETTA, LLP**

Per:

A handwritten signature in dark ink, appearing to read 'Enzo Di Iorio', with a stylized flourish at the end.

Enzo Di Iorio

ED/db

cc: client

This is Exhibit 9 to the Affidavit of  
Larry Coker  
Sworn before me this 13 of January  
A Commissioner, etc.  
[Signature]

CV-10-0100675-00

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

BRANDON GRAY INTERNET SERVICES INC.

Plaintiff

- and -

CANADIAN INTERNET REGISTRATION AUTHORITY also known as AUTORITÉ  
CANADIENNE POUR LES ENREGISTREMENTS INTERNET also known as CIRA  
also known as ACEI

Defendant

**STATEMENT OF CLAIM**

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff(s) lawyer(s) or, where the Plaintiff(s) do(es) not have a lawyer, serve it on the Plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.


Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU WISH TO DEFEND THIS PROCEEDING but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$2,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$500.00 for costs and have the costs assessed by the court.

Date: August 31, 2010

Issued by   
Local registrar

Address of Court Office: 50 Eagle Street West  
Newmarket, Ontario  
L3Y 6B1

**TO:**

**CANADIAN INTERNET REGISTRATION AUTHORITY also known as**  
**AUTORITÉ CANADIENNE POUR LES ENREGISTREMENTS**  
**INTERNET also known as CIRA also known as ACEI**  
350 Sparks Street  
Suite 306  
Ottawa, Ontario  
K1R 7S8

## CLAIM

1. The Plaintiff claims:

- a. damages in the sum of \$10,000,000.00 for breach of contract, bad faith, breach of fiduciary duty, intentional and unlawful interference with economic relations, inducing breach of contract, breach of duty of good faith, irreparable harm to business reputation and profits, loss of business and loss of business opportunity;
- b. punitive and exemplary damages in the sum of \$100,000.00;
- c. an order compelling the Defendant to re-certify the Plaintiff as a Registrar of the dot-ca internet domain name registration system (the "Registry");
- d. an order declaring that the Defendant owes the Plaintiff a fiduciary duty arising out of its relationship with the Plaintiff and that it has breached those fiduciary duties;
- e. an interim, interlocutory and permanent injunction prohibiting the Defendant and anyone acting on its behalf, without further Court order, from:
  - (i) directly or indirectly breaching, cancelling, lapsing, forfeiting or surrendering its Registrar Agreement and/or contract with the Plaintiff;
  - (ii) directly or indirectly refusing and/or failing to re-certify and/or renew the Plaintiff's registration as a Registrar of the Registry;
  - (iii) directly or indirectly discontinuing its relationship with the Plaintiff;
- f. pre-judgment interest in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c.C.43;

- g. post-judgment interest in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c.C.43;
- h. costs of this matter on a substantial indemnity basis, together with any Harmonized Sales Tax which may be payable on any amount(s) pursuant to the *Excise Tax Act* R.S.C., 1985, as amended; and
- i. such further and other relief as to this Honourable Court seems just.

2. The Plaintiff, Brandon Gray Internet Services Inc. (hereinafter "Brandon Gray"), is a corporation duly incorporated pursuant to the laws of the Dominion of Canada maintaining its head office in the Town of Markham, Ontario.

3. The Defendant, Canadian Internet Registration Authority also known as Autorité Canadienne pour les Enregistrements Internet also known as CIRA also known as ACEI (hereinafter "CIRA"), is a corporation duly incorporated pursuant to the laws of the Dominion of Canada, without share capital, that, among other things, manages the dot-ca domain space, develops and implements domain name policy, accredits Registrars and runs a WHOIS service for dot-ca domains. CIRA has been entrusted with the exclusive jurisdiction within Canada to manage, operate and control the Registry.

4. Brandon Gray was incorporated in 2004 and since that time has continuously been in the business of registering, renewing and transferring domains.

5. As a result, Brandon Gray is well known, recognizable and highly respected in the internet community.



6. In or around June 2004, Brandon Gray and CIRA entered into a Registrar Agreement (the "Agreement") whereby CIRA agreed to certify the Plaintiff as a Registrar of the Registry. Brandon Gray was entitled to, *inter alia*, register dot-ca or sub-domain names on behalf of individuals, corporations, trusts, partnerships, etc. ("Resellers"), as well as provide the Resellers with all associated services.

