

## **Summary of Trademark Clearinghouse Validation Framework Agreement**

On 6 December 2012, ICANN entered into a Trademark Clearinghouse Validation Framework Agreement with Deloitte Enterprise Risk Services, a department of Deloitte Bedrijfsrevisoren BV/CVBA, a company duly incorporated in Belgium (“Deloitte”). The agreement provides the terms and conditions under which Deloitte will authenticate and validate trademark submissions from trademark holders and trademark agents for inclusion in the Trademark Clearinghouse. Deloitte will also be responsible for developing and implementing a user interface to manage the processing of trademarks. All work done by Deloitte shall be in accordance with the service level agreements, which are available as Appendix 2.

The initial term of the agreement expires on the fifth anniversary of ICANN’s entry into a registry agreement under the new gTLD program, with consecutive one-year renewals thereafter unless either party provides 180 days’ notice of intent not to renew. ICANN may extend the final expiration of the term of the agreement for up to 90 days to facilitate the transition of the validation related services from Deloitte to a successor provider. Deloitte will initially be the sole provider of the validation services, but following the completion of ten (10) Qualified Sunrise Periods by Registries pursuant to the New gTLD Program, ICANN may then select additional third parties (“Additional Validators”) to perform the Trademark Clearinghouse validation services, in addition to Deloitte’s providing of the Trademark Clearinghouse Validation Function, provided, however, that ICANN shall use commercially reasonable efforts to ensure that such Additional Validators provide the Trademark Clearinghouse Validation Function without regard to region or type of Trademark and operating under the same terms and conditions as Deloitte hereunder, unless ICANN determines, following public discussion, to (i) appoint Additional Validators for specific regions, (ii) specify the types of Trademarks to be validated by such Additional Validators or (iii) modify the terms and conditions pursuant to which such Additional Validators shall operate.

“Qualified Sunrise Period” means a “Sunrise Period” (as such term is used in the gTLD Applicant Guidebook) offered by a non-IDN Registry pursuant to the New gTLD Program that results in the registration of at least ten thousand (10,000) domain names in such Registry related to such Sunrise Period.

ICANN may terminate the agreement under customary circumstances, including due to breach. Deloitte may terminate the agreement if Deloitte’s performance of the agreement would be illegal or against Deloitte’s professional rules. In most cases, ICANN may postpone the effective date of a termination for up to 270 days to allow for the transition of the validation related services to a successor provider.

Prior to the expiration or termination of the agreement, Deloitte has agreed to cooperate with ICANN and any successor service provider to transition the validation related services. Additionally, Deloitte will provide ICANN with the trademark data, the trademark clearinghouse website (if not already transferred) and any materials specifically developed or prepared by Deloitte relating to the services.

Trademark holders and trademark agents will pay the Trademark Clearinghouse directly in accordance with a fee schedule, which is available as Appendix 4. Deloitte must obtain ICANN's consent prior to amending the fee schedule and must also provide users who are being charged a fee by Deloitte at least 60 days' notice before any fee increase becomes effective. Upon ICANN's request, but limited to once a year, Deloitte will prepare a report detailing the gross margin that it has realized from the agreement and ICANN may conduct an audit to assess the information set forth in such report. In addition ICANN has the right to conduct contractual compliance audits.

If the aggregate number of trademark records (calculated as a product of trademarks multiplied by years of registration related thereto) submitted for inclusion in the Trademark Clearinghouse on or prior to the second anniversary of the first registry agreement is less than 50,000, ICANN will pay Deloitte a fee equal to the percentage shortfall multiplied by \$2,500,000.

When submitting a trademark, trademark holders and agents will be given the option to opt in to having their trademark included in a separate ancillary services database, which would make those trademarks eligible for possible future ancillary services from Deloitte as well as third parties. Trademark holders and agents can later opt out of such ancillary services database at any time. Deloitte may not provide ancillary services without ICANN's prior consent.

Under the agreement, Deloitte grants to ICANN an irrevocable license to any software specifically developed by Deloitte to provide the contracted services to ICANN. In addition, Deloitte has granted to ICANN an irrevocable license to certain materials created by Deloitte to the extent they are related to the validation related services covered by the agreement or any applicable statement of work. Deloitte will not have a legal interest in the trademark holders' data included in the Trademark Clearinghouse database.

