# Registry-Registrar Agreement

This Registry-Registrar Agreement (the "Agreement") is entered into by and between Bayerische Motoren Werke Aktiengesellschaft (“BMW”), a publicly-held stock corporation organized under the law of Germany, with its principal place of business located at Munich, Germany and Key-Systems GmbH, a Company organized under the law of Germany, with its principal place of business located at Im Oberen Werk 1, 66386 St. Ingbert, Germany (“Registrar”), (each individually a “Party” or collectively the “Parties”) through their authorized representatives, and takes effect on the date executed by the final Party (the "Effective Date").

WHEREAS, registrars provide Internet domain name registration services within the .BMW top-level domain wherein BMW operates and maintains certain TLD servers and zone files;

WHEREAS, Key-Systems GmbH wishes to register second-level domain names in the registrar system for the .BMW TLD.

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

**1. DEFINITIONS**

**1.1.**"Confidential Information" means all information and materials including, without limitation, computer software, data, information, databases, protocols, reference implementation and documentation, and functional and interface specifications, provided by the disclosing party to the receiving party and marked or otherwise identified as Confidential, provided that if a communication is oral, the Disclosing Party will notify the Receiving Party in writing within 15 days of the disclosure.

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

**1.3.**"EPP" means the Extensible Provisioning Protocol.

**1.4.**"ICANN" refers to the Internet Corporation for Assigned Names and Numbers.

**1.5.**"IP" means Internet Protocol.

**1.6.**The "Licensed Product" refers to the intellectual property required to access the Supported Protocol, and to the APIs, and software, collectively.

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

**1.8.**"Registered Name" refers to a domain name within the domain of the Registry TLD, whether consisting of two or more (e.g., john.smith.name) levels, about which BMW or an affiliate engaged in providing registry services maintains data in a registry database, arranges for such maintenance, or derives revenue from such maintenance. A name in a registry database may be a Registered Name even though it does not appear in a TLD zone file (e.g., a registered but inactive name).

**1.9.**"Registry TLD" means the .BMW TLD.

**1.10.**"Supported Protocol" means BMW's implementation of EPP, or any successor protocols, supported by the System.

**1.11.**The "System" refers to the registrar system operated by BMW for registration of Registered Names in the Registry TLD.

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

**2. OBLIGATIONS OF THE PARTIES**

**2.1. System Operation and Access.**Throughout the term of this Agreement, BMW shall operate the System and provide Key-Systems GmbH with access to the System to transmit domain name registration information for the Registry TLD to the System. Nothing in this Agreement entitles Key-Systems GmbH to enforce any agreement between BMW and ICANN.

**2.2. Maintenance of Registrations Sponsored by Registrar.** Subject to the provisions of this Agreement, ICANN requirements, and BMW requirements, including, without limitation, those authorized by ICANN, BMW shall maintain the registrations of Registered Names sponsored by Key-Systems GmbH in the System during the term for which Key-Systems GmbH has paid the fees required by Subsection 5.1.

**2.3. Distribution of EPP, APIs and Software.** As soon as commercially practicable after the Effective Date of this Agreement, BMW shall make available to Key-Systems GmbH (i) full documentation of the Supported Protocol, (ii) "C" and/or "Java" application program interfaces ("APIs") to the Supported Protocol with documentation, and (iii) reference client software ("Software") that will allow Key-Systems GmbH to develop its system to register second-level domain names through the System for the Registry TLD. If BMW elects to modify or upgrade the APIs and/or Supported Protocol, BMW shall provide updated APIs to the Supported Protocol with documentation and updated Software to Key-Systems GmbH promptly as such updates become available.

**2.4. Registrar Responsibility for Customer Support.**Key-Systems GmbH shall provide (i) support to accept orders for registration, cancellation, modification, renewal, deletion or transfer of Registered Names and (ii) customer service (including domain name record support) and billing and technical support to Registered Name Holders. Key-Systems GmbH shall, consistent with ICANN policy, provide to Registered Name Holders emergency contact or 24/7 support information for critical situations such as domain name hijacking.

**2.5. Data Submission Requirements.**As part of its registration and sponsorship of Registered Names in the Registry TLD, Key-Systems GmbH shall submit complete data as required by technical specifications of the System that are made available to Key-Systems GmbH from time to time. Key-Systems GmbH shall submit any corrections or updates from a Registered Name Holder relating to the registration information for a Registered Name to BMW in a timely manner.