7. At all material times, the Plaintiff has been a reputable accredited Registrar. Since 2004, Brandon Gray has been registering, renewing and transferring dot-ca domains on behalf of the Resellers and currently has agreements with over twenty-five (25) Resellers in the Registry and services between 4,000 and 6,000 Customers. Brandon Gray's revenue is solely determined by the number of Resellers and ultimately the services that it provides to the Resellers and Customers in the Registry.

8. The agreements entered into by Brandon Gray with the Resellers were for the express and implied purpose of ensuring that the Resellers' dot-ca domains be registered, that said domains remain in good standing and that Brandon Gray would remain a viable and thriving entity thus safeguarding their business interests.

9. CIRA did not have any legal basis upon which to refuse the re-certification of the Plaintiff. Pursuant to the Agreement, certification as a Registrar is valid for one (1) year; however, paragraph 1.2 of the Agreement provides that the Registrar may be re-certified annually by CIRA. Further, paragraph 7.2 of the Agreement provides that the term of the Agreement shall be automatically extended for successive periods of one (1) year upon re-certification of the Registrar. Finally,

pursuant to paragraph 7.6 of the Agreement, CIRA may, in its sole discretion by giving notice thereof to the Registrar, terminate or suspend the Agreement *only in* specified circumstances.

10. On or about August 6, 2010, without warning or prior notice, the Plaintiff's representative received a letter via electronic email, advising of CIRA's decision to refuse Brandon Gray's re-certification as a CIRA certified Registrar, thus informing the Plaintiff of its decision to terminate its relationship with Brandon Gray effective August 24, 2010. Essentially, Brandon Gray was given the restricted option of either selling its dot-ca business to another certified Registrar or having its business effectively shut down on the termination date. The termination date was later extended to September 7, 2010. None of the circumstances specified in the Agreement giving CIRA the ability to terminate or suspend the Agreement or its relationship with Brandon Gray were ever present.

11. Despite repeated attempts by the Plaintiff and its lawyers to confirm the reasons for said termination, CIRA has refused to provide a valid explanation as to why it has made the unilateral decision to cease its relationship with the Plaintiff. Consequently, there was no valid reason for terminating the relationship. No circumstances have arisen that justify the refusal to re-certify Brandon Gray as a Registrar.

12. As CIRA has the exclusive jurisdiction and responsibility for the operation and control of the dot-ca domain name registration system, CIRA's decision, therefore, to terminate its relationship with Brandon Gray will shut down the Plaintiff's operations, make it impossible for Brandon Gray to operate in its chosen industry and will cause severe financial harm to the Plaintiff, its Resellers, the Plaintiff's employees and the Plaintiff's Customers.

13. The Plaintiff pleads that by virtue of the Agreement with CIRA and by CIRA having the ability to exercise discretion or power, CIRA owes a fiduciary duty to Brandon Gray. As a fiduciary, CIRA is bound to act in and demonstrate good faith towards Brandon Gray. However, CIRA has unilaterally exercised its power so as to affect the Plaintiff's interests. On account of CIRA's having been entrusted with the exclusive jurisdiction within Canada to manage, operate and control the Registry, Brandon Gray is in a position of vulnerability at the hands of CIRA; there is no availability of an alternative supply of the Registry. Consequently, by refusing to accept re-certification of Brandon Gray as a Registrar, the Defendant has engaged in conduct with the intention of unlawfully breaching the Agreement with the Plaintiff, thus breaching its fiduciary duties and duties of good faith.

14. The Plaintiff pleads that CIRA's conduct was directed towards Brandon Gray and that the Defendant knew or ought to have known that harm to Brandon Gray was likely in the circumstances. The Plaintiff pleads that it will suffer damages as a result of the Defendant's actions.

15. The Plaintiff further pleads that the Defendant was aware, at all material times, of the contracts and relations between the Plaintiff and its Resellers and that by terminating its relationship with Brandon Gray, CIRA will cause the Plaintiff's Resellers to terminate and/or surrender their contracts and their longstanding relationships with the Plaintiff. The Plaintiff, along with its Resellers, Customers, and employees will, therefore, suffer irreparable harm for which damages may not be quantifiable for an adequate remedy.

16. The Plaintiff pleads that it was an express or implied term of Agreement with CIRA that the Defendant would not terminate the Agreement unless it had just cause to do so.

17. The Plaintiff further pleads that CIRA breached its contractual obligations to the Plaintiff when it unilaterally and without justification terminated the Agreement.

