



## PARTICIPATION AGREEMENT

THIS DNS-OARC PARTICIPATION AGREEMENT (the "Agreement") is made and entered into as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between OARC, Inc., a Delaware nonprofit corporation ("DNS-OARC"), and \_\_\_\_\_, a \_\_\_\_\_ ("Participant").

The parties agree as follows:

### 1. DNS-OARC Background and Purpose; Definitions.

1.1 Background and Purpose. The Domain Name System Operations, Analysis, and Research Center was created in 2003 by Internet Systems Consortium, a non-profit corporation based in Redwood City, California. In 2008, OARC, Inc., a separate non-profit corporation, was created. The specific purpose of the corporation is to gather and analyze world-wide data from the Internet Domain Name System in support of network operations, coordination, research, and prevention of abusive and illegal activity; and to disseminate such information to governmental entities, businesses, educational institutions and individuals. DNS-OARC and Participant hereby agree that participation in DNS-OARC shall be subject to and governed solely by the terms and conditions of this Agreement and the Bylaws.

1.2 Definitions. In addition to the other capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings ascribed to them as follows:

"Application Form" means the application form for participation in DNS-OARC posted on DNS-OARC's website ([www.dns-oarc.net](http://www.dns-oarc.net)) which has been completed by Participant.

"Board of Directors" means the directors of DNS-OARC, as selected pursuant to the Bylaws.

"Bylaws" means the bylaws of DNS-OARC now in effect and as amended from time to time.

"Data" means data files provided by Participants or generated by DNS-OARC or Participants and residing on DNS-OARC systems with the intention of sharing. Examples of Data include, but are not limited to: (a) raw packet captures, generally in the form of "pcap" files; (b) name server query log files; (c) archived zone files; and (d) other types of log files relating to network traffic, attacks, or application transactions.

"Data Sharing Agreement" means the Agreement attached hereto as Appendix A. All Participants must complete and execute the Data Sharing Agreement in order to submit and/or access Data.

"Designated Representative" means the specific individual designated to act as the primary contact for Participant for all communication pertaining to DNS-OARC pursuant to Section 2.5(a) of this Agreement and as initially specified on the Application Form.

"DNS-OARC" means OARC, Inc., a Delaware nonprofit corporation.

"DNS-OARC Participants" means all individuals or entities participating at any Participation Level in DNS-OARC.

"Effective Date" means the date first set forth above.

“Information” means verbal and/or written information shared with DNS-OARC Participants. Examples of Information include, but are not limited to: (a) knowledge of particular attacks or attack methods making use of DNS or affecting DNS service operators; (b) knowledge of vulnerabilities in DNS software and/or products and/or the protocol itself; (c) causes of extended outages experienced by DNS service operators; (d) advance knowledge of cutting-edge research related to the DNS; and (e) DNS-OARC Member Point of Contact details.

“Member” has the meaning assigned to it in Section 2.2(a) of this Agreement.

“Member Dues” means the annual dues payable by Participant pursuant to Section 3 of this Agreement, based upon the selected Participation Level. Member Dues may be modified from time to time by the Board of Directors pursuant to Section 3.2 of this Agreement.

“Participation Level” means the level of participation in DNS-OARC which is selected by Participant pursuant to Section 2.1 of this Agreement and initialed in Schedule A.

“Supporter” has the meaning assigned to it in Section 2.2(b) of this Agreement.

## 2. Participation In DNS-OARC.

2.1 Selection of Participation Level. Organizations and individuals participate in DNS-OARC as either Members or Supporters, each of which is described in Section 2.2 below. Participant hereby elects to participate in DNS-OARC at the Participation Level initialed in Schedule A. All participation in DNS-OARC shall be determined with reference to the Participation Level selected by Participant, and this Agreement shall not be effective unless and until Participant selects a Participation Level.

2.2 Description of Participation Levels. The following is a description of the two Participation Levels in DNS-OARC available.

(a) Members. To participate in DNS-OARC as a Member, an applicant must meet the general requirements set forth in Section 2.3 and elect one of the Member Participation Levels described on Schedule A. Members shall have the right to vote on any matter requiring approval of the Members pursuant to the Bylaws. Members shall have the right to submit Information to DNS-OARC and have access to Information submitted by other DNS-OARC Participants, subject to the confidentiality restrictions set forth in Section 6 below. Members shall have the right to submit and access Data only upon completion and execution of the Data Sharing Agreement.