**2.6. License.**Key-Systems GmbH grants BMW as Registry a non-exclusive, royalty-free, nontransferable worldwide limited license to the data elements consisting of the Registered Name, the IP addresses of nameservers, the identity of the registering registrar, and other data required or permitted by technical specifications of the Registry System as made available to Key-Systems GmbH by BMW from time to time, for propagation of and the provision of authorized access to the TLD zone files or as otherwise required or permitted by BMW's Registry Agreement with ICANN concerning the operation of the Registry TLD, as may be amended from time to time.

**2.7. Registrar's Registration Agreement and Domain Name Dispute Policy.** Key-Systems GmbH shall have in effect an electronic or paper registration agreement with the Registered Name Holder which may be amended from time to time by Key-Systems GmbH, provided a copy is made available to BMW. Key-Systems GmbH shall provide a copy of Key-Systems GmbH's registration agreement upon request for same by BMW. Key-Systems GmbH shall include in its registration agreement those terms required by this Agreement and other terms that are consistent with Key-Systems GmbH's obligations to BMW under this Agreement. Registrar shall employ in its domain name registration business all ICANN Consensus Policies, including without limitation the Uniform Rapid Suspension Policy, Uniform Domain Name Dispute Resolution Policy and the Inter-Registrar Transfer Policy, as each may be amended from time to time.

In its registration agreement with each Registered Name Holder, Key-Systems GmbH shall require such Registered Name Holder to:

(a) acknowledge and agree that BMW reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, as it deems necessary, in its unlimited and sole discretion: (1) to comply with specifications adopted by any industry group generally recognized as authoritative with respect to the Internet (e.g., RFCs), (2) to correct mistakes made by BMW or any registrar in connection with a domain name registration, or (3) for the non-payment of fees to BMW; and

(b) indemnify, defend and hold harmless BMW and its subcontractors, and its and their directors, officers, employees, agents, and affiliates from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses arising out of or relating to, for any reason whatsoever, the Registered Name Holder's domain name registration. The registration agreement shall further require that this indemnification obligation survive the termination or expiration of the registration agreement; and,

(c) accept all ICANN-mandated and TLD-specific rights-protection mechanisms; and

(d) abide by the Domain Name Registration and Use Policy for .BMW which may be amended from time to time and which shall be displayed on the registry website for BMW and incorporated into any domain name registration licensing agreement between BMW and their affiliates; and

(e) abide by the Anti-Abuse Policy for .BMW Domain Names.

**2.7.1 Registration Policy.** The .BMW top-level domain will enable the company to communicate with all of its dealers, partners, affiliates, customers, investors and the general public, and to display information about the BMW brand, in a secure and unified manner. The .BMW top-level domain will further provide a single location where customers may research product information or learn about new models and features, and where authorized dealers or affiliates may advertise in a BMW-endorsed, authenticated space.

The registration of domain names within the .BMW TLD shall be restricted to BMW itself, and, where deemed appropriate by BMW, its affiliated parties and trademark licensees. **Key-Systems GmbH** shall validate and verify each registration request, and shall additionally verify each registration request with BMW’s Trademark Department, ensuring that BMW has made such registration request. **Key-Systems GmbH** shall also ensure that, upon registration, BMW,its affiliated parties or trademark licensee appear as the registrant of record for the domain name. Furthermore, BMW shall only accept a domain name registration request which complies with the Domain Allocation Rules provided in the Domain Name Registration and Use Policy for .BMW. BMW reserves the right to cancel any registration which does not comply with the Domain Name Registration and Use Policy for “.BMW” or the Anti-Abuse Policy for .BMW Domain Names.

**2.8. Secure Connection.**Key-Systems GmbH agrees to develop and employ in its domain name registration business all necessary technology and restrictions to ensure that its connection to the System is secure. All data exchanged between Key-Systems GmbH's system and the System shall be protected to avoid unintended disclosure of information. Only qualified persons at BMW AG IT will have access to editing zone files and settings, including MX-records of all second level domain names. Key-Systems GmbH shall employ commercially reasonable measures to prevent its access to the Registry System granted hereunder from being used to (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than its own existing customers; or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of BMW, any other registry operated under an agreement with ICANN, or any ICANN-accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

Each EPP session shall be authenticated and encrypted using two-way secure socket layer ("SSL") protocol. Key-Systems GmbH agrees to authenticate every EPP client connection with the System using both an X.509 server certificate issued by a commercial Certification Authority identified by the Registry and its Registrar password, which it shall disclose only to its employees with a need to know. In addition to SSL and password protections, Key-Systems GmbH agrees to utilize PIN/TAN based login procedures. Key-Systems GmbH agrees to notify Registry within four (4) hours of learning that its Registrar password has been compromised in any way or if its server certificate has been revoked by the issuing Certification Authority or compromised in any way.

