SPECIFICATION 13

.BRAND TLD PROVISIONS

On or prior to the date of the Agreement, ICANN has qualified the TLD as a .Brand TLD (as defined below). 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) **initiate the dispute resolution proceedings set forth in Article 5 of the Agreement during such 30 calendar day period disputing ICANN's determination (a "Dispute Proceeding"). If upon expiration of such 30 calendar day period, Registry Operator fails to meet the requirements of the .Brand TLD definition to ICANN's reasonable satisfaction and has not initiated a Dispute Proceeding pursuant to Article 5 of the Agreement, (i) the TLD shall immediately cease to be a .Brand TLD, (ii) Registry Operator shall immediately** comply with the provisions of the Agreement as no longer modified by this Specification 13~~, in which case~~ **(other than Section 2 hereof) and (iii)** the provisions of this Specification 13 **(other than Section 2 hereof)** shall thereafter ~~be void, unless~~ **no longer have any effect.**

If 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~~ **a Dispute Proceeding**, there will be no change in the status of the TLD as a .Brand TLD in accordance with this Specification 13 **during the pendency of such Dispute Proceeding,** 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**(s)**. **If, following mediation pursuant to Section 5.1 of the Agreement, ICANN and** Registry Operator ~~must promptly notify ICANN in writing of any change to the TLD that could potentially disqualify it~~ **reach agreement resolving the Dispute Proceeding, the parties shall implement such agreement. If the dispute is not resolved through mediation, the Dispute Proceeding shall be resolved through a binding arbitration proceeding pursuant to Section 5.2 of the Agreement. If, upon conclusion of the arbitration proceeding, ICANN's determination is not fully overturned by the arbitrator, (i) the TLD shall on the date the arbitrator released his or her findings immediately cease to be a .Brand TLD, (ii) Registry Operator shall immediately comply with the provisions of the Agreement as no longer modified by this Specification 13 (other than Section 2 hereof) and (iii) the provisions of this Specification 13 (other than Section 2 hereof) shall thereafter no longer have any effect. If, upon conclusion of the arbitration proceeding, ICANN's determination is fully overturned by the arbitrator, then ICANN's determination shall have no effect**

and the TLD shall remain a .Brand TLD. However, any resolution of a Dispute Proceeding shall not limit or otherwise restrict ICANN's right to subsequently determine, in its reasonable discretion, that the TLD no longer qualifies as a .Brand TLD. **The date on which, if any, this Specification 13 (other than Section 2 hereof) no longer has any effect is referred to as the "Disqualification Date."**

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

1. Registry Operator is exempt from complying with the requirements of **Specification 9 to** the ~~Code of Conduct~~ **Agreement**, notwithstanding the provisions of Section 6 of ~~the Code of Conduct~~ **Specification 9**.

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.~~

2. **Notwithstanding the requirements of Section 2.8 of the Agreement, Section 1 of Specification 7 to the Agreement and Section 2 of the Trademark Clearinghouse Rights Protection Mechanism Requirements (the "TMCH Requirements"), Registry Operator is not required to provide a Sunrise Period (as defined in the TMCH Requirements) or, except as set forth herein, otherwise comply with the obligations set forth in Section 2 of the TMCH Requirements (collectively, the "Sunrise Requirements") so long as the TLD continues to be qualified as a .Brand TLD by ICANN.**

   Registry Operator must comply with all other provisions of the TMCH Requirements, including completing the Integration Testing required by Section 1 of the TMCH Requirements and providing the Claims Services required by Section 3 of the TMCH Requirements. Registry Operator will provide ICANN (i) confirmation of completion of Integration Testing and (ii) notice of the start date (the "Claims Commencement Date") and end date for the Claims Period (as defined in the TMCH Requirements) for the TLD, in each case via the customer services portal at http://myicann.secure.force.com/. Registry Operator may not Allocate (as defined in the TMCH Requirements) or register a domain name in the TLD (except for "NIC" and self-allocation or registration to itself of domain names pursuant to Section 3.2 of Specification 5) prior to the Claims Commencement Date.