(b) Supporters. To participate in DNS-OARC as a Supporter, an applicant must meet the general requirements set forth in Section 2.3 and elect the Supporter Participation Level described on Schedule A. Supporters shall NOT have the right to vote on matters requiring approval of Members or to access Information from other DNS-OARC Participants. Supporters shall have the right to submit and access Data only upon completion and execution of the Data Sharing Agreement.

2.3 Requirements for all Participation Levels. In order to participate in DNS-OARC, Participant must meet the following requirements:

(a) Participant shall be a duly formed and validly existing entity in good standing in the country in which its principal place of business is located, authorized to do business in each country in which it operates, and have the full power and authority to enter into this Agreement.

(b) Participant shall have completed the Application Form to DNS-OARC’s satisfaction, including specifying its Designated Representative’s name and contact information, and all information on the completed Application Form shall be true, accurate and complete as of the date of execution of this Agreement.

(c) This Agreement shall have been executed on behalf of Participant by a duly authorized representative and the Participation Level shall be indicated on Schedule A attached hereto.

(d) Participant, and all individuals acting on behalf of Participant, shall comply at all times with the DNS-OARC Conduct Policy which is located at <https://www.dns-oarc.net/oarc/policies/conduct>.

## 2.4 Application for Participation.

(a) Consideration by Board of Directors. The Board of Directors shall have the right, in its sole and absolute discretion, to accept or deny any application for participation in DNS-OARC. The Board of Directors may deny an application with or without cause or explanation, and may consider security, confidentiality, operational concerns or any other pertinent matter in accepting or denying an application. The Board of Directors may develop criteria for acceptance or denial of applications, which criteria may be changed from time to time in its sole discretion, and reserves the right to accept any applicant which the Board of Directors determines will further the purposes and mission of DNS-OARC. The Board of Directors will use its best efforts to approve or deny an application within thirty (30) days of receipt of a completed Application Form, although failure to make a decision within such time period shall in no way be deemed an implied acceptance of such application.

(b) Approval of Blue Membership Level. Acceptance at the Blue Membership Level is subject to the prior approval of the Board of Directors, taking into consideration the size of the organization and its inability to qualify for Bronze Membership (the typical entry level for DNS-OARC membership). The Board of Directors may set criteria for approval from time to time, but in all cases, such organization's membership should directly benefit DNS-OARC. The decision to approve or deny an application for Blue Membership shall be made at the sole discretion of the Board of Directors.

## 2.5 Designated Representative and Points of Contact.

- (a) Designated Representative. The Designated Representative shall be a specific individual who has been designated by Participant to act as Participant's primary contact for all communications with Participant concerning DNS-OARC. The Designated Representative shall have the authority to act on behalf of Participant in all matters related to DNS-OARC. The DNS-OARC Secretariat and the Board of Directors shall be entitled to rely on such authority without further inquiry. Participant shall specify its initial Designated Representative on the Application Form and shall send written notice to DNS-OARC of any change in its Designated Representative.
- (b) Points of Contact. DNS-OARC Members shall be entitled to designate additional individuals (a "Point of Contact") who will have access to other Members' Point of Contact details, portal and mailing list(s). The number of Points of Contact for each Member is described on Schedule A and depends on the level selected. The Designated Representative is considered one of the Points of Contact for each Member.

## 3. Dues and Contributions.

3.1 Funding. DNS-OARC is supported by Member Dues, grants and/or sponsors and all operating costs of DNS-OARC are paid by funds obtained from these sources.

3.2 Member Dues. Members shall pay the annual Member Dues for participation in DNS-OARC as specified on Schedule A attached hereto. The Board of Directors reserves the right in its sole discretion to change the Member Dues from time to time, with any such change to become effective upon the renewal of a Member's annual term. All Member Dues are nonrefundable and shall under no circumstances be refunded in the event of termination prior to the expiration of the then-current term.

**3.3 Payment of Member Dues.** A Member shall pay its first year's Member Dues to DNS-OARC upon execution and delivery of this Agreement. All subsequent Member Dues shall be paid on or before the annual renewal date of this Agreement. If DNS-OARC does not receive payment in full within thirty (30) days of the due date, then the Member shall be deemed suspended and shall not be entitled to participate in DNS-OARC until such time as such Member Dues are paid in full. If dues are not received within 90 days of due date, a late fee of 10% may be assessed. Furthermore, DNS-OARC shall have the right to declare a default and terminate such Member in accordance with the procedure set forth in Section 4.3 below.

**3.4 Supporter Contributions.** Supporters shall make a tangible contribution to DNS-OARC on at least an annual basis. This requirement may be waived on a per-case basis at the discretion of the Board of Directors. If DNS-OARC has not received such a contribution after a period of one (1) year, then DNS-OARC may terminate this Agreement with respect to such Supporter. Tangible contributions may include one or more of the following: (a) submitted data; (b) presentations given to DNS-OARC Members; (c) goods or services with a notional financial value.