Upon prior written notification to Key-Systems GmbH, BMW may require other industry standard security provisions, practices or technology to ensure that the Registry System is secure and stable, which BMW may adopt from time to time in its sole and complete discretion.

**2.8.1. Handling of Personal Data.**BMW shall notify Key-Systems GmbH of the purposes for which Personal Data submitted to BMW by Key-Systems GmbH is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. BMW shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. BMW shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars. BMW may from time to time use the demographic data collected for statistical analysis, provided that this analysis will not disclose individual Personal Data and provided that such use is compatible with the notice provided to registrars regarding the purpose and procedures for such use.

**2.8.2. Authorization Codes**. Key-Systems GmbH shall not provide identical Registrar-generated authorization <authinfo> codes for domain names registered by different registrants with the same Registrar. BMW in its sole discretion may choose to modify <authinfo> codes for a given domain and shall notify the sponsoring registrar of such modifications via EPP compliant mechanisms (i.e., EPP<poll> or EPP<domain:Info>). Documentation of these mechanisms shall be made available to Key-Systems GmbH by BMW. Key-Systems GmbH shall provide the Registered Name Holder with timely access to the authorization code along with the ability to modify the authorization code within five (5) calendar days.

**2.9. Domain Name Lookup Capability.**Key-Systems GmbH agrees to employ in its domain name registration business BMW's registry domain name lookup capability to determine if a requested domain name is available or currently unavailable for registration. Key-Systems GmbH also agrees, at its expense, to provide an interactive web page and a port 43 Whois service providing free public query-based access to up-to-date (i.e., updated at least daily) data concerning all active Registered Names sponsored by Key-Systems GmbH for the Registry TLD. The data accessible shall consist of elements that are designated from time to time according to an ICANN adopted specification or policy or the Registrar Accreditation Agreement between Key-Systems GmbH and ICANN.

**2.10. Transfer of Sponsorship of Registrations.**Key-Systems GmbH agrees to implement transfers of Registered Name registrations from another registrar to Key-Systems GmbH and vice versa pursuant to the Inter-Registrar Transfer Policy as may be amended from time to time by ICANN (the "Transfer Policy").

**2.11. Time.**Key-Systems GmbH agrees that in the event of any dispute concerning the time of the entry of a domain name registration into the registry database, the time shown in the BMW records shall control.

**2.12. Compliance with Operational Requirements.**Key-Systems GmbH shall comply with each of the following requirements, and further shall include in its registration agreement with each Registered Name Holder, as applicable, an obligation for such Registered Name Holder to comply with each of the following requirements:

(a) ICANN standards, policies, procedures, and practices for which BMW has monitoring responsibility in accordance with the Registry Agreement or other arrangement with ICANN; and

(b) Operational standards, policies, procedures, and practices for the Registry TLD established from time to time by BMW in a non-arbitrary manner and applicable to all registrars ("Operational Requirements"), including affiliates of BMW, and consistent with BMW's Registry Agreement with ICANN, as applicable, upon BMW's notification to Key-Systems GmbH of the establishment of those terms and conditions.

**2.13. Resolution of Technical Problems or Breach of Agreement.**Key-Systems GmbH agrees to employ necessary employees, contractors, or agents with sufficient technical training and experience to respond to and fix all technical problems concerning the use of the Supported Protocol, the APIs and the systems of BMW in conjunction with Key-Systems GmbH's systems. Key-Systems GmbH agrees that in the event of significant degradation of the System or other emergency, or upon Key-Systems GmbH's violation of Operational Requirements or breach of this Agreement, BMW may, in its sole discretion, temporarily suspend or restrict access to the System. Such temporary suspensions or restrictions shall be applied in a nonarbitrary manner and shall apply fairly to any registrar similarly situated.

**2.14. Prohibited Domain Name Registrations.**In addition to complying with ICANN standards, policies, procedures, and practices limiting domain names that may be registered, Key-Systems GmbH agrees to comply with applicable statutes and regulations, including of BMW limiting the domain names that may be registered.

**2.15 Uniform Rapid Suspension Provisions.** The Registrar must accept and process payments for the renewal of a domain name by a URS Complainant in cases where the URS Complainant prevailed. The Registrar must not renew a domain name to a URS Complainant who prevailed for longer than one year.

**2.16. ICANN Requirements.**BMW's obligations hereunder are subject to modification at any time as the result of ICANN-mandated requirements and consensus policies. Notwithstanding anything in this Agreement to the contrary, Key-Systems GmbH shall comply with any such ICANN requirements in accordance with the timeline defined by ICANN.