18. The Plaintiff further pleads that CIRA has a duty to act in good faith. This duty is independent of its contractual duties of good faith to the Plaintiff. CIRA violated this duty of good faith to the Plaintiff by terminating its respective relationship with the Plaintiff without cause, justification or lawful excuse.

19. Even if CIRA had reasonable grounds to terminate the relationship, the Plaintiff pleads that CIRA had an implied duty of good faith to disclose its reasons and processes behind its decisions for terminating its relationship with the Plaintiff and to provide the Plaintiff with an opportunity to engage in corrective measures to allow its status to remain as a Registrar.

20. The Plaintiff pleads that CIRA intentionally interfered with the Plaintiff's economic relations by refusing to accept re-certification of Brandon Gray as a Registrar without valid cause, justification or lawful excuse. CIRA knew, or ought to have known, that by refusing to accept the re-certification, the Plaintiff may suffer damages as a result of being unable to secure a replacement dot-ca internet domain name registration system to carry on its business. There is no alternative supply of the Registry available to Brandon Gray. The decision by CIRA to terminate its relationship with the Plaintiff was directed specifically and intentionally at the Plaintiff. By failing to communicate openly and be accountable to the Plaintiff, CIRA purposely acted outside of its legal requirements and powers.

21. As a result, the Plaintiff pleads that it will suffer a loss of business, a loss of business opportunity and a loss of business reputation and will therefore suffer irreparable harm as a result of the actions of the Defendant.

22. Further particulars of the damages suffered by the Plaintiffs will be provided at or prior to the trial of this action.

23. The Defendant's conduct in terminating its relationship with the Plaintiff without cause, justification or lawful excuse and in refusing to provide a reason or explanation was malicious and high-handed. The Plaintiff pleads that this is an appropriate case for this Honourable Court to award punitive and exemplary damages.

24. The Plaintiff proposes that this action be tried at NEWMARKET, Ontario.

Date: August 31, 2010

**ROTUNDO DI IORIO QUAGLIETTA, LLP**  
Barristers & Solicitors  
BDC Building  
3901 Highway No. 7  
Suite 400  
Vaughan, ON  
L4L 8LK

Tel: (905) 264-7800  
Fax: (905) 264-7808

**Enzo Di Iorio (LSUC No. 36681V)**  
**David Brand (LSUC No. 55770B)**

Lawyers for the Plaintiffs

CRANLEY GROUP INTERNET SERVICES INC.

- and -

CANADIAN INTERNET REGISTRY AUTHORITY also known as ACEI  
CANADIENNE POUR LES ENREGISTREMENTS INTERNET also known as  
CIRA also known as ACEI  
Defendant

Plaintiff

Court File No. CV-10-0100675-c

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at NEWMARKET

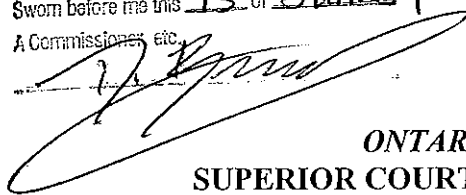
**STATEMENT OF CLAIM**

**ROTUNDO DI IORIO QUAGLIETTA, LLP**  
Barristers and Solicitors  
BDC Building  
3901 Highway #7  
Suite 400  
Vaughan, Ontario  
L4L 8L5

Tel: (905) 264-7800  
Fax: (905) 264-7808

**Enzo Di Iorio (LSUC No. 36681V)**  
**David Brand (LSUC No. 55770B)**

Lawyers for the Plaintiff

This is Exhibit H to the Affidavit of  
Larry Coker  
Sworn before me this 13 of January  
A Commissioner, etc.  


Court File No. CV-10-0100675-00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

BRANDON GRAY INTERNET SERVICES INC.

Plaintiff

- and -

CANADIAN INTERNET REGISTRATION AUTHORITY also known as AUTORITÉ  
CANADIENNE POUR LES ENREGISTREMENTS INTERNET also known as CIRA  
also known as ACEI

Defendant

**NOTICE OF MOTION**

**THE PLAINTIFF**, Brandon Gray Internet Services Inc. ("Brandon Gray") will make a motion to the Court, on **October 15, 2010 at 9:30 a.m.**, or as soon after that time as the motion can be heard, at 50 Eagle Street West, Newmarket, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard

- ☐ in writing under subrule 37.12.1(1);
- ☐ in writing as an unopposed motion under subrule 37.12.1(4);
- ☒ orally.