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

**4.1 Initial and Renewal Terms.** This Agreement shall be effective as of the Effective Date and shall continue for one (1) year therefrom. This Agreement shall renew automatically for successive one-year terms unless one party gives the other party thirty (30) days advance written notice before the end of the then-current term. Upon annual payment of its Member Dues or submission of its Contribution, Participant is deemed to have accepted any amendments or modifications to this Agreement in effect at the time of such payment, provided that such amendments or modifications were duly approved by the Board of Directors. Upon written request, DNS-OARC shall make available to Participant a copy of the then-current version of this Agreement and a copy of the Agreement most recently executed by Participant.

**4.2 Termination By Participant.** Participant may terminate this Agreement at any time upon thirty (30) days prior written notice to DNS-OARC.

**4.3 Termination By DNS-OARC For Cause.** DNS-OARC may terminate this Agreement at any time in the event that: (a) Participant fails to perform any of its obligations under this Agreement, including without limitation, the payment of Member Dues, and such failure remains unremedied for a period of thirty (30) days after written notice thereof, or (b) Participant shall become insolvent, make an assignment for the benefit of creditors, commence any proceeding in bankruptcy or consent to any bankruptcy or similar proceeding, or (c) Participant is unable to be contacted or located despite reasonable attempts to do so. Termination shall not relieve or excuse Participant from a breach of this Agreement which occurred prior to termination thereof.

**4.4 Immediate Termination By DNS-OARC.** DNS-OARC may terminate this Agreement at any time without prior oral or written notice in the event that the Board of Directors determines, in its sole discretion, that such immediate termination is necessary to prevent the breach of confidential or security-related information or to maintain the viability or integrity of DNS-OARC.

**4.5 Member Termination.** In the event that Participant is a Member, the termination of membership in DNS-OARC shall be governed by Article III, Section 3 of the Bylaws.

**4.6 All Terminations.** Following any termination of this Agreement, neither party shall have any rights or obligations with respect to the other party or participation in DNS-OARC, except for those continuing obligations as provided in Section 14.1, and no refund or credit shall be given for any Member Dues paid by Participant prior to termination.

## 5. Information – Confidentiality and Use.

5.1 Information vs. Data. Within DNS-OARC, Information and Data have different meanings (see Section 1.2 above for specific definitions) and are governed by different rules and restrictions. All Members may submit and receive DNS-OARC Information and may submit and/or have access to Data upon completion and execution of the Data Sharing Agreement. All Supporters who have executed the Data Sharing Agreement may submit and/or have access to DNS-OARC Data but may not submit or receive Information unless specially approved by the Board of Directors. The submission, receipt and use of Information are set forth in this Section 5. The submission, receipt and use of Data are set forth in the Data Sharing Agreement.

5.2 Categories of Information. All Information submitted in connection with DNS-OARC shall be categorized as follows:

(a) Non-Confidential. Unless otherwise specified at the time of submission, all Information shall be deemed non-confidential and may be disseminated to any parties, whether or not they are DNS-OARC Participants.

(b) Confidential Information – DNS-OARC Participants. If a Participant wishes certain Information to be treated as confidential by the other DNS-OARC Participants, Participant shall clearly designate such Information at the time of submission as confidential (“Confidential Information”). All such Confidential Information may be used by DNS-OARC and the Members, provided that they (i) shall hold all Confidential Information in the highest confidence, (ii) shall not disclose, disseminate or publicize any Confidential Information to any person or entity, and (iii) shall take all action necessary or appropriate to hold all Confidential Information in the highest confidence. All Confidential Information shall remain confidential for a period of two (2) years after submission, unless a longer period is requested in writing by a Participant.

(i) Exceptions to Confidentiality. Confidential Information shall not include: (A) Information already in possession of the non-disclosing party through lawful means or through independent development, (B) Information which is publicly available when received or thereafter becomes publicly available through no fault of the non-disclosing party, (C) Information which is required to be disclosed as a result of a final order of a court of competent jurisdiction in a proceeding in which the disclosing party has had a reasonable opportunity to contest disclosure, and (D) Information which the disclosing party did not designate as confidential.

(ii) Form of Disclosure. Confidential Information submitted by Participant shall be communicated only in writing or other tangible means of expression. In the event of any oral disclosure, Participant must provide written notice to DNS-OARC within ten (10) days of such submission that the Information submitted is to be treated as “Confidential Information” and subject to the restrictions described in this Section 5. If Participant fails to send such notice within the 10-day period, then the Information disclosed shall be deemed to be non-confidential.