**2.17. Accredited Registrar.** During the term of this Agreement, Key-Systems GmbH shall maintain in full force and effect its accreditation by ICANN as a registrar for the Registry TLD.

**3. LICENSE**

**3.1. License Grant.**Subject to the terms and conditions of this Agreement, BMW hereby grants Key-Systems GmbH and Key-Systems GmbH accepts a non-exclusive, royalty-free, nontransferable, worldwide limited license to use for the term and purposes of this Agreement the Licensed Product, as well as updates and redesigns thereof, to provide domain name registration services in the Registry TLD only and for no other purpose. The Licensed Product, as well as updates and redesigns thereof, will enable Key-Systems GmbH to register domain names in the Registry TLD with the Registry on behalf of its Registered Name Holders. Key-Systems GmbH, using the Licensed Product, as well as updates and redesigns thereof, will be able to invoke the following operations on the System: (i) check the availability of a domain name, (ii) register a domain name, (iii) re-register a domain name, (iv) cancel the registration of a domain name it has registered, (v) update the nameservers of a domain name, (vi) transfer a domain name from another registrar to itself with proper authorization, (vii) query a domain name registration record, (viii) register a nameserver, (ix) update the IP addresses of a nameserver, (x) delete a nameserver, (xi) query a nameserver, and (xii) establish and end an authenticated session.

**3.2. Limitations on Use.**Notwithstanding any other provisions in this Agreement, except with the written consent of BMW, Key-Systems GmbH shall not: (i) sublicense the Licensed Product or otherwise permit any use of the Licensed Product by or for the benefit of any party other than Key-Systems GmbH, (ii) publish, distribute or permit disclosure of the Licensed Product other than to employees, contractors, and agents of Key-Systems GmbH for use in Key-Systems GmbH's domain name registration business, (iii) decompile, reverse engineer, copy or re-engineer the Licensed Product for any unauthorized purpose, (iv) use or permit use of the Licensed Product in violation of any federal, state or local rule, regulation or law, or for any unlawful purpose. Key-Systems GmbH agrees to employ the necessary measures to prevent its access to the System granted hereunder from being used to (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than Key-Systems GmbH's customers; or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of BMW or any ICANN-Accredited Registrar, except as reasonably necessary to register domain names or modify existing registrations.

**3.3. Changes to Licensed Materials.**BMW may from time to time replace or make modifications to the Licensed Product licensed hereunder. BMW will provide Key-Systems GmbH with at least ninety (90) days notice prior to the implementation of any material changes to the Supported Protocol, APIs or software licensed hereunder.

**4. SUPPORT SERVICES**

**4.1. Engineering Support.**BMW agrees to provide Key-Systems GmbH with reasonable engineering telephone support (between the hours of 9 a.m. to 5 p.m. CET or at such other times as may be mutually agreed upon) to address engineering issues arising in connection with Key-Systems GmbH's use of the System.

**4.2. Customer Service Support.**During the term of this Agreement, BMW will provide reasonable telephone, web based and e-mail customer service support to Key-Systems GmbH, not Registered Name Holder or prospective customers of Key-Systems GmbH, for nontechnical issues solely relating to the System and its operation. BMW will provide Key-Systems GmbH with a telephone number and e-mail address for such support during implementation of the Supported Protocol, APIs and Software.

**5. FEES**

**5.1. Registration Fees.**

(a) Key-Systems GmbH agrees to pay BMW the non-refundable fees set forth in Exhibit A for initial and renewal registrations and other incidental and ancillary services provided by BMW (collectively, the "Registration Fees").

(b) BMW reserves the right to adjust the Registration Fees, provided that any price increase shall be made only upon six (6) months prior notice to Key-Systems GmbH (by e-mail, hand, by registered mail, or by courier or express delivery service), and provided that such adjustments are consistent with BMW's Registry Agreement with ICANN.

(c) Key-Systems GmbH shall provide BMW a payment security comprised of an irrevocable letter of credit or cash deposit (the "Payment Security"). The amount of the Payment Security establishes Key-Systems GmbH's credit limit in the BMW System and should be based on anticipated monthly level of registrations and other billable transactions. Key-Systems GmbH agrees to modify its Payment Security to support increases in billable transaction volumes as required by the BMW credit and billing policies. BMW will invoice Key-Systems GmbH monthly in arrears for each month's Registration Fees. All Registration Fees are due immediately upon receipt of BMW's monthly invoices. In order to satisfy any outstanding account balances, BMW may draw upon the Key-Systems GmbH's Payment Security. If this occurs, Key-Systems GmbH agrees to replenish Payment Security to the pre-draw level immediately upon completion of draw. If Key-Systems GmbH's Payment Security is depleted, registration of domain names for the Key-Systems GmbH will be suspended and new registrations will not be accepted until the Payment Security is replenished.