   Registry Operator must comply with the Sunrise Requirements effective as of the Disqualification Date and commence a Sunrise Period within 60 calendar days of

the Disqualification Date. If, at the Disqualification Date, the Trademark Clearinghouse or any successor or alternative trademark validation authority appointed by ICANN is not in operation, Registry Operator must implement the Sunrise Requirements through an alternative mechanism developed by Registry Operator that is reasonably acceptable to ICANN. As of the Disqualification Date, Registry Operator may not Allocate or register any additional domain names to third parties prior to the Allocation or registration of all Sunrise Period registrations except as permitted by Section 2.2.4 of the TMCH Requirements. In the event ICANN develops an alternative version of the TMCH Requirements specifically for .Brand TLDs or former .Brand TLDs, Registry Operator agrees to comply with such alternative requirements if such requirements are similar to the TMCH Requirements in effect as of the date hereof as modified by this Specification 13.

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

Transition of Registry upon Termination of Agreement.

    (a)   Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of ~~this~~ **the** 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**,** **subject to the terms of this Section 4.5,** if the TLD ~~qualifies~~ **is qualified** as a .Brand TLD **by ICANN** 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.

    (b)   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~~ **the** Agreement disputing ICANN's determination, ICANN will not transition operation of the TLD to **a** successor registry operator during the pendency of such proceedings. **If, following mediation pursuant to Section 5.1 of the Agreement, ICANN and Registry Operator reach agreement resolving the dispute, the parties shall implement such agreement. If the dispute is not resolved**

through mediation, the dispute shall be resolved through a binding arbitration proceeding pursuant to Section 5.2 of the Agreement. If, upon conclusion of the arbitration proceeding, ICANN's determination is not fully overturned by the arbitrator, ICANN may delegate and transition the operation of the TLD to a successor registry operator on or following the date the arbitrator released his or her findings. If, upon conclusion of the arbitration proceeding, ICANN's determination is fully overturned by the arbitrator, then ICANN may not delegate or transition the operation of the TLD based on ICANN's determination that the such delegation and transition is necessary to protect the public interest.

(c) For the avoidance of doubt, an Emergency Operator will not be considered a successor registry operator for purposes of this Section 4.5~~, and~~**. In addition,** 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~~ **the** 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. Registry Operator must promptly notify ICANN in writing of any change to the TLD that could cause the TLD to fail to meet the requirements of the definition of a .Brand TLD. In addition, Registry Operator agrees to provide ICANN with any amendment or modification to the registration policies for the TLD that could potentially disqualify the TLD as a .Brand TLD.

~~5~~**6**. For purposes of this Specification 13, the following terms shall have the following meanings:

5.1**6.1** ".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;~~

    a. is recorded with, and issued a signed data mark file by, the Trademark Clearinghouse or any successor or alternative trademark validation authority appointed by ICANN, if such trademark meets the eligibility requirements of such validation authority (provided that Registry Operator is not required to maintain such recordation for more than one year);

    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 **any 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 **or its Affiliate** in connection with the offering **of any** of the goods and/or services identified in the trademark registration;

    e. does not begin with a **period or a** dot; and

    f. is used by Registry Operator **or its Affiliate** 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~~ **are registrants of** domain names **in the TLD** and control the DNS records associated with domain names at any level in the TLD; ~~and~~

(iii) the TLD is not a Generic String TLD (as defined in Specification 11); and

(~~iii~~**iv**) Registry Operator has provided ICANN with an accurate and complete copy of such trademark registration.

5.26.2   "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 **string** operated by that Registry Operator, where such license is:

(i)   **such license is** valid under applicable law;

(ii)   **such license is** for **the** use of such trademark in the regular course of that person or entity's business outside of the provision of TLD Registry Services;, and **is not primarily for the purpose of enabling registration or use of domain names in the TLD;**

(iii)   **such trademark is** used continuously in that person or entity's business throughout the Term.**; and**

(iv)   the domain names in the TLD registered to the Trademark Licensee are required to be used for the promotion, support, distribution, sales or other services reasonably related to any of the goods and/or services identified in the trademark registration.

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~~Table Delete~~	0
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