

Trademark Clearinghouse

Rights Protection Mechanism Requirements

The Trademark Clearinghouse will facilitate the Sunrise Services and Claims Services (each as defined below, and collectively, the “**Services**”). These Trademark Clearinghouse Rights Protection Mechanism Requirements (these “**TMCH Requirements**”) are the rights protection mechanisms related to the Trademark Clearinghouse specified in Section 1 of Specification 7 to the Registry Agreement between ICANN and Registry Operator (as such term is defined therein) (the “**Agreement**”). These TMCH Requirements are part of the Agreement and each Registry Operator must comply with these TMCH Requirements, subject to the terms and conditions of the Agreement.

The Services were developed by the community with the goal of providing protection for verified legal rights. The Sunrise and Trademark Claims services have been implemented in accordance with this goal. Registry Operator has discretion to implement its TLD startup phases in accordance with its own business and operational models, so long as the minimum requirements contained in these TMCH Requirements are met.

The terms MAY, MUST, MUST NOT, SHOULD and SHOULD NOT are used in accordance with RFC 2119, which is available at <http://www.ietf.org/rfc/rfc2119.txt>.

1 **Testing and Credentials.**

1.1 **Testing.**

1.1.1 Following execution of the Agreement, Registry Operator **MUST** complete integration testing (“**Testing**”) with the entity appointed by ICANN to interact with the registries for the sunrise and claims processes (the “**TMCH Sunrise and Claims Operator**”). The scope and substance of such Testing will be determined by the TMCH Sunrise and Claims Operator. Registry Operator **MUST** notify the TMCH Sunrise and Claims Operator of the date that Registry Operator would like to commence Testing, provided that the TMCH Sunrise and Claims Operator will have discretion to assign the Testing dates. Once scheduled, the Testing for Registry Operator will be available for a period of fourteen (14) consecutive calendar days following the scheduled commencement date of the Testing. The TMCH Sunrise and Claims Operator will issue temporary credentials (i.e. user name and password) for each Registry Operator for Testing.

1.1.2 Registry Operator **MUST** only allow registrars who have completed Testing to sponsor the registration of domain names during the Sunrise Period (as defined in Section 2.2.1 hereof) and Claims Period (as defined in Section 3.2.1 hereof) (including, if applicable, a Limited Registration Period (as defined in Section 3.2.4 hereof)). Registrars are expected to notify the TMCH Sunrise and Claims Operator of the date that the applicable registrar would like to commence Testing, provided that the TMCH Sunrise and Claims Operator will have discretion to assign the Testing dates. Once scheduled, the Testing for the applicable registrar will be available for a period of fourteen (14) consecutive calendar days following the scheduled commencement date of the Testing. The TMCH Sunrise and Claims Operator will issue temporary credentials for each registrar for Testing.

1.2 **Credentials.**

1.2.1 Following execution of the Agreement, ICANN will provide Registry Operator with credentials (i.e. user name and password) for access to the Services.

1.2.2 Following acceptance of the Terms of Service (as defined below), ICANN will provide registrars with credentials for access to the

Services.

- 2 **Sunrise Period.** The Trademark Clearinghouse will provide various services to facilitate the Sunrise Periods (as defined below) of new gTLD registries (the “**Sunrise Services**”). One of the Sunrise Services is to allow holders of marks (such marks, “**Trademark Records**”) that have been verified by the Trademark Clearinghouse (“**Trademark Holders**”) and, if necessary, who have established proof-of-use for such marks (such Trademark Holders who have also established proof-of-use, “**Sunrise-Eligible Rights Holders**”) an opportunity to register domain names in new gTLD registries prior to the launch of General Registration (as defined below) or any Limited Registration Period of domain names in the registry (“**Sunrise Registrations**”). For purposes of these TMCH Requirements, “**General Registration**” in a TLD is deemed to occur on the first day following the Sunrise Period in which domain names are generally available to all registrants that are qualified to register domain names within the TLD.

2.1 **Notice of Sunrise Period.**

2.1.1 Registry Operator MUST provide the following information to ICANN at least thirty (30) calendar days in advance of the date the registry’s Sunrise Period is scheduled to begin (collectively, the “**TLD Startup Information**”):

2.1.1.1 Confirmation that the Registry Operator has completed Testing.

2.1.1.2 Start date and duration for the Sunrise Period, as such start date is assigned by, and duration is communicated to, the TMCH Sunrise and Claims Operator.