(d) The Registration Fees due under this Agreement are exclusive of tax. All taxes, duties, fees and other governmental charges of any kind (including sales, turnover, services, use and value-added taxes, but excluding taxes based on the net income of BMW which are imposed by or under the authority of any government or any political subdivision thereof on the fees for any services, software and/or hardware shall be borne by Key-Systems GmbH and shall not be considered a part of, a deduction from or an offset against such Registration Fees. All payments due to BMW shall be made without any deduction or withholding on account of any tax, duty, charge or penalty except as required by law, in which case, the sum payable by Key-Systems GmbH from which such deduction or withholding is to be made shall be increased to the extent necessary to ensure that, after making such deduction or withholding, BMW receives and retains (free from any liability with respect thereof) a net sum equal to the sum it would have received but for such deduction or withholding being required.

**5.2. Change in Registrar Sponsoring Domain Name.**Key-Systems GmbH may assume sponsorship of a Registered Name Holder's existing domain name registration from another registrar by following the Transfer Policy.

(a) For each transfer of the sponsorship of a domain-name registration under the Transfer Policy, Key-Systems GmbH agrees to pay BMW the renewal registration fee associated with a one-year extension, as set forth above. The losing registrar's Registration Fees will not be refunded as a result of any such transfer.

(b) For a transfer approved by ICANN under Part B of the Transfer Policy, Key-Systems GmbH agrees to pay BMW US $0 (for transfers of 50,000 names or fewer) or US $50,000 (for transfers of more than 50,000 names).

Fees under this Section 5.2 shall be due immediately upon receipt of BMW's invoice pursuant to the Payment Security.

**5.3. Charges for ICANN Fees.**Key-Systems GmbH agrees to pay to BMW, within five (5) days of the date when due, any variable registry-level fees paid by BMW to ICANN, which fees shall be secured by the Payment Security. The fee will consist of two components; each component will be calculated by ICANN for each registrar:

(a) The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year but shall not exceed the amount set forth in the Registry Agreement.

(b) The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each fiscal year, but the sum of the per-registrar fees calculated for all registrars shall not exceed the total Per-Registrar Variable funding established pursuant to the approved ICANN Budget.

**5.4. Non-Payment of Fees.**Timely payment of fees owing under this Section 5 is a material condition of performance under this Agreement. In the event that Key-Systems GmbH fails to pay its fees within five (5) days of the date when due, BMW may: (i) stop accepting new initial or renewal registrations from Key-Systems GmbH; (ii) delete the domain names associated with invoices not paid in full from the Registry database; (iii) give written notice of termination of this Agreement pursuant to Section 6.1(b) below; and (iv) pursue any other remedy under this Agreement.

**6. MISCELLANEOUS**

**6.1. Term of Agreement and Termination.**

(a) **Term of the Agreement; Revisions.**The duties and obligations of the Parties under this Agreement shall apply from the Effective Date through and including the last day of the calendar month sixty (60) months from the Effective Date (the "Initial Term"). Upon conclusion of the Initial Term, all provisions of this Agreement will automatically renew for successive five (5) year renewal periods until the Agreement has been terminated as provided herein, Key-Systems GmbH elects not to renew, or BMW ceases to operate the registry for the Registry TLD. In the event that changes to ICANN policies or rules are adopted by ICANN which require revisions to BMW's Registry-Registrar Agreement, Key-Systems GmbH shall have thirty (30) days from the date of notice of any such revision to review, comment on, and execute an amendment substituting the revised agreement in place of this Agreement, or Key-Systems GmbH may, at its option exercised within such thirty (30) day period, terminate this Agreement by giving written notice to BMW, with such termination to take effect on the date provided by ICANN on which the revisions must be implemented by the Registrar (or at an earlier date that is agreed to by BMW); provided, however, that in the event BMW does not receive such executed amendment or notice of termination from Key-Systems GmbH within such thirty (30) day period of the date of the notice, Key-Systems GmbH shall be deemed to have executed such amendment as of the thirty-first (31st) day after the date of the notice.

(b) **Termination For Cause.**In the event that either Party materially breaches any term of this Agreement including any of its representations and warranties hereunder and such breach is not substantially cured within thirty (30) calendar days after written notice thereof is given by the other Party, then the non-breaching Party may, by giving written notice thereof to the other Party, terminate this Agreement as of the date specified in such notice of termination.