(iii) Use of Confidential Information. Participant shall not use or circulate Confidential Information within its own organization or its affiliates (*i.e.*, entities controlled by or under common control with Participant) other than as strictly necessary on a need-to-know basis, and then with appropriate written confidentiality agreements. In no event shall Participant cause, permit or enable any third party to have access to or use Confidential Information in any manner whatsoever without the prior written consent of both the disclosing party and the Board of Directors and the execution by such third party of an appropriate written confidentiality agreement. In no event shall Participant (or anyone to whom it discloses Confidential Information) package or repackage any Confidential Information into a commercial product or service.

(iv) Non-Participant Information. If any third party (*e.g.*, a governmental entity, computer emergency response team, information sharing and analysis center, etc.) wishes to share Confidential Information with DNS-OARC Participants, the Board of Directors may disclose such

Information to its Participants and designate it as Confidential. In such event, Participant shall treat such Information as Confidential Information and subject to all of the restrictions contained in this Section 5.

- 5.3 Sharing of Information. DNS-OARC was founded for the purpose of having its Participants submit and share information. To further that purpose, all Participants are strongly encouraged to designate as Non-Confidential as much Information as possible in order to ensure broad distribution of such Information.
- 5.4 Submission of Information. Each time Participant submits any Information to DNS-OARC, Participant must designate what restrictions, if any, are to be placed on the Information. This includes whether such Information is Confidential or Non-Confidential, attributable or anonymous, whether redistributable or not, and so forth, as appropriate. Participant is solely responsible for designation of any applicable restrictions. In the absence of any such designated restrictions, the Information submitted shall be deemed to be Non-Confidential and available on an unrestricted basis. Participant may change its designation of restrictions from time to time by written notice to DNS-OARC of such change.
- 5.5 Source-Identifying Information. At the time of submission, Participant may identify any Information as either "attributable" or "anonymous." If no such designation is made, the Information shall be deemed submitted anonymously. For any anonymous submission, Participant shall be responsible for removal of all source-identifying Information. DNS-OARC shall use reasonable efforts to remove any source-identifying Information of which it may be aware, but Participant acknowledges and agrees that DNS-OARC does not have the capacity to so edit every submission from Participant.
- 5.6 DNS-OARC Use of Information and Data. The DNS-OARC staff and the Board of Directors may make any use of Information and/or Data submitted by Participants or third parties (including providing selected Information to the public) which they deem advisable, except as otherwise provided in this Agreement. Information and Data disseminated to Members shall be made available on a non-discriminatory basis except as otherwise provided in this Agreement. Notwithstanding the above, the Board of Directors shall retain the right to delay or withhold the release of any Information or Data to Participants or third parties, if it determines in its sole discretion that such delay or withholding is necessary or advisable for whatever reason it deems sufficient, including without limitation, potential harm to persons, property or the information technology infrastructure.
- 5.7 Accuracy of Information. Participant shall use its best efforts to ensure that all Information which it provides to DNS-OARC or other DNS-OARC Participants is accurate and complete and shall not knowingly provide any false, inaccurate or misleading Information. DNS-OARC shall use its best efforts to ensure that all Information which it disseminates to DNS-OARC Participants is accurate and complete and shall not knowingly provide any false, inaccurate or misleading Information. However, neither Participant nor DNS-OARC warrants the absolute accuracy or completeness of the Information provided or disseminated in connection with this Agreement.

6. Reservation of Rights. Any rights that are not expressly granted herein are reserved to the individual parties. This Agreement does not in any way: (i) grant to any party the right to copyright, trademark or patent any property of any other party (except that for protection of Data received at DNS-OARC, the Board of Directors may register compilation copyrights in its own name for the data accumulation of the DNS-OARC Participants and analysis thereof); (ii) obligate any party to disclose or receive any information, perform any work, or enter into any lease, license, business engagement or other business relationship or agreement; (iii) limit any party from developing, manufacturing or marketing products or



services which may be competitive with DNS-OARC or other DNS-OARC Participants; (iv) limit any party from assigning or reassigning its employees in any way; (v) create any joint relationship or authorize any party to act or speak on behalf of DNS-OARC or any other DNS-OARC Participant; or (vi) limit any Participant from entering into a business relationship with any other entity.

7. Disclaimer of Warranties. ALL INFORMATION, SERVICES, GOODS AND SOFTWARE, IF ANY, WHICH IS PROVIDED BY A PARTY TO ANY OTHER PARTY IN CONNECTION WITH THIS AGREEMENT, IS PROVIDED SOLELY ON AN AS-IS BASIS, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY ARISING OUT OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERFERENCE AND NON-INFRINGEMENT.