2.1.1.3 The complete Sunrise registration policies for the TLD.

2.1.1.4 Start date and duration for all Limited Registration Periods, if any, as such start date is assigned by, and duration is communicated to, the TMCH Sunrise and Claims Operator.

2.1.1.5 Start date and duration for the Claims Period, as such start date is assigned by, and duration is communicated to, the TMCH Sunrise and Claims Operator.

2.1.2 Registry Operator MUST submit its TLD Startup Information to ICANN

at the following email address <address>.

- 2.1.3 If Registry Operator makes any changes to its TLD Startup Information, Registry Operator MUST provide ICANN with updated TLD Startup Information. If such updated TLD Startup Information changes the start date or duration for the Sunrise Period, any Limited Registration Period, or Claims Period, Registry Operator must comply with the thirty (30) calendar day notice requirements in Section 2.1.1 hereof before initiating the rescheduled period. However, TLD Criteria MUST NOT be changed during the pendency of a Sunrise period.
- 2.1.4 Registry Operator MUST NOT submit TLD Startup Information to ICANN prior to the delegation of its TLD (as defined in the Agreement) into the root zone.

2.2 **Duration and Timing of Sunrise Period.**

- 2.2.1 Registry Operator MUST provide the Sunrise Services for a minimum of thirty (30) calendar days prior to General Registration (as defined below) or any Limited Registration Period in the TLD (the “**Sunrise Period**”). Registration of domain names in the TLD during the Sunrise Period MUST be restricted to Sunrise-Eligible Rights Holders.
- 2.2.2 Registry Operator MAY provide Sunrise Services for a period in excess of thirty (30) calendar days, so long as the duration of the Sunrise Period is detailed in its TLD Startup Information.
- 2.2.3 Following commencement of the Sunrise Period, including any extensions thereto, Registry Operator MAY NOT shorten the duration of the Sunrise Period, but it MAY extend the duration of the Sunrise Period by providing updated TLD Startup Information to ICANN and the TMCH Sunrise and Claims Operator at least three (3) calendar days prior to the effective date of the extension.
- 2.2.4 Registry Operator MUST NOT allow a domain name to be reserved or registered to a registrant who is not a Sunrise-Eligible Rights Holder prior to the conclusion of the Sunrise Period.

2.3 **Sunrise Eligibility Requirements.**

2.3.1 Registry Operator MAY impose the following types of restrictions to register a domain name in its TLD, provided that such restrictions are imposed equally in the Sunrise Period, any Limited Registration Period and the Claims Period, as applicable (collectively “**TLD Criteria**”):

2.3.1.1 Registry Operator MAY define a purpose related to the TLD for applying restrictions relating to the underlying rights of a Trademark Record (e.g., restrictions on the class of goods or jurisdiction of the Trademark Record that are related to the TLD).

2.3.1.2 Registry Operator MAY specify requirements that are not related to the scope of mark rights (e.g., if the TLD is restricted by Registry Operator to allow registrations only to members of a particular industry or community, then Registry Operator MAY also impose such registration restriction on Sunrise Registrations.)

2.3.1.3 If Registry Operator is operating a community-based TLD, as evidenced by the Agreement, Registry Operator MUST apply any community-based eligibility requirements during the Sunrise Period.

2.3.1.4 If Registry Operator has submitted any public interest commitments pursuant to Section 2.17 of the Agreement, Registry Operator MUST apply such public interest commitments during the Sunrise Period.

2.3.1.5 Registry Operator MAY require that the information in a Signed Mark Data (“**SMD**”) for a potential Sunrise Registration match the applicable Whois record for the registrant for the registered domain name.

2.3.1.6 Registry Operator MAY impose limited date restrictions of up to one (1) year to prevent gaming of the Registry Operator’s Sunrise Period, relating to the date that a trademark underlying a Trademark Record was registered, court validated or protected by statute or treaty (e.g., a Registry Operator may choose to not accept Sunrise Registrations based on trademarks issued after a certain

date).