(c) **Termination at Option.**Either may terminate this Agreement at any time by giving the other party one hundred eighty (180) days notice of termination.

(d) **Termination Upon Loss of Registrar's Accreditation.**This Agreement shall terminate immediately in the event Key-Systems GmbH's accreditation for the Registry TLD by ICANN, or its successor, is terminated or expires without renewal.

(e) **Termination in the Event that Successor Registry Operator is Named.**This Agreement shall terminate in the event that ICANN, as appropriate, designates another entity to operate the registry for the Registry TLD.

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

(g) **Effect of Termination.**Upon expiration or termination of this Agreement, BMW will, to the extent it has the authority to do so, complete the registration of all domain names processed by Key-Systems GmbH prior to the date of such expiration or termination, provided that Key-Systems GmbH's payments to BMW for Registration Fees are current and timely. Immediately upon any expiration or termination of this Agreement, Key-Systems GmbH shall (i) transfer its sponsorship of Registered Name registrations to another licensed registrar(s) of the Registry, in compliance with Part B of the Transfer Policy, or any other procedures established or approved by ICANN, as appropriate, and (ii) either return to BMW or certify to BMW the destruction of all Confidential Information it has received under this Agreement. In the event of termination, BMW reserves the right to immediately contact any and all Registered Name Holders to facilitate the orderly and stable transition of Registered Name Holders to other ICANN-accredited registrars. All fees owing to BMW shall become immediately due and payable.

(h) **Survival.**In the event of termination of this Agreement, the following shall survive: (i) Sections 2.6 (License), 2.7 (Registrar's Registration Agreement and Domain Name Dispute Policy), 2.7.1 (Registration Policy), 2.8.1 (Handling of Personal Data), 6.1(g) (Effect of Termination), 6.1(h) (Survival), 6.2 (No Third Party Beneficiaries; Relationship of the Parties), 6.6 (Attorneys' Fees), 6.7 (Dispute Resolution; Choice of Law; Venue), 6.8 (Notices), 6.10 (Use of Confidential Information), 6.11 (Delays or Omissions; Waivers), 6.12 (Limitation of Liability), 6.13 (Construction), 6.14 (Intellectual Property), 6.15(c) (Disclaimer of Warranties), 6.16 (Indemnification), and 6.17 (Entire Agreement; Severability); (ii) the Registered Name Holder's obligations to indemnify, defend, and hold harmless BMW, as stated in Section 2.7(b); and (iii) Key-Systems GmbH's payment obligations as set forth in Section 5 with respect to fees incurred during the term of this Agreement. Neither Party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms but each Party shall be liable for any damage arising from any breach by it of this Agreement.

**6.2. No Third Party Beneficiaries; Relationship of the Parties.**This Agreement does not provide and shall not be construed to provide third parties (i.e., non-parties to this Agreement), including any Registered Name Holder, with any remedy, claim, cause of action or privilege. Nothing in this Agreement shall be construed as creating an employer-employee or agency relationship, a partnership or a joint venture between the Parties.

**6.3. Force Majeure.**Neither Party shall be responsible for any failure to perform any obligation (other than payment obligations) or provide service hereunder because of any Act of God, strike, work stoppage, governmental acts or directives, war, riot or civil commotion, equipment or facilities shortages which are being experienced by providers of telecommunications services generally, or other similar force beyond such Party's reasonable control.

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

**6.5. Amendment in Writing.**Except as otherwise provided in this Agreement, any amendment or supplement to this Agreement shall be in writing and duly executed by both Parties. Any new services approved by ICANN and purchased by Key-Systems GmbH will be subject to such terms and conditions as may be established by BMW through an appendix to this Agreement or such other agreement executed by Key-Systems GmbH and BMW.

**6.6. Attorneys' Fees.**If any legal action or other legal proceeding (including arbitration) relating to the performance under this Agreement or the enforcement of any provision of this Agreement is brought against either Party hereto, the prevailing Party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing Party may be entitled).

**6.7. Dispute Resolution; Choice of Law; Venue.**The Parties shall attempt to resolve any disputes between them prior to resorting to litigation. This Agreement is to be construed in accordance with and governed by the laws of Germany, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the laws of Germany to the rights and duties of the Parties. Any legal action or other legal proceeding relating to this Agreement or the enforcement of any provision of this Agreement shall be brought or otherwise commenced in the district court of Munich I, Germany (Landgericht München I). Each Party to this Agreement expressly and irrevocably consents and submits to the district court of Munich I, Germany (Landgericht München I) in connection with any such legal proceeding.