8. Limitation of Liability. THE REMEDIES OF ANY PARTY WITH RESPECT TO PARTICIPATION IN DNS-OARC OR THE PROVISION OR USE OF INFORMATION IN CONNECTION THEREWITH, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, SHALL BE EXCLUSIVELY AS SET FORTH HEREIN. IN NO EVENT UNDER ANY THEORY SHALL A PARTY'S LIABILITY TO ANOTHER PARTY FOR ANY DAMAGES HOWSOEVER ARISING OF ANY TYPE BE IN AN AMOUNT IN EXCESS OF THE MINIMUM ANNUAL MEMBER DUES FOR PLATINUM MEMBERS. IN NO EVENT UNDER ANY THEORY SHALL ANY PARTY BE LIABLE TO ANOTHER PARTY FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGE FOR LOSS OF PROPERTY OR SOFTWARE, LOSS OF PROFITS OR REVENUE, LOSS OF USE, COST OF CAPITAL, LOSS OF DATA, OR ANY OTHER ECONOMIC LOSS, NOTWITHSTANDING THAT SUCH PARTY MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. UNDER NO CIRCUMSTANCES SHALL ANY FAILURE OF ANY REMEDY OF ITS ESSENTIAL PURPOSE AFFECT THE FOREGOING DISCLAIMER OF DAMAGES. IN NO EVENT MAY A CAUSE OF ACTION BE ASSERTED AGAINST ANY PARTY UNDER THIS AGREEMENT WHICH ARISES OUT OF OR RELATES TO ANY EVENT OCCURRING MORE THAN ONE YEAR PRIOR TO THE FILING OF SUCH CAUSE OF ACTION.

IN NO EVENT SHALL, (B) ANY DNS-OARC INCUR ANY LIABILITY WHATSOEVER FOR THE FOLLOWING: (A) DENIAL OF ANY POTENTIAL PARTICIPANT'S APPLICATION TERMINATION PURSUANT TO SECTION 4 ABOVE, (C) COMMUNICATIONS WITH PARTICIPANT'S DESIGNATED REPRESENTATIVE AND ANY ACTIONS TAKEN OR NOT TAKEN IN RELIANCE ON SUCH REPRESENTATIVE'S AUTHORITY TO ACT ON BEHALF OF PARTICIPANT, (D) ANY DISCLOSURE OF CONFIDENTIAL INFORMATION WHERE PARTICIPANT FAILED TO APPROPRIATELY DESIGNATE SUCH INFORMATION AS CONFIDENTIAL OR REMOVE SOURCE-IDENTIFYING INFORMATION OR WHERE SUCH DISCLOSURE WAS NOT THE RESULT OF DNS-OARC'S NEGLIGENCE OR INTENTIONAL ACTS, (E) DNS-OARC'S USE OF ITS GOOD FAITH DISCRETION PURSUANT TO THE TERMS OF THIS AGREEMENT, OR (F) ANY CLAIM OR DEMAND AGAINST PARTICIPANT BY ANY OTHER PARTY.

9. Indemnification.

9.1 Mutual Indemnification. Each party agrees to indemnify, hold harmless and defend the other party from and against any claim, action, loss, liability, expense, demand, damage or judgment, including costs and attorneys' fees, which arises as a result of or in connection with (i) any actions by a party or any of such party's agents, employees, consultants or representatives, including a breach of this Agreement, or (ii) a party's use or misuse of any information obtained in connection with this Agreement.

9.2 Indemnification of DNS-OARC. Each Participant agrees to indemnify, hold harmless and defend DNS-OARC from and against any claim, action, loss, liability, expense, demand, damage or judgment, including costs and attorneys' fees, which arises as a result of or in connection with any knowingly false, incomplete or misleading information given by Participant in connection with this Agreement, including without limitation, any information contained on the Application Form.

10. Publicity. The Board of Directors reserves the exclusive right to issue press releases or marketing, advertising and promotional materials related to DNS-OARC. Participant shall not issue or cause to be issued any press releases or promotional, marketing or advertising materials, nor shall Participant make any representations on behalf of DNS-OARC, the Board of Directors or another DNS-OARC Participant. Participant may issue a press release announcing Participant's joining DNS-OARC, subject to the Board of Director's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. The names of specific DNS-OARC Participants will not be utilized by DNS-OARC or the Board of Directors except to list or mention them as Participants of DNS-OARC on its web pages, or in promotional, marketing or publicity materials.