- 2.3.2 If any information necessary to satisfy TLD Criteria is not part of the SMD, Registry Operator MUST cooperate with Sunrise-Eligible Rights Holders to allow Sunrise-Eligible Rights Holders to provide information necessary to satisfy the TLD Criteria.
- 2.3.3 Registry Operator MUST NOT impose special “Sunrise Period-only” restrictions that apply only to Sunrise Registrations where there are no corresponding registration restrictions in Limited Registration Periods or General Registration, except in the case of Section 2.3.1.6 hereof.
- 2.3.4 Registry Operator MUST provide a mechanism to resolve disputes regarding its registration of Sunrise Registrations. Each Registry Operator MUST develop a Sunrise Dispute Resolution Policy (“**SDRP**”), which will allow challenges to Sunrise Registrations, including on the grounds that the domain name that was registered does not match the Trademark Record on which the Eligible Rights Holder based its Sunrise Registration (pursuant to the matching rules established by the Trademark Clearinghouse). Registry Operator MUST provide prompt notice of the outcome of an SDRP proceeding to the affected parties.

2.4 Allocation Mechanisms.

- 2.4.1 Registry Operator MUST give equal treatment to all requests for Sunrise Registrations for which a Sunrise-Eligible Rights Holder has a valid SMD and meets the Registry Operator’s TLD Criteria for registration in the TLD during a Sunrise Period.
- 2.4.2 Registry Operator MUST only register domain names during the Sunrise Period if a valid SMD from the Sunrise-Eligible Rights Holder matching the applied for domain name was provided and the validation procedures described in the Functional Specification (as defined below) were performed.
- 2.4.3 If Registry Operator wishes to implement variant or bundling rules, domain names allocated under such variant or bundling rules MUST NOT be allocated prior to the conclusion of the Sunrise Period, but MAY be allocated in a Limited Registration Period, Claims Period or

General Registration, subject to any restrictions contained therein.

2.4.4 Pursuant to Section 2.6 of the Agreement, Registry Operator MAY establish policies concerning the reservation or blocking of additional domain names within the TLD at its discretion. However, if, at any time following the conclusion of the Sunrise Period, such domain names are later released from such reservation or blocking, then those domain names MUST be subject to the Claims Services specified in Section 3 hereof.

2.5 Sunrise Technical Specifications.

2.5.1 Registry Operator MUST implement the Sunrise Services in accordance with the functional specifications referenced in Section 1.1.1 of the Terms of Service (as defined below) (the “**Functional Specifications**”).

2.5.2 In the Registry-Registrar Agreement applicable to the TLD, Registry Operator MUST require registrars to comply with the Functional Specifications.

2.5.3 The SMD-validation validity period referenced in the Functional Specifications will be forty-five (45) calendar days.

3 **Claims Period.** The “**Claims Services**” provide both (i) notices to potential domain name registrants that a domain name they are seeking to register in a TLD matches a Trademark Record of a Trademark Holder that has been verified by the Trademark Clearinghouse (a “**Claims Notice**”) and (ii) notices to Trademark Holders when a domain name matching their Trademark Record that have been verified by the Trademark Clearinghouse is actually registered. The Claims Notice is intended to provide clear notice to the prospective domain name registrant of the scope of the Trademark Holder’s rights. A copy of the Claims Notice form is attached hereto as Exhibit A (the “**Claims Notice Form**”) and an example of a completed Claims Notice Form is attached hereto as Exhibit B. The Claims Notice Form defines the elements of the “**Claims Notice Information**” received from the TMCH Sunrise and Claims Operator’s Claims Notice Information Service (“**CNIS**”) that MUST be shown by the registrar to the potential domain name registrant. All Claims Notices MUST contain all of the Claims Notice Information to be valid. A potential domain name registrant may complete the domain name registration following the receipt of a Claims Notice (a “**Claims Registration**”).

3.1 **Notice of Claims Period and Limited Registration Periods.**

- 3.1.1 Registry Operator **MUST** provide ICANN with the start date and duration of its Claims Period as part of its TLD Startup Information in accordance with Section 2.1.1 hereof. Registry Operator **MUST** also provide ICANN with the start date(s) and duration(s) of any Limited Registration Period, if any, as part of its TLD Startup Information in accordance with Section 2.1.1 hereof.
- 3.1.2 If Registry Operator makes any changes to the TLD Startup Information contained in Sections 2.1.1.4 or 2.1.1.5 hereof prior to the start of the applicable Limited Registration Period or Claims Period, Registry Operator must comply with the thirty (30) calendar day notice requirements in Sections 3.1.1 and 3.1.2 hereof before initiating a rescheduled Limited Registration Period or Claims Period to which such change relates.

