

SPECIFICATION 13

.BRAND TLD PROVISIONS

The provisions of this Specification 13 shall apply as of the Effective Date of the Agreement, and shall continue to apply for so long as the TLD meets the requirements of the definition of a .Brand TLD (as defined below).

If at any time ICANN determines, in its reasonable discretion, that the TLD no longer qualifies as a .Brand TLD, then ICANN will provide Registry Operator with written notice of its determination, and Registry Operator will have 30 calendar days following the date of delivery of such notice to either (i) meet the requirements of the .Brand TLD definition to ICANN's reasonable satisfaction, in which case the provisions of this Specification 13 shall continue to apply, or (ii) comply with the provisions of the Agreement as no longer modified by this Specification 13, in which case the provisions of this Specification 13 shall thereafter be void, unless Registry Operator initiates the dispute resolution proceedings set forth in Article 5 of this Agreement during such 30 calendar day period disputing ICANN's determination. During the pendency of such dispute resolution proceedings, there will be no change in the status of the TLD as a .Brand TLD in accordance with this Specification 13 so long as Registry Operator otherwise continues to operate the TLD in compliance with the requirements of the definition of a .Brand TLD and this Specification 13, other than with respect to the disputed issue. Registry Operator must promptly notify ICANN in writing of any change to the TLD that could potentially disqualify it as a .Brand TLD.

In addition to the foregoing, the parties agree as follows:

1. Registry Operator is exempt from complying with the requirements of the Code of Conduct, notwithstanding the provisions of Section 6 of the Code of Conduct.
2. The second sentence of Section 2.9(a) of the Agreement is superseded by the following:

Subject to the requirements of Specification 11, Registry Operator must either (i) provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD, or (ii) Registry Operator may in its discretion designate one or more ICANN accredited registrars as the exclusive registrar(s) for the TLD.

3. Section 4.5 of the Agreement is superseded by the following:

Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator will provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD

necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if the TLD qualifies as a .Brand TLD in accordance with Specification 13 on the date that the Agreement expires or terminates (the “Expiration Date”), ICANN may not delegate the TLD to a successor registry operator for a period of two years following the Expiration Date without Registry Operator’s consent (which shall not be unreasonably withheld, conditioned or delayed), unless ICANN reasonably determines that transitioning operation of the TLD is necessary to protect the public interest. If ICANN determines, in its reasonable discretion, that transitioning operation of the TLD is necessary to protect the public interest, then ICANN will provide Registry Operator with written notice and a reasonably detailed explanation for its public interest determination. If, within 30 calendar days of receipt of such notice, Registry Operator initiates the dispute resolution proceedings as set forth in Article 5 of this Agreement disputing ICANN’s determination, ICANN will not transition operation of the TLD to successor registry operator during the pendency of such proceedings. For the avoidance of doubt, an Emergency Operator will not be considered a successor registry operator for purposes of this Section 4.5, and this Section 4.5 shall not prohibit ICANN from accepting applications for or delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement.

4. Registry Operator agrees to conduct internal reviews at least once per calendar year to ensure that the TLD meets the requirements of the definition of a .Brand TLD. Within 20 calendar days following the end of each calendar year, Registry Operator will provide ICANN with the results of its internal review(s), along with a certification executed by one of its executive officers certifying that the TLD meets the requirements of the definition of a .Brand TLD. These materials will be submitted to ICANN by via email at [____@icann.org]. Registry Operator agrees that ICANN may publicly post the results of Registry Operator’s review and certification, but ICANN will keep confidential and not publish any information that is, and Registry Operator has marked as, Confidential Information, other than in compliance with Section 7.15 of the Registry Agreement. ICANN may specify in the future the form and content of these reports or inform Registry Operator that the reports be delivered by other reasonable means.
5. For purposes of this Specification 13, the following terms shall have the following meanings:

5.1 “.Brand TLDs” are TLDs where:

- (i) the TLD string is identical to the textual elements protectable under applicable law, of a registered trademark valid under applicable law, which registered trademark:
 - a. is registered with the Trademark Clearinghouse, if such mark meets the eligibility requirements to be registered with the Trademark Clearinghouse;
 - b. is owned and used by the Registry Operator or its Affiliate in the ordinary course of Registry Operator’s or its Affiliates’ business in connection with the offering of the goods and/or services claimed in the trademark registration;
 - c. was issued to Registry Operator or its Affiliate prior to the filing of its TLD registry application with ICANN;
 - d. is used throughout the Term continuously in the ordinary course of business of Registry Operator in connection with the offering of the goods and/or services identified in the trademark registration;
 - e. does not begin with a dot; and
 - f. is used by Registry Operator in the conduct of one or more of its businesses that are unrelated to the provision of TLD Registry Services; and
- (ii) only Registry Operator, its Affiliates, or Trademark Licensees register domain names and control the DNS records associated with domain names at any level in the TLD; and
- (iii) Registry Operator has provided ICANN with an accurate and complete copy of such trademark registration.

5.2 “Trademark Licensee” means any corporation, partnership, limited liability company or similar legal entity (and not a person) that has a written trademark license agreement with a Registry Operator or its Affiliate, for use of the registered trademark owned by the Registry Operator or its Affiliate, the textual elements of which correspond exactly to the .Brand TLD operated by that Registry Operator, where such license is:

- (i) valid under applicable law;
- (ii) for use of such trademark in the regular course of that person or entity’s business outside of the provision of TLD Registry Services; and

(iii) used continuously in that person or entity's business throughout the Term.