11. Trademarks. Neither Participant nor DNS-OARC shall use the name, trademark, logo or other indicia of the other party without the prior written consent of such other party, which may be given or withheld in such other party's sole discretion.

12. Relationship Among Parties. Nothing in this Agreement shall be construed to create a partnership, joint venture, franchise, affiliate, employer-employee or principal-agent relationship, but rather the relationship of the parties shall be that of independent parties. No party shall have the authority to commit or bind any other party without such party's prior written consent. Each party is responsible for the supervision, direction and control of its respective personnel.

13. Notices. All notices required under this Agreement shall be given in writing and sent: (a) by personal delivery or by registered or certified mail, return receipt requested, to the address set forth below in the signature block of this Agreement, (b) by facsimile to the fax number set forth below, or (c) by email to the email address set forth below. Any such notice shall be deemed to have been given on the date of delivery if sent by personal delivery, facsimile or email, or three (3) business days after the date of mailing, irrespective of the date appearing therein. Either party may change its address by written notice to the other party pursuant to this Section.

14. Miscellaneous.

14.1 Survival. The obligations of the parties under Sections 5, 7, 8, 9, 10 and 11 shall survive the termination or expiration of this Agreement.

14.2 Governing Law. This Agreement shall be governed and construed according to the laws of the State of California applicable to contracts between residents of California which are made and performed in California.

14.3 Mediation and Arbitration. Any controversy or claim between the parties arising out of or relating to this Agreement shall be settled by mediation or by arbitration in San Mateo County, California.

(a) Mediation. The parties shall attempt in good faith to settle their dispute by mediation for a period of thirty (30) days before the commencement of arbitration proceedings.

(b) Arbitration. Any matter not settled by mediation shall be determined by arbitration before a single arbitrator in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution. The costs of the arbitration, including the arbitrator's fee, shall be borne equally by the parties to the arbitration, but attorneys' fees may be awarded to the prevailing or most prevailing party at the discretion of the arbitrator. The arbitrator shall not have any power to alter, amend, modify or change any of the terms of this Agreement nor to grant any remedy which is either prohibited by the terms of this Agreement, or not available in a court of law. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

(c) Enforcement. In the event that either party fails to comply with Sections 14.3(a) or (b), the other party may file an action in any court of competent jurisdiction to compel the non-compliant party to



comply with such provisions. In such event, the prevailing party shall be entitled to recover its attorneys' fees and costs.

**14.4 Severability.** If any provision of this Agreement is illegal, invalid or voidable under any applicable law, it shall be severable, the remaining provisions shall not be affected, impaired or invalidated and the Agreement shall be interpreted as far as possible so as to give effect to its stated purpose.

**14.5 Attorneys' Fees.** In the event that any action is brought to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover the reasonable costs and expenses of such action, including reasonable attorneys' fees, subject to the conditions specified in Subsections 14.3 (b) and (c) above.

**14.6 Jurisdiction and Venue; Enforcement.** Each party hereby submits to the exclusive jurisdiction and venue of the Superior Court of the State of California for the County of San Mateo or the Federal District Court for the Northern District of California for the purposes of any action to enforce its rights under Sections 14.3 and 14.6 of this Agreement, and agrees that service upon such party in any such action may be made by first class mail, certified or registered, to the addresses set forth above. Each party acknowledges that in the event of a breach of this Agreement the damage to the non-breaching party would be irreparable and extremely difficult to estimate, making any remedy at law or damages inadequate. Thus, in addition to any other right or remedy available to it, a party shall be entitled to specific performance of any provision of this Agreement and, for the purpose of aiding the arbitration and/or preserving the rights of a party under this Agreement pending an arbitration, each party shall have the right to seek temporary or preliminary injunctive relief from the arbitration panel or in a court located in the Superior Court of the State of California for the County of San Mateo or the Federal District Court for the Northern District of California, which shall not be a waiver of the arbitration provisions contained herein. The parties agree that any judgment entered by the above Courts shall be given full force and effect and shall be enforceable in any court of competent jurisdiction.

**14.7 Successors and Assigns.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their successors, assigns and legal representatives. Notwithstanding the foregoing, this Agreement shall not be assignable by Participant without DNS-OARC's prior written consent.

**14.8 Waiver.** No delay or failure of either party to exercise any right or remedy pursuant to this Agreement shall operate as a waiver thereof. No waiver of any term or provision of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party.

**14.9 Headings and Pronouns.** The headings of the sections of this Agreement are for convenience and reference only and are not to be considered in construing this Agreement. All pronouns used in this Agreement shall be deemed to include masculine, feminine and neuter forms.