3.2 **Duration and Timing of Claims Period and Limited Registration Periods.**

- 3.2.1 Registry Operator **MUST** provide the Claims Services for at least the first ninety (90) calendar days of General Registration (the “**Claims Period**”). The Sunrise Period and the Claims Period **MUST** be two distinct phases. The Sunrise Period and the Claims Period **MAY NOT** overlap.
- 3.2.2 Registry Operator **MAY** provide Claims Services for a period in excess of ninety (90) calendar days, so long as the duration of the Claims Period is detailed in its TLD Startup Information.
- 3.2.3 Following commencement of the Claims Period, including any extensions thereto, Registry Operator **MAY NOT** shorten the duration of the Claims Period, but it **MAY** extend the duration of the Claims Period by providing updated TLD Startup Information to ICANN and the TMCH Sunrise and Claims Operator at least three (3) calendar days prior to the effective date of the extension.
- 3.2.4 Registry Operator **MAY** establish additional periods during which it will accept limited domain name registrations following the Sunrise Period but prior to General Registration to domain name registrants who are not Sunrise-Eligible Rights Holders (a “**Limited Registration Period**”); provided, however, that all aspects of the Claims Services

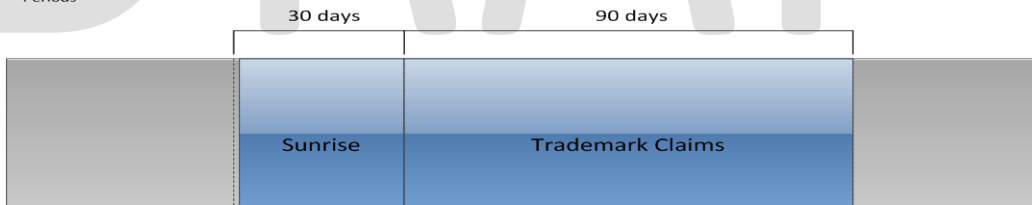
MUST be implemented during any such Limited Registration Period in the same manner as the Claims Period. The Sunrise Period, any Limited Registration Period(s) and the Claims Period MUST be at least three distinct phases. The Sunrise Period, Limited Registration Period and the Claims Period MAY NOT overlap.

3.2.5 If a Registry Operator decides to offer a Limited Registration Period, the Registry Operator MUST provide the Claims Services during the entire Limited Registration Period in addition to the standard Claims Period. For the avoidance of doubt, the first ninety (90) calendar days of General Registration must employ the Claims Services, regardless of any other registration period prior to the start of General Registration.

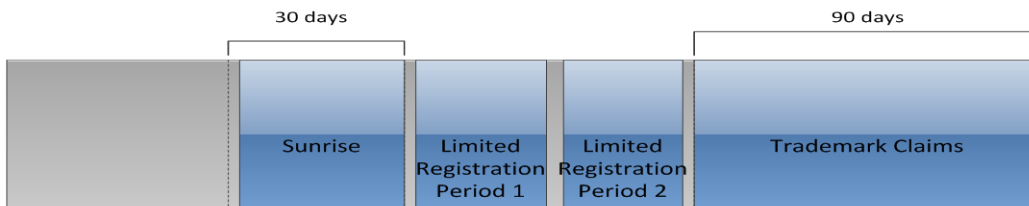
3.2.6 Following commencement of a Limited Registration Period, including any extensions thereto, Registry Operator MAY shorten or extend the duration of the Limited Registration Period by providing updated TLD Startup Information to ICANN and the TMCH Sunrise and Claims Operator at least three (3) calendar days prior to the effective date of the extension.

3.2.7 The following diagram illustrates the timing of the Sunrise Period, Limited Registration Periods and the Claims Period.

Without Limited Registration Periods



With Limited Registration Periods



3.3 Claims Notices.

3.3.1 In the Registry-Registrar Agreement applicable to the TLD, Registry Operator **MUST** require registrars to comply with the following obligations in relation to the Claims Services:

3.3.1.1 Registrars **MUST** only query the CNIS for domain names that have been applied for by a potential domain name registrant, and may not query the CNIS for any other purpose.

3.3.1.2 Registrars **MUST**, after acquiring Claims Notice Information from the CNIS, clearly and conspicuously display the Claims Notice, containing the Claims Notice Information, to the potential domain name registrant and inquire as to whether the potential domain name registrant wishes to continue with the registration. The Claims Notice **MUST** be provided by the registrar at the time of potential registration in real time, without cost to the prospective domain name registrant, and must be in the form specified in the Claims Notice Form. The Claims Notice must require an affirmative confirmation by the potential domain name registrant to continue with the registration (i.e. acceptance box should not be pre-checked). The Claims Notice **MUST** be provided by the registrar to the potential domain name registrant in English and **SHOULD** be provided by the registrar to the potential domain name registration in the language of the registration agreement.