The parties have also agreed to customary indemnification provisions, subject to a reciprocal cap on liability. Neither party will be liable to the other for any lost profits or consequential, special or punitive damages. Disputes between ICANN and Deloitte will be resolved through a dispute resolution procedure or ultimately through arbitration. The agreement also provides ICANN with certain audit rights to monitor Deloitte's contractual compliance.

Deloitte is to comply with a conflict of interest policy that has been developed for this agreement.

## APPENDIX 2 – SERVICE LEVEL AGREEMENTS

These Service Level Agreements provide metrics to measure performance of the Trademark Clearinghouse Validation Function operated by Deloitte. Deloitte shall perform the Trademark Clearinghouse Validation Function in accordance with the specification and requirements set forth in these Service Level Agreements.

	<b>Service Area</b>	<b>Availability</b>	<b>Performance during normal operations</b>	<b>Performance during Early Bird Registration Period (as defined in the Fee Specification) or High Volume Period</b>
<b>1.</b>	<b>Verification of Trademark Data</b>			
A.	Availability to receive submissions of Trademark Data for validation or proof of use	99.9% (outside of planned maintenance window)	N/A	N/A
B.	Verification of Trademark Data from the moment of payment	N/A	12 calendar days	20 calendar days
C.	Verification of proof of use from the moment of payment	N/A	8 calendar days	14 calendar days
D.	Error Correction process (reverification) as of the moment of notification to Deloitte	N/A	8 calendar days	14 calendar days
<b>2.</b>	<b>Sunrise Support</b>			
A.	Time to provide notification to a Trademark Holder or Trademark Agent from their receipt from the Trademark Clearinghouse Database Function provider of a sunrise notification	N/A	99.999% within 12 hours; 99% within 3 hours	N/A
B.	Availability to receive information from the Trademark Clearinghouse Database Function provider regarding sunrise notifications	99.9%	N/A	N/A
<b>3.</b>	<b>Trademark Claims Support</b>			

A.	Time to provide notification to a Trademark Holder or Trademark Agent from their receipt from the Trademark Clearinghouse Database Function provider of a trademark claims notification	N/A	99.999% within 12 hours; 99% within 3 hours	N/A
B.	Availability to receive information from the Trademark Clearinghouse Database Function provider regarding trademark claims notifications	99.9%	N/A	N/A
<b>4.</b>	<b>Trademark Holder and Trademark Agent Assistance</b>			
A.	Availability of interface to submit Trademark Holder and Trademark Agent inquiries (web, email)	99.9%	N/A	N/A
B.	Time to response to general inquiries from Trademark Holders and Trademark Agents	N/A	1 calendar day	2 calendar day
C.	Time to resolution of general inquiries from Trademark Holders and Trademark Agents	N/A	5 calendar days	10 calendar days
D.	Time to resolution of billing inquiries from Trademark Holders and Trademark Agents	N/A	5 calendar days	10 calendar days
E.	Time to response to User interface inquiries	N/A	1 calendar day	2 calendar day
<b>5.</b>	<b>Dispute Resolution Processing</b>			
A.	Time to resolution of a dispute from a Trademark Holder or Trademark Agent contesting result of validation or proof of use	N/A	7 calendar days	12 calendar days
B.	Time to resolution of a dispute from a third party contesting result of validation or proof of use	N/A	10 calendar days	N/A
C.	Time to resolution of a dispute from a third party based on new information not previously considered	N/A	10 calendar days	15 calendar days

**“High Volume Period”** means a week in which more than 15,000 Trademark records are submitted to Deloitte for validation.

In the event that Deloitte schedules a planned maintenance outage, it will provide related notice to Users, including ICANN, at least 48 hours ahead of that maintenance outage. ICANN will note planned maintenance times, and a planned maintenance period of up to 4 hours per month will not be counted as an outage for SLA purposes.

## APPENDIX 4 – FEE SPECIFICATION

### 1. Introduction

This Fee Specification sets forth the fee structure and relevant fees that Deloitte and its subcontractors may charge Trademark Holders and Trademark Agents related to providing the Trademark Clearinghouse Validation Function. The fees are inclusive of any charges or fees that may be paid by Deloitte and its subcontractors to third parties related to its provision of the Trademark Clearinghouse Validation Function, including the provider of the Trademark Clearinghouse Database Function.