**14.10 Counterparts; Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Signatures may be delivered electronically or by facsimile, and such copies shall be treated as originals for all purposes.

**14.11 Further Assurances.** Each party hereto shall use their best efforts to do and perform or cause to be done and performed all further acts and shall execute and deliver all other agreements, certificates, instruments or documents as the other party may reasonably request in order to promote the intent and purpose of this Agreement and the consummation of the transactions contemplated thereby.

14.12 Entire Agreement; Amendments. This Agreement, including the attached Schedule A which is incorporated herein by this reference, the Data Sharing Agreement, the Application Form and the Bylaws constitute the final and entire understanding and agreement between the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, relating to any transaction contemplated by this Agreement. This Agreement may be amended or modified from time to time by the Board of Directors; provided that any such change shall not be effective with respect to Participant until the renewal of Participant's annual term.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**DNS-OARC:**

OARC INC.,  
a Delaware nonprofit corporation

Signed by: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

DNS-OARC, Office  
1533 Lewis Street  
Indianapolis, IN 46202 USA

Email: admin@dns-oarc.net

**PARTICIPANT:**

\_\_\_\_\_  
a \_\_\_\_\_

Signed by: \_\_\_\_\_

Print name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Email: \_\_\_\_\_

**NOTE:** Participant shall have completed and signed the Application Form on DNS-OARC's website and initialed its choice on Schedule A and Appendix A attached hereto.

**DNS-OARC Participation Agreement**  
**Schedule A**  
**Participation Levels and Dues**

The current Participation Levels and Dues are described below. Please select one of the Member or Supporter Levels below and initial next to your choice.

**A. Member:** Each Member shall be entitled to one (1) vote on any matter requiring the approval of DNS-OARC Members pursuant to the Bylaws.

- \_\_\_\_\_ Diamond. US\$50,000/year or greater. This is available to corporations and governments with an extremely strong interest in supporting the mission and success of DNS-OARC. This level entitles Member to at least eighteen (18) assigned Points of Contact, each of which may participate in the DNS-OARC system, and inclusion of Member in publicity materials appearing on the DNS-OARC website and elsewhere.
- \_\_\_\_\_ Platinum. US\$27,500/year or greater. This is available to corporations and governments with a particularly strong interest in supporting the mission and success of DNS-OARC. This level entitles Member to at least twelve (12) assigned Points of Contact, each of which may participate in the DNS-OARC system, and inclusion of Member in publicity materials appearing on the DNS-OARC website and elsewhere.
- \_\_\_\_\_ Gold. US\$16,500/year. This is available for organizations with a strong interest in the mission and success of DNS-OARC. This level entitles Member to eight (8) assigned Points of Contact, each of which may participate in the DNS-OARC system, and inclusion of Member in publicity materials appearing on the DNS-OARC website and elsewhere.
- \_\_\_\_\_ Silver. US\$11,000/year, which entitles Member to five (5) assigned Points of Contact, each of which may participate in the DNS-OARC system.
- \_\_\_\_\_ Bronze. US\$7,200/year, which entitles Member to three (3) assigned Points of Contact, each of which may participate in the DNS-OARC system.
- \_\_\_\_\_ Blue. US\$1,250/year, which entitles Member to (2) assigned Points of Contact, each of which may participate in the DNS-OARC system. This Membership Level is subject to the discretion of the Board of Directors and additional criteria they will publish on the DNS-OARC website from time to time, as set forth in Section 2.4(b) above.

**B. Supporter:** Supporters do not pay dues and may not vote on Member matters. Supporters are entitled to one (1) assigned Point of Contact, may participate in the DNS-OARC system, may submit and access DNS-OARC Data, and must select at least one option on the attached Data Sharing Agreement. This Participation Level is wholly subject to the discretion of the Board of Directors.

\_\_\_\_\_ Supporter



## **Appendix A**

### **DNS-OARC Data Sharing Agreement**

**ACCESS TO DATA.** Only Participants who have executed this Data Sharing Agreement may submit and/or have access to DNS-OARC Data, as defined in the Participation Agreement.

1. **Types of Data.**

- 1.1 Raw: data submitted by Participants (e.g., DITL);
- 1.2 Generated: data generated by DNS-OARC systems and applications (e.g., ODVR, Porttest, Benchmarks);
- 1.3 Derivative: data derived by analysis from one or more Raw data sets.