3.3.1.3 Registrars **MUST NOT** provide a Claims Notice ID (as defined in the Functional Specifications) to Registry Operator without having satisfied the obligations contained in Section 3.3.1.2 hereof.

3.3.2 Registry Operator **MUST NOT** query the CNIS.

3.4 Claims Services Technical Specifications.

3.4.1 Registry Operator **MUST** implement the Claims Services in accordance with the Functional Specifications.

3.4.2 In the Registry-Registrar Agreement applicable to the TLD, Registry Operator MUST require registrars to comply with the Functional Specifications in implementing the Claims Services.

3.4.3 The TCN-Ack validity period referenced in the Functional Specifications is forty-five (45) calendar days.

4 **General Requirements.**

4.1 **Matching.**

4.1.1 For purposes of the Sunrise Services and Claims Services, matching domain name labels will be generated for each Trademark Record in accordance with the Trademark Clearinghouse's domain name matching rules and made available to Registry Operator on the Domain Name Label List mentioned in the Functional Specifications.

4.1.2 Registry Operator MAY implement additional matching rules at the TLD level, provided that the Claims Services are still implemented for any Claims Registration satisfying such additional matching rules.

4.2 **Support Services.**

4.2.1 Registry Operator MUST utilize the various non-interactive resources provided by ICANN and the TMCH Sunrise and Claims Operator, such as FAQs, webinars and user guides, prior to initiating any in-person request for support.

4.2.2 Registry Operator MAY appoint up to five (5) individuals that will be able to interact with the TMCH Sunrise and Claims Operator for support ("**Authorized Users**").

4.2.3 In the Registry-Registrar Agreement applicable to the TLD, Registry Operator MUST prevent registrars from appointing more than five (5) Authorized Users.

4.3 **Terms of Service.**

4.3.1 Registry Operator MUST read and accept the terms of service developed by ICANN and the TMCH Sunrise and Claims Operator for access to the Services (the "**Terms of Service**") prior to utilizing any of the Services, including Testing. The Terms of Service are available

at <LINK>.

- 4.3.2 Registry Operator MUST require its Registrars to read and accept the Terms of Service prior to utilizing any of the Services, including Testing.

4.4 **Payment.**

- 4.4.1 Registry Operator MUST pay ICANN a one-time setup fee of five thousand dollars (\$5,000 USD) for access to and use of the Services, which shall be accrued upon the signing of the Agreement. ICANN will then pass this payment through to the TMCH Sunrise and Claims Operator.

- 4.4.2 Registry Operator MUST pay ICANN thirty cents (\$0.30 USD) per Sunrise Registration and Claims Registration (including any Claims Registrations during a Limited Registration Period), which shall be accrued upon the applicable registration date. ICANN will then pass this payment through to the TMCH Sunrise and Claims Operator.

- 4.4.3 ICANN will invoice the Registry Operator quarterly for the fees described in Sections 4.4.1 and 4.4.2 hereof (the “**TMCH Fees**”). All TMCH Fees are exclusive of applicable taxes. Payment of the applicable TMCH Fees related thereto will be due from the Registry Operator upon receipt of the invoice from ICANN in USD by wire transfer of immediately available funds or other electronic means acceptable to ICANN, in each case, to an account specified by ICANN, within the time specified in Section 6.1 of the Agreement (the “**Payable Date**”).

- 4.4.4 If any payments or portions thereof are not received by ICANN within thirty (30) calendar days after the Payable Date, the Registry Operator MUST pay ICANN a late fee (the “**Late Fee**”) for each day between and including the thirtieth day after the Payable Date and the date ICANN receives such late payment in full. The amount of the Late Fee will be invoiced to the Registry Operator. The Late Fee will be based on a rate equal to the lesser of (a) one and a half percent (1.5%) of the amount of such payment that is late per thirty days or portion thereof, or (b) the maximum amount permissible by applicable law.

4.5 **Changes.**

- 4.5.1 These TMCH Requirements may be revised by ICANN to reflect material changes following a thirty (30) calendar day public comment period. ICANN will notify Registry Operator of any such changes.
- 4.5.2 These TMCH Requirements may be revised by ICANN to reflect administrative changes. ICANN will notify Registry Operator of any such changes.
- 4.5.3 Registry Operator MUST comply with any changes in accordance with this Section 4.5 within thirty (30) calendar days of such changes becoming effective.
- 4.5.4 In the Registry-Registrar Agreement applicable to the TLD, Registry Operator MUST require its registrars to comply with any changes in accordance with this Section 4.5 within thirty (30) calendar days of such changes becoming effective.