The fee structure provides for a blended rate for all types of Trademarks unrelated to the jurisdiction in which a Trademark is protected. In addition, the fee structure makes no distinction between whether the Trademark Holder or Trademark Agent has opted for sunrise services and/or trademark claims notifications.

The fee structure also includes the option for Trademark Holders and Trademark Agents to register their Trademarks with the Trademark Clearinghouse for terms of 1, 3 or 5 years, and provides step-based pricing discounts based on volume. In order to be eligible for discounted pricing, Trademark Holders and Trademark Agents must fund a prepayment account with the Trademark Clearinghouse, from which the costs of each registration will be deducted.

In order to determine the applicable discount level, each Trademark Holder and Trademark Agent will have a unique Status Counter (as defined below), which will display the Status Points (as defined below) held by each Trademark Holder and Trademark Agent at any given point in time. The amount of Status Points will determine the level of discounted pricing applicable to each registration in the Trademark Clearinghouse. Status Points will be calculated as set forth herein, and will additionally reward Trademark Holders and Trademark Agents that register Trademarks during the Early Bird Registration Period (as defined below) or register their Trademarks for 3 or 5-year periods. Early-bird registration, which will be available to Trademark Holders and Trademark Agents from the moment the Trademark Clearinghouse goes live (i.e. when Trademark submissions are accepted for registration with the Trademark Clearinghouse) until the calendar day prior to the date the first Registry initiates a sunrise period pursuant to the New gTLD Program (the “**Early Bird Registration Period**”). Early bird registration provides Trademark Holders and Trademark Agents with the possibility to obtain protection for circa an additional 3-5 months, as the Trademark record will not expire on the first anniversary of the date the early bird registration period closed, but will instead expire on the first anniversary of the calendar day prior to the date the first Registry initiates a sunrise period pursuant to the New gTLD Program. A Trademark registered after the Early Bird Registration Period will expire on the first anniversary of the date of registration of such Trademark.

All prices are listed in USD and do not include any VAT. An additional 15% VAT will be applicable when:

- The Trademark Holder/Trademark Agent's registered country of residence is within the European Union and the Trademark Holder/Trademark Agent has indicated it is not VAT-liable (i.e. did not provide a valid VAT-number); or
- The Trademark Holders/Trademark Agent's registered country of residence is Luxembourg.

The fee structure does not include any fees related to dispute resolution or any other services that the Trademark Clearinghouse may provide (such as domain name variants, etc.). These fees will be set forth in an additional written instrument or a supplement to this Fee Specification at a later date.

Unless otherwise defined herein, capitalized terms used in this Fee Specification shall have the meanings assigned to them in the Trademark Clearinghouse Validation Framework Agreement between ICANN and Deloitte.

## **2. Trademark Clearinghouse Services**

The fee structure set forth in this Fee Specification includes the following services, which are offered to Trademark Holders and Trademark Agents:

- **Trademark Registration:** Upon registration of a trademark with the Trademark Clearinghouse, up to 10 domain names can be linked to each Trademark registration based on the Domain Name Matching Rules. Trademark registrations can be done for a period of 1, 3 or 5 years, and will be (re)validated once per year notwithstanding the duration of registration selected by the Trademark Holder or Trademark Agent.
- **Additional domain names linked to Trademark registration (optional service):** If the Trademark Holder or Trademark Agent determines that more than 10 domain names need to be linked to one Trademark registration, the number of domain names linked to such registration can be increased (from 1 domain name to each of the domain names variants determined in accordance with the Domain Name Matching Rules linked to a single Trademark registration).
- **Verification Services:** All data relating to the Trademark will be verified. In the event the Trademark record is correct, accurate and verified, the Trademark Holder or Trademark Agent, as applicable, will be able to receive Trademark claims notifications (in the event the Trademark Holder or Trademark Agent elected for such services). In the event that the Trademark Holder or Trademark Agent has elected for sunrise services, proof of use will also be verified. In the event that the verification is successful, a signed mark data (SMD) file will be

generated and the Trademark Holder or Trademark Agent will receive sunrise notifications.