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

**if to** Key-Systems GmbH:

|  |  |
| --- | --- |
| Customer Name: Key-Systems GmbH |   |
| Attention: Markus Germann |   |
| Physical Address; Im Oberen Werk 1 |   |
| City: St. Ingbert |   |
| State:  |   |
| Postal: 66386 |   |
| Country: Germany |   |
| Telephone Number: +49.68949396850 |   |
| Facsimile Number: +49.68949396851 |   |
| E-Mail: registry@key-systems.net |   |

**with a copy to:**

 vgreimann@key-systems.net

**if to** BMW

Attention: Aimee Gessner

Senior Legal Counsel

BMW AG, Dept. AJ-55, 80788 Munich, Germany

Telephone: +49 89 382-30465

Facsimile: +49 89 382-33050

E-Mail: aimee.gessner@bmw.de

**with copies to:**
**E-Mail:** domains@bmw.de

**6.9. Assignment/Sublicense.**Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of and be binding upon, the successors and permitted assigns of the Parties hereto. Key-Systems GmbH shall not assign, sublicense or transfer its rights or obligations under this Agreement to any third person without the prior written consent of BMW. BMW may assign its rights or obligations under this Agreement to an affiliate without the consent of Key-Systems GmbH.

**6.9.1. Assignment in Connection with Assignment of Agreement with ICANN**. In the event that BMW's Registry Agreement with ICANN for the Registry TLD is validly assigned, BMW's rights under this Agreement shall be automatically assigned to the assignee of the Registry Agreement, provided that the assignee assumes the duties of BMW under this Agreement. In the event that Key-Systems GmbH's accreditation agreement with ICANN for the Registry TLD is validly assigned, Key-Systems GmbH's rights under this Agreement shall be automatically assigned to the assignee of the accreditation agreement, provided that the subsequent registrar assumes the duties of Key-Systems GmbH under this Agreement.

**6.10. Use of Confidential Information.**During the term of this Agreement, each Party (the "Disclosing Party") may disclose its Confidential Information to the other Party (the "Receiving Party"). Each Party's use and disclosure of Confidential Information disclosed hereunder are subject to the following terms and conditions:

(a) The Receiving Party shall treat as strictly confidential, and use all reasonable efforts to preserve the secrecy and confidentiality of, all Confidential Information of the Disclosing Party, including implementing reasonable physical security measures and operating procedures.

(b) The Receiving Party agrees that it will use any Confidential Information of the Disclosing Party solely for the purpose of exercising its right or performing its obligations under this Agreement and for no other purposes whatsoever.

(c) The Receiving Party shall make no disclosures whatsoever of any Confidential Information of the Disclosing Party to others; provided, however, that if the Receiving Party is a corporation, partnership, or similar entity, disclosure is permitted to the Receiving Party's officers, employees, contractors and agents who have a demonstrable need to know such Confidential Information, provided the Receiving Party shall advise such personnel of the confidential nature of the Confidential Information and take reasonable steps to maintain the confidentiality thereof.

(d) The Receiving Party shall not modify or remove any confidentiality legends and/or copyright notices appearing on any Confidential Information of the Disclosing Party.

(e) The Receiving Party agrees not to prepare any derivative works based on the Confidential Information.

(f) Notwithstanding the foregoing, this Subsection 6.10 imposes no obligation upon the parties with respect to information that (i) is disclosed in the absence of a confidentiality agreement and such disclosure was agreed to by the Disclosing Party in writing prior to such disclosure; or (ii) is or has entered the public domain through no fault of the Receiving Party; or (iii) is known by the Receiving Party prior to the time of disclosure; or (iv) is independently developed by the Receiving Party without use of the Confidential Information; or (v) is made generally available by the Disclosing Party without restriction on disclosure, or (vi) is required to be disclosed by law, regulation or court order; provided, that in the event the Receiving Party is required by law, regulation or court order to disclose any of Disclosing Party's Confidential Information, Receiving Party will promptly notify Disclosing Party in writing prior to making any such disclosure in order to facilitate Disclosing Party seeking a protective order or other appropriate remedy from the proper authority, at the Disclosing Party's expense. Receiving Party agrees to cooperate with Disclosing Party in seeking such order or other remedy. Receiving Party further agrees that if Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information that is legally required.