4.6 Audits.

- 4.6.1 Registry Operator MUST cooperate with compliance audits in relation to its compliance with these TMCH Requirements, which audits shall be conducted in accordance with Section 2.11 of the Agreement.
- 4.6.2 In the Registry-Registrar Agreement applicable to the TLD, Registry Operator MUST require registrars to cooperate with compliance audits in relation to their compliance with these TMCH Requirements, which audits shall be conducted in accordance with the terms and conditions of the Registrar Accreditation Agreement.
- 4.6.3 In the Registry-Registrar Agreement applicable to the TLD, Registry Operator MUST require registrars to collect and store a domain name registrant's IP address for at least one hundred eighty (180) calendar days following the date of the Sunrise Registration or Claims Registration.

Exhibit A

TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below. Your rights to register this domain name may or may not be protected as noncommercial use or “fair use” by the laws of your country. [in bold italics or all caps]

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration. If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below. The following [number] marks are listed in the Trademark Clearinghouse:

1. Mark: <tmNotice:markName>
Jurisdiction: <tmNotice:jurDesc>
Goods and Services: <tmNotice:goodsAndServices>
International Class of Goods and Services or Equivalent if applicable:
<tmNotice:classDesc>
Trademark Registrant: <tmNotice:holder>
Trademark Registrant Contact: <tmNotice:contact>

2 (<tmNotice:claim>). Mark: Jurisdiction: Goods and Services: International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

X (<tmNotice:claim>). Mark: Jurisdiction: Goods and Services: International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact

Exhibit B

TRADEMARK NOTICE

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below. Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country.

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration. If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below. The following marks are listed in the Trademark Clearinghouse:

1. Mark: Example One
Jurisdiction: UNITED STATES OF AMERICA
Goods and Services:
Bardus populorum circumdabit se cum captiosus populum.
Smert populorum circumdabit se cum captiosus populum qui eis differimus.
International Class of Goods and Services or Equivalent if applicable:
35 - Advertising; business management; business administration.
36 - Insurance; financial affairs; monetary affairs; real estate.
Trademark Registrant:
Organization: Example Inc.
Address: 123 Example Dr.
City: Reston
State: VA
Postal Code: 20190
Country: US
Trademark Registrant Contact:
Name: Joe Doe
Organization: Example Inc
Address: 123 Example Dr Suite 100

City: Reston
State: VA
Postal Code: 20190
Country: US
Phone: +1.7035555555x4321
Email: jdoe@example.com

2. Mark: Example-One

Jurisdiction: BRAZIL

Goods and Services:

Bardus populorum circumdabit se cum captiosus populum.
Smert populorum circumdabit se cum captiosus populum qui eis
differimus.

Trademark Registrant:

Organization: Example S.A. de C.V.

Address: Calle conocida #343

City: Conocida

State: SP

Postal Code: 82140

Country: BR

DRAFT

Trademark Clearinghouse

Terms of Service Agreement for Registries and Registrars

These Trademark Clearinghouse Terms of Service Agreement for Registries and Registrars (this “**Agreement**”) is entered into by and between the Internet Corporation for Assigned Names and Numbers, a California public-benefit non-profit corporation (“**ICANN**”), and you.

This Agreement sets forth the general terms and conditions of your use of the “**Trademark Clearinghouse**” and the services accessed through the Trademark Clearinghouse (individually and collectively, the “**Services**”). Your electronic acceptance of this Agreement signifies that you have read, understand, acknowledge and agree to be bound by this Agreement, and acknowledge that ICANN has selected International Business Machines of Belgium BVBA, a company under laws of Belgium (“**IBM**”), as its subcontractor to provide the Services to Registries and Registrars.

The terms “we”, “us” or “our” shall refer to ICANN. The terms “you”, “your”, or “User” shall refer to any individual or entity who accepts this Agreement, has access to your account or uses your Account (as defined below).

If you are entering into this Agreement on behalf of a corporate entity, you represent and warrant that you have the legal authority to bind such corporate entity to the terms and conditions contained in this Agreement, in which case the terms “you”, “your”, or “User” shall refer to such corporate entity.