- **Customer Service:** Responding to Trademark Holders and Trademark Agents through a web-ticketing tool. For urgent matters, a hotline/phone service will be made available by Deloitte.

### 3. **Basic Fee Structure**

The basic fee structure (the “**Basic Fee Structure**”) set forth in this Section 3 is available only to Trademark Holders, and does not contain any discounted pricing based on volume. If a Trademark Holder desires discounted pricing, the Trademark Holder must establish a Prepayment Account (as defined below), in which case the fee structure set forth in Section 4 will be applicable.

#### 3.1 **Pricing**

##### 3.1.1. **Trademark Registration (including up to 10 domain names in accordance to the Domain Name Matching Rules)**

The following table sets forth the Basic Fee Structure fees for registration of a single trademark record by a Trademark Holder in the Trademark Clearinghouse, which varies based on the duration of the registration.

	Price (USD)		
	1-Year	3-Year	5-Year
Trademark Registration	150	435	725

##### 3.1.2. **Additional Domain Name Linked to a Trademark Registration**

The following table sets forth the applicable additional fee for each additional domain name (above 10) that a Trademark Holder chooses to link to a Trademark registration, which varies based on the duration of the registration.

	Price (USD)		
	1-Year	3-Year	5-Year
Additional fee per domain name above the 10 domain names in accordance to the Domain Name Matching Rules	1	3	5

#### 3.2 **Forms of Payment**

A Trademark Holder who opts for the Basic Fee Structure will have to pay through credit card (VISA, MasterCard, American Express) at the time of registration of a Trademark

with the Trademark Clearinghouse. For security and abuse purposes, Trademark Holders will be able to register multiple Trademarks, but they will be limited to 10 Trademark registrations per payment transaction.

### 3.3 Trademark Renewal

All Trademark records in the Trademark Clearinghouse are subject to annual re-validation of the trademark data, notwithstanding the duration of registration selected by the Trademark Holder. For registration of a one year period, a Trademark record will have to be renewed manually by the Trademark Holder and a renewal fee (which is the same as the first submission fee) will have to be paid to the Trademark Clearinghouse.

## 4. Discount Fee Structure

The discount fee structure (the “**Discount Fee Structure**”) set forth in this Section 4 is available to Trademark Holders and Trademark Agents, and provides for step-based pricing discounts based on volume. In order to be eligible for the Discount Fee Structure, Trademark Holders and Trademark Agents must establish a Prepayment Account, as set forth below.

### 4.1 Pricing

The following table sets forth the step-based discounted pricing of the Discount Fee Structure, which is determined based on the number of Status Points held by the Trademark Holder or Trademark Agent, as applicable, at the time of registration of a Trademark. The amount of Status Points held by a Trademark Holder or Trademark Agent, as applicable, at the time of registration of a Trademark with the Trademark Clearinghouse will determine which price level is applicable to the registration of such Trademark.

Status Points	Price (USD)		
	1-Year	3-Year	5-Year
0 – 3,000	145	435	725
3,001 to 25,000	135	405	675
25,001 to 60,000	120	360	600
60,001 to 100,000	105	315	525
Over 100,000	95	285	475

### 4.2 Additional Domain Name Linked to a Trademark Registration

The following table sets forth the applicable additional fee for each additional domain name (above 10) that a Trademark Holder or Trademark Agent, as applicable, chooses to link to a Trademark registration, which varies based on the duration of the registration.

	Price (USD)
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	1-Year	3-Year	5-Year
Additional fee per domain name above the 10 domain names in accordance to the Domain Name Matching Rules	1	3	5

### 4.3 Form of Payment

In order to participate in the Discount Fee Structure, Trademark Holders and Trademark Agents must establish an account with the Trademark Clearinghouse pursuant to which the Trademark Agent or Trademark Holder will deposit, prior to registering any Trademarks, funds with an initial minimum amount of USD \$15,000 that will thereafter be available to the Trademark Holder or Trademark Agent for registering Trademarks in the Trademark Clearinghouse (the “**Prepayment Account**”). The Prepayment Account will be funded by wire transfer of immediately available funds to an account specified by Deloitte, and all costs associated with the wire transfer will be borne by the Trademark Holder or Trademark Agent, as applicable. Wire transfer will be the only form of payment accepted by the Trademark Clearinghouse for a Prepayment Account.