2. **Categories of Data.**

2.1 **Confidential.** Unless otherwise specified at the time of submission or generation, Raw and Generated Data shall be deemed Confidential and may not be disseminated to any parties, whether or not they are DNS-OARC Participants. All such Confidential Data may be used by DNS-OARC and the other DNS-OARC Participants, provided that they (i) shall hold all Confidential Data in the highest confidence, (ii) shall not disclose, disseminate or publicize any Confidential Data to any person or entity, and (iii) shall take all action necessary or appropriate to hold all Confidential Data in the highest confidence. All Confidential Data shall remain confidential for a period of two (2) years after submission, unless a longer period is requested in writing by a Participant.

2.2 **Exceptions to Confidentiality.** Confidential Data shall not include: (A) Data already in possession of the non-disclosing party through lawful means or through independent development, (B) Data which are publicly available when received or thereafter becomes publicly available through no fault of the non-submitting party, (C) Data which are required to be disclosed as a result of a final order of a court of competent jurisdiction in a proceeding in which the submitting party has had a reasonable opportunity to contest disclosure.

2.3 **Non-Confidential.** If a Participant wishes certain Data to be treated as Non-Confidential, Participant shall clearly designate such Data at the time of submission or generation as Non-Confidential Data. All such Non-Confidential Data may be disseminated to any parties, whether or not they are DNS-OARC Participants.

3. **Submission of Data.** Each time Participant submits any Data to DNS-OARC, Participant must designate what restrictions, if any, are to be placed on the Data. This includes whether such Data are Confidential or Non-Confidential, attributable or anonymous, whether redistributable or not, and so forth, as appropriate. Participant is solely responsible for designation of any applicable restrictions. In the absence of any such designated restrictions, Raw Data submitted shall be deemed to be Confidential. Participant may change its designation of restrictions from time to time by written notice to DNS-OARC of such change.

4. **Source-Identifying Data.** Participant may choose, at its own discretion, to “anonymize” source-identifying elements (e.g., IP addresses) prior to submitting Data.

## 5. Participant Use of Data.

5.1 All use of Data submitted to DNS-OARC will take place on DNS-OARC computers. DNS-OARC will provide powerful server computers with high-speed access to the file servers and databases holding the Data to which Participant is permitted access. Participant will copy its data-analysis software to DNS-OARC computers and run that software there. Results of such analysis are considered Derivative Data, and when exported back to Participant's computers are not permitted to contain Raw Data nor can any exported results contain identifying information.

5.2 Participant shall not use or circulate Confidential Data within its own organization or its affiliates (i.e. entities controlled by or under common control with Participant) other than as strictly necessary on a need-to-know basis, and then with appropriate written confidentiality agreements. In no event shall Participant cause, permit or enable any third party to have access to or use Confidential Data in any manner whatsoever without the prior written consent of both the disclosing party and the Board of Directors and the execution by such third party of an appropriate written confidentiality agreement. In no event shall Participant (or anyone to whom it discloses Confidential Data) package or repackage any Confidential Data into a commercial product or service.

5.3 Participants are encouraged to publish the results of their analysis of the Data at DNS-OARC workshops and other public fora. All publication of Derivative Data must include acknowledgment of DNS-OARC as the source of the Data. Prior to publication, Participant must seek and obtain written permission from DNS-OARC for such publication, to allow DNS-OARC to verify that all terms of this Agreement are being adhered to.

6. Specific Requirements of Members. Should any Member's organization have a specific data analysis requirement, and subject to the prior consent of the Board of Directors, a Member may provide its own, or rent from DNS-OARC, computer(s) to be located in DNS-OARC's data center and administered by DNS-OARC staff, to which only such Member will have access, provided that enough physical space and electric power are available to support such Member's computers. Prior to installation and use of any Member's computers in the DNS-OARC data center, such Member shall enter into an agreement with DNS-OARC setting forth the terms and fees on which such installation and use is permitted. DNS-OARC shall use its best efforts to ensure that its computers remain accessible to and can accommodate reasonable use \_\_\_\_\_ by \_\_\_\_\_ Members.

Please select one or more of the options below, initial next to your choices, and sign below:

\_\_\_\_\_ Participant will submit Data to DNS-OARC. Upon completion and execution of this Data Sharing Agreement, and acceptance as a DNS-OARC Participant, Participant will be given credentials and instructions for submitting Data to DNS-OARC systems.

\_\_\_\_\_ Participant will access Data at DNS-OARC. Upon completion and execution of this Data Sharing Agreement, and acceptance as a DNS-OARC Participant, Participant will be given credentials and instructions for accessing Data on DNS-OARC systems.

\_\_\_\_\_ Participant will neither submit Data to, nor access Data at, DNS-OARC.

**PARTICIPANT:**

\_\_\_\_\_,  
a \_\_\_\_\_

Signed by: \_\_\_\_\_

Print name: \_\_\_\_\_

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