5 **Services.**

5.1 **Related Documents.**

5.1.1 As a User, you must comply with all requirements attributable to you as either a registry or registrar in the Trademark Clearinghouse’s functional specification, a copy of which is available at <LINK> (the “**Functional Specifications**”). Until the Functional Specifications become a Request for Comment (“**RFC**”), Registry Operator must implement the most recent draft version of the Functional Specifications available at the time of signing this Agreement, the most recent version of which is available at <https://tools.ietf.org/html/draft-lozano-tmch-func-spec>. After the date the Functional Specifications become a RFC: (i) If you have not already signed this Agreement, you will comply with the RFC version of the Functional Specifications; or (ii) If you have already signed this Agreement, you will have one hundred eighty (180) calendar days from the date you are notified by ICANN of the RFC to comply with the RFC version of the Functional Specifications.

5.1.2 If you are a registry, you must comply with the Trademark Clearinghouse Rights Protection Mechanism Requirements, a copy of which is available at <LINK> (the “**TMCH Requirements**”).

5.2 **Access.**

5.2.1 Subject to the terms of this Agreement, we will provide you access to and use of the Trademark Clearinghouse and the Services.

5.2.2 You will receive your login credentials for the Trademark Clearinghouse upon your acceptance of this Agreement.

5.3 **Application Programming Interface.**

An application programming interface (“API”) may be available to you to access and use the Services. We may change or delete the API at any time. You understand that once an API is changed or deleted it will no longer work as previously operated and you are responsible for updating your use of the API.

5.4 **Content.** The Trademark Clearinghouse contains content regarding domain name registrations provided by registries and registrars in accordance with the Functional Specification and the TMCH Requirements (“**Registration Content**”). The Trademark Clearinghouse also contains content regarding trademarks submitted by trademark holders and their agents for the purpose of receiving the benefits of Sunrise Periods and Claims Periods (as such terms are defined in the TMCH Requirements) (such content, the “**Trademark Content**”, and collectively with the Registration Content as well as your and other user’s account information, the “**Clearinghouse Content**”).

5.5 **License to the Registration Content.** By submitting Registration Content, you grant us and our subcontractors a fully paid, nonexclusive, royalty-free, perpetual, irrevocable, and fully sublicensable license and approval to host, cache, copy, and display Registration Content for the purpose of and in conjunction with effectuating the purposes of the Trademark Clearinghouse. By submitting Registration Content, you also represent and warrant that: (i) the Registration Content is accurate; (ii) you own or have permission to use and submit the information or content that you submit; and (iii) to your knowledge, the use of the Registration Content will not violate the rights of any third party. You represent that you have and will keep in effect during your use of the Services, all licenses and approvals necessary to grant us and our subcontractors these rights and that they will be provided at no charge to us upon request. You represent that by adding, creating, installing, uploading, or transferring Registration Content for use in conjunction with the Services, you are not violating any applicable license agreements or applicable laws. You understand and agree that we may retain (but not distribute, display, or perform) server copies of your Registration Content.

5.6 **License for the Services.** We grant you a limited, personal, non-commercial, non-exclusive, non-sublicensable, non-assignable license to access and use the Services. You will not access or use the Services or Clearinghouse Content for purposes other than those stated in this Agreement, the Functional Specifications or the TMCH Requirements.

5.7 **No Other Licenses.** Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including intellectual property licenses or rights) are granted either directly, by implication, by estoppel or otherwise.

6 **Access to the Trademark Clearinghouse.**

6.1 **Account.** In order to access the Trademark Clearinghouse or use the Services, you must create an account (your “**Account**”). You represent and warrant to us that all information you submit when you create your Account is accurate, current and complete, and that you will keep your Account information accurate, current and complete. If we have reason to believe that your Account information is untrue, inaccurate, out-of-date or incomplete, we reserve the right, in our sole discretion, to suspend or terminate your Account. You are solely responsible for the activity that occurs on your Account, whether authorized by you or not, and you must keep your Account information secure. You must notify us immediately of any breach of security or unauthorized use of your Account. We will not be liable for any loss you incur due to any unauthorized use of your Account.

6.2 **International Transfers.** If you are visiting the Trademark Clearinghouse from a country other than the country in which our servers are located, your communications with us may result in the transfer of

information (including your Account information) across international boundaries. By visiting the Trademark Clearinghouse and communicating electronically with us, you consent to such transfers.