At any time the Trademark Holder or Trademark Agent may increase the amount of funds in its Prepayment Account with a minimum of USD \$1,000 per transaction through the “profile management” page, which will be accessible through the Trademark Clearinghouse website. Any additional funding of the Prepayment Account will be by wire transfer of immediately available funds to an account specified by Deloitte. The Trademark Holder or Trademark Agent may withdraw some or all of the balance of its Prepayment Account at its discretion. A Trademark will not be accepted for registration with the Trademark Clearinghouse if a Trademark Holder’s or Trademark Agent’s Prepayment Account does not contain sufficient funds to pay the applicable registration fee.

### 4.4 Trademark Renewal

All Trademark records in the Trademark Clearinghouse are subject to annual re-validation of the Trademark Data, notwithstanding the duration of registration selected by the Trademark Holder or Trademark Agent, as applicable. For registration of a one year period, a Trademark record will have to be renewed manually by the Trademark Holder or Trademark Agent, as applicable, and a renewal fee (which is the same as the first submission fee) will have to be paid to the Trademark Clearinghouse.

### 4.5 Status Counter and Status Points

As highlighted above, the price per Trademark registration is determined based on the number of “**Status Points**” held by the Trademark Holder or Trademark Agent, as applicable. Deloitte will maintain a counting system (the “**Status Counter**”), which will indicate the number of Status Points held by the Trademark Holder or the Trademark Agent. The Status Points indicated on a Trademark Holders or Trademark Agents’

Status Counter will determine the applicable fee for registering a Trademark at the moment of registration. Accordingly, increasing the number indicated by the Status Counter will result in a corresponding increase to a Trademark Holder's or Trademark Agent's Status Points.

During each Registration Period (as defined below), Deloitte will maintain a Status Counter and calculate the Status Points for each Trademark Holder and Trademark Agent who registers with the Trademark Clearinghouse. Upon establishing a Prepayment Account, the Trademark Holder's or Trademark Agent's Status Counter will start at zero. During each Registration Period, the Status Counter will increase based on the number and type of Trademark registrations as described below. At the end of each Registration Period, the Status Counter will be reset to zero.

During each Registration Period, the Status Counter will increase as follows:

- For each 1-year Trademark registration, the Status Counter will increase by 1 point.
- For each 3-year Trademark registration, the Status Counter will increase by 4 points.
- For each 5-year Trademark registration, the Status Counter will increase by 7 points.
- In the case of a Trademark registered during the Early Bird Registration Period, the Status Counter will increase by 1 additional point in the case of a 3-year registration and 2 additional points in the case of a 5-year registration (e.g., a 3-year early-bird registration will result in a total increase of 5 points and a 5-year registration will result in a total increase of 9 points).

The following table sets forth examples of operation of the Status Counter and calculation of Status Points:

Example Registrations	Status Counter	Status Points
Trademark Holder registers three Trademarks, each for a 1-year period	1+1+1	3
Trademark Agent registers three Trademarks, each for a 5-year period	7+7+7	21
Trademark Agent registers two Trademarks, each for a 3-year period, and three Trademarks, each for a 5-year period	4+4+7+7+7	29
Trademark Agent registers three Trademarks during the Early Bird Registration Period, each for a 5-year period	7+2+7+2+7+2	27

A "Registration Period" is determined as follows:

- For a Trademark Holder or Trademark Agent who registered one or more Trademarks in the Trademark Clearinghouse during the Early Bird Registration Period, the first Registration Period begins on the date the Trademark Holder or Trademark Agent registered its first Trademark with the Trademark Clearinghouse, and ends on the first anniversary of the date the Early Bird Registration Period closed.
- For a Trademark Holder or Trademark Agent who did not register a Trademark during the Early Bird Registration Period, the first Registration Period begins on the date the Trademark Holder or Trademark Agent registered its first Trademark with the Trademark Clearinghouse, and ends on the first anniversary of such date.
- Thereafter, in either of the above two cases, each subsequent Registration Period shall consist of a 12 month period beginning on the date of termination of the previous Registration Period and ending on the first anniversary of such date.