**THE MOTION IS FOR:**

1. an interim, interlocutory and permanent injunction prohibiting the Defendant and anyone acting on its behalf, without further Court order, from:

- (i) directly or indirectly breaching, cancelling, lapsing, forfeiting or surrendering its Registrar Agreement and/or contract with the Plaintiff;
  - (ii) directly or indirectly refusing and/or failing to re-certify and/or renew the Plaintiff's registration as a Registrar of the dot-ca internet domain name registration system (the "Registry"); and
  - (iii) directly or indirectly discontinuing its relationship with the Plaintiff;
- 2. an order immediately compelling the Defendant to re-certify the Plaintiff as a Registrar of the Registry;
- 3. an Order dispensing of the requirement to file a factum pursuant to rule 40.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, if necessary;
- 4. an Order abridging time for service of this Notice of Motion, if necessary;
- 5. costs of this motion as against the Defendant on a substantial indemnity basis, together with any Harmonized Sales Tax which may be payable pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended; and
- 6. such further and other relief as this Honourable Court may deem just and appropriate.

**THE GROUNDS FOR THE MOTION ARE:**

- 1. The Defendant, Canadian Internet Registration Authority also known as Autorité Canadienne pour les Enregistrements Internet also known as CIRA also known as ACEI ("CIRA"), has been entrusted with the exclusive jurisdiction within Canada



to manage, operate and control the Registry. There is therefore no availability of an alternative supply of the Registry.

2. Pursuant to a Registrar Agreement (the "Agreement") entered into in or around June 2004 by Brandon Gray and the Defendant, CIRA agreed to certify the Plaintiff as a Registrar of the Registry, and in turn, Brandon Gray was entitled to, *inter alia*, register dot-ca or sub-domain names on behalf of individuals, corporations, trusts, partnerships, etc. ("Resellers"), as well as provide the Resellers with all associated services.
3. Pursuant to the Agreement, certification as a Registrar is valid for one (1) year; however, paragraph 1.2 of the Agreement provides that the Registrar may be re-certified annually by CIRA. Further, paragraph 7.2 of the Agreement provides that the term of the Agreement shall be automatically extended for successive periods of one (1) year upon re-certification of the Registrar.
4. Pursuant to paragraph 7.6 of the Agreement, CIRA may, in its sole discretion by giving notice thereof to the Registrar, terminate or suspend the Agreement *only under* certain conditions.
5. Since 2004, Brandon Gray has been registering, renewing and transferring dot-ca domains on behalf of the Resellers and currently has agreements with over twenty-five (25) Resellers in the Registry and services between 4,000 and 6,000 Customers.

6. Brandon Gray's revenue is solely determined by the number of Resellers and ultimately the services that it provides to the Resellers and Customers in the Registry.
7. Without warning or prior notice, on August 6, 2010, the Plaintiff received a letter via electronic email, advising of CIRA's decision to refuse Brandon Gray's re-certification as a CIRA certified Registrar, thus informing the Plaintiff of its decision to terminate its relationship with Brandon Gray effective August 24, 2010. The termination date was extended to September 7, 2010, and extended further to September 7, 2010, because of requests made by the Plaintiff's lawyer.
8. Brandon Gray was only given the option of either selling its dot-ca business to another certified Registrar or having its business effectively shut down on the termination date.
9. None of the circumstances specified in the Agreement giving CIRA the ability to terminate or suspend the Agreement or its relationship with Brandon Gray were ever present.
10. Despite repeated attempts by the Plaintiff and its lawyers to confirm the reasons for said termination, CIRA has refused to provide a valid explanation as to why it has made the unilateral decision to cease its relationship with the Plaintiff.
11. CIRA does not have any legal basis upon which to refuse the re-certification of the Plaintiff.

12. The Plaintiff, along with the Plaintiff's Resellers and Customers, will suffer a loss of business, a loss of business opportunity and a loss of business reputation and will therefore suffer irreparable harm if the injunction sought herein is not granted.
13. As CIRA has the exclusive jurisdiction and responsibility for the operation and control of the Registry, CIRA's decision to terminate its relationship with Brandon Gray will shut down the Plaintiff's operations, make it impossible for Brandon Gray to operate in its chosen industry and will cause severe financial harm to the Plaintiff, its employees, Resellers and Customers.
14. Accordingly, the Plaintiff, along with its Resellers and Customers, will suffer the greater harm as a result of being unable to secure a replacement Registry to carry on its business.
15. There is no alternative supply of the Registry available to Brandon Gray.
16. There is a serious question to be tried.
17. The balance of convenience favours the granting of an injunction.
18. The Plaintiff has given an undertaking as to damages.
19. Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended.
20. Rules 1.04, 2.03, 3.02 and 40.01 of the *Rules of Civil Procedure*. and
21. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing  
of the motion:

1. The Affidavit of Larry Coker, affirmed on September 3, 2010, and the exhibits attached thereto;
2. The Affidavit of Marilyn Benlolo, affirmed on September 3, 2010, and the exhibits attached thereto; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

October 5, 2010

**ROTUNDO DI IORIO QUAGLIETTA, LLP**

Barristers and Solicitors

BDC Building

3901 Highway #7

Suite 400

Vaughan, Ontario

L4L 8L5

Tel: (905) 264-7800

Fax: (905) 264-7808

**Enzo Di Iorio (LSCU #36681V)**

**David Brand (LSUC #55770B)**

Lawyers for the Plaintiff

BRANDON GRAY INTERNET SERVICES INC.

- and -

CANADIAN INTERNET REGISTRY AUTHORITY also known as AUTORITÉ  
CANADIENNE POUR LES ENREGISTREMENTS INTERNET also known as  
CIRA also known as ACEI  
Defendant

Plaintiff

Court File No. CV-10-0100675-00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at NEWMARKET

**NOTICE OF MOTION**

**ROTUNDO DI IORIO QUAGLIETTA, LLP**

Barristers and Solicitors  
BDC Building  
3901 Highway #7  
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**Enzo Di Iorio (LSUC No. 36681V)**

**David Brand (LSUC No. 55770B)**

Lawyers for the Plaintiff

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T 613.237.5160  
F 613.230.8842  
blg.com

**BLG**  
Borden Ladner Gervais

**By Facsimile and By Mail**

October 20, 2010

Mr. Enzo Di Iorio  
Mr. David Brand  
Rotundo Di Iorio Quaglietta LLP  
BDC Building  
400 – 3901 Highway 7  
Vaughan, ON L4L 8L5

Dear Sirs

**Re: Brandon Gray Internet Services Inc. v. CIRA**  
**Court File: CV-10-0100675-10**  
**Our File: 335404-000056**

Further to our appearance on Friday, October, 15, Madam Justice Gilmore endorsed the record as follows:

Long motion heard today. Counsel advise that an agreement will be put in place to extend the Plaintiff's certification pending my decision and without prejudice to the Defendant's rights under the agreement.

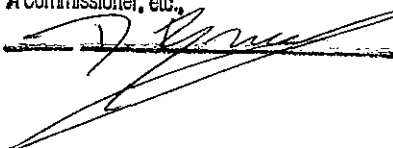
I advised the Court, at the conclusion of our submissions, that CIRA was prepared to extend the expiry date of Brandon Gray's certification as a Registrar until the Court had released its decision with respect to your motion, on the same terms as the earlier extensions have been agreed to – that is, that the extension is without prejudice to CIRA's rights, including without prejudice to its contractual rights under the respective CIRA Registrar and Registrant Agreements, and also without prejudice to any determination CIRA has taken to date, or may take in the future, not to recertify Brandon Gray. You advised, before the Court, that your client accepted that offer. I told Her Honour that I would be sending a letter confirming that agreement. That is the purpose of this letter.

Yours very truly

  
Peter K. Doody

PKD/js

c Mr. Michael Stewart, CIRA  
OTT01042312701

This is Exhibit I to the Affidavit of  
Larry Coker  
Sworn before me this 13 of January  
A Commissioner, etc.,  


BRANDON GRAY INTERNET SERVICES INC.

- and -

CANADIAN INTERNET REGISTRATION AUTHORITY also known as  
AUTHORITE CANADIENNE POUR LES ENREGISTREMENTS  
INTERNET also known as CIRA also known as ACEI  
Respondent

Applicant

File No.

Registry Document No.

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*,  
R.S.C. 1985, c. C-34, as amended.

**AND IN THE MATTER OF** an  
Application by Brandon Gray Internet Services  
Inc. for relief pursuant to sections 75, 103.1  
and 104 of the *Competition Act*, R.S.C. 1985, c.  
C-34, as amended.

**AFFIDAVIT OF LARRY COKER**  
(AFFIRMED JANUARY 13, 2011)

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