6.3 Availability and Outages. Subject to the terms and conditions of this Agreement and our other policies and procedures, we shall use commercially reasonable efforts to attempt to provide the Trademark Clearinghouse and the Services on a twenty-four (24) hours a day, seven (7) days a week basis throughout the term of this Agreement. You acknowledge and agree that from time to time the Trademark Clearinghouse may be inaccessible or inoperable for any reason including, but not limited to,: (i) equipment malfunctions; (ii) periodic maintenance, repairs or replacements that we undertake from time to time; or (iii) causes beyond our reasonable control or that are not reasonably foreseeable including, but not limited to interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures. You acknowledge and agree that we have no control over the availability of the Trademark Clearinghouse or the Service on a continuous or uninterrupted basis, and that we or our subcontractors, including IBM, assume no liability to you or any other party with regard thereto.

7 Covenants of User.

7.1 Prohibited Uses. You agree that you will not use the Trademark Clearinghouse or the Services in a manner (as determined by us in our sole discretion) that:

7.1.1 Is illegal, or promotes or encourages illegal activity;

7.1.2 Infringes on the intellectual property rights of any other person or entity;

7.1.3 Interferes with the operation of the Trademark Clearinghouse or the Services;

7.1.4 Modifies or alters any part of the Clearinghouse Content or the Services;

7.1.5 Results in the distribution of Clearinghouse Content in a manner not authorized or contemplated by the Functional Specifications or TMCH Requirements; or

7.1.6 Contains or installs any viruses, worms, bugs, Trojan horses or other code, files or programs designed to, or capable of, disrupting, damaging or limiting the functionality of the Trademark Clearinghouse, the Clearinghouse Content or the Services or affecting any other person or entity.

7.2 No Collecting or Harvesting. You agree that you will not collect or harvest (or permit anyone else to collect or harvest) any Clearinghouse Content or any non-public or personally identifiable information contained in the Trademark Clearinghouse about another any other person or entity, except to the extent required to perform your obligations under the Functional Specifications and TMCH Requirements.

7.3 No Copying or Distributing. You agree that you (i) will not copy or distribute in any medium any part of the Clearinghouse Content or the Services and (ii) agree to not use, copy, modify, make derivative works based upon, link to, or distribute any portion of the Clearinghouse Content or the Services, except to the extent required to perform your obligations under the Functional Specifications and TMCH Requirements. Further, you will not reverse assemble, reverse compile, or otherwise translate any portion of the Clearinghouse Content or the Services except as specifically permitted by law without the possibility of contractual waiver.

7.4 No Reproducing. You agree that you will not reproduce, republish, or publically display, perform or distribute, or otherwise use the Clearinghouse Content for any purpose, except to the extent required to

perform your obligations under the Functional Specifications and TMCH Requirements, or prepare any modification or prepare derivative works based on the contents of the Clearinghouse Content or the Services.

7.5 **No Misrepresentation.** You agree that you will not misrepresent the source of any Registration Content. You will not use a false email address, impersonate any person or entity, or otherwise mislead us as to the origin of any information provided by you to us.

7.6 **Security Compliance.** You agree that you will not circumvent, disable or otherwise interfere with the security-related features of the Trademark Clearinghouse or the Services (including, without limitation, those features that prevent or restrict use or copying of any Clearinghouse Content) or circumvent limitations on the use of the Trademark Clearinghouse, Clearinghouse Content or the Services.

8 **Term and Termination.**

8.1 **Term.** The term of this Agreement is effective upon the date of your electronic acceptance and continues until terminated.

8.2 **Termination.**

8.2.1 If you are a registry, you may terminate this Agreement at any time upon seven (7) calendar days' notice to ICANN; provided, however, you may not terminate this Agreement prior to the conclusion of your Claims Period, as required by the TMCH Requirements.

8.2.2 If you are a registrar, you may terminate this Agreement at any time upon seven (7) calendar days' notice to ICANN.

8.3 **Suspension.** We expressly reserve the right to deny, cancel, terminate, suspend, lock, or modify access to (or control of) any Account or Services for any reason (as determined by us in our sole discretion), including but not limited to the following: (i) to correct mistakes made by us in offering or delivering any Services; (ii) to protect the integrity and stability of the Trademark Clearinghouse; (iii) to assist with our fraud and abuse detection and prevention efforts; (iv) to comply with court orders against you or applicable local, state, national and international laws, rules and regulations; (v) to comply with requests of law enforcement, including subpoena