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

**6.12. Limitation of Liability.** IN NO EVENT WILL BMW BE LIABLE TO REGISTRAR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF BMW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF THE PARTIES EXCEED THE LESSER OF (I) THE TOTAL AMOUNT PAID TO BMW UNDER THE TERMS OF THIS AGREEMENT FOR THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD, OR (ii) $5,000 USD.

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

**6.14. Intellectual Property.**Subject to Section 2.6 above, each Party will continue to independently own its intellectual property, including all patents, trademarks, trade names, service marks, copyrights, trade secrets, proprietary processes and all other forms of intellectual property.

**6.15. Representations and Warranties**

(a) **Registrar.**Key-Systems GmbH represents and warrants that: (1) it is a corporation duly incorporated, validly existing and in good standing under the law of Virginia, USA, (2) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, (3) it is, and during the term of this Agreement will continue to be, accredited by ICANN or its successor, pursuant to the 2013 Registrar Accreditation Agreement or any subsequent registrar accreditation agreement deemed permissible by ICANN for the purposes of the registration of .BMW domain names, (4) the execution, performance and delivery of this Agreement has been duly authorized by Key-Systems GmbH, and (5) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Key-Systems GmbH in order for it to enter into and perform its obligations under this Agreement.

(b) **Registry.**BMW represents and warrants that: (1) it is a publicly-held stock corporation duly incorporated, validly existing and in good standing under the laws of Germany, (2) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, (3) the execution, performance and delivery of this Agreement has been duly authorized by BMW, and (4) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by BMW in order for it to enter into and perform its obligations under this Agreement.

(c) **Disclaimer of Warranties.**The EPP, APIs and Software are provided "as-is" and without any warranty of any kind. BMW EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. BMW DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE EPP, APIs OR SOFTWARE WILL MEET REGISTRAR'S REQUIREMENTS, OR THAT THE OPERATION OF THE EPP, APIs OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE EPP, APIs OR SOFTWARE WILL BE CORRECTED. FURTHERMORE, BMW DOES NOT WARRANT NOR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE EPP, APIs, SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SHOULD THE EPP, APIs OR SOFTWARE PROVE DEFECTIVE, REGISTRAR ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION OF REGISTRAR'S OWN SYSTEMS AND SOFTWARE.

**6.16. Indemnification.**Key-Systems GmbH, at its own expense and within thirty (30) days of presentation of a demand by BMW under this paragraph, will indemnify, defend and hold harmless BMW and its employees, directors, officers, representatives, agents and affiliates, against any claim, suit, action, or other proceeding brought against BMW or any affiliate of BMW based on or arising from any claim or alleged claim (i) relating to any product or service of Key-Systems GmbH; (ii) relating to any agreement, including Key-Systems GmbH's dispute policy, with any Registered Name Holder of Key-Systems GmbH; or (iii) relating to Key-Systems GmbH's domain name registration business, including, but not limited to, Key-Systems GmbH's advertising, domain name application process, systems and other processes, fees charged, billing practices and customer service; provided, however, that in any such case: (a) BMW provides Key-Systems GmbH with prompt notice of any such claim, and (b) upon Key-Systems GmbH's written request, BMW will provide to Key-Systems GmbH all available information and assistance reasonably necessary for Key-Systems GmbH to defend such claim, provided that Key-Systems GmbH reimburses BMW for its actual and reasonable costs. BMW shall have the right to control the defense of BMW to any claim or in litigation, through counsel of its choice, whose fees shall be subject to indemnification as provided herein. Key-Systems GmbH will not enter into any settlement or compromise of any such indemnifiable claim without BMW's prior written consent, which consent shall not be unreasonably withheld. Key-Systems GmbH will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by BMW in connection with or arising from any such indemnifiable claim, suit, action or proceeding.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

BMW

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

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Key-Systems GmbH

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

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exhibit A
REGISTRATION FEES

**1. Domain-Name Initial Registration Fee**

Key-Systems GmbH agrees to pay US $0 per annual increment of an initial domain name registration, or such other amount as may be established in accordance with Section 5.1(b) above.

**2. Domain-Name Renewal Fee**

Key-Systems GmbH agrees to pay US $0 per annual increment of a domain name registration renewal, or such other amount as may be established in accordance with Section 5.1(b) above.

**3. Domain Name Transfer**

Key-Systems GmbH agrees to pay US $0 per domain name that is transferred to Key-Systems GmbH from another ICANN-Accredited Registrar, or such other amount as may be established in accordance with Section 5.1(b) above.

**4. EPP Update to Restore a Name**

Key-Systems GmbH agrees to pay US $0 per use of the EPP Update command to restore a domain name, or such other amount as may be established in accordance with Section 5.1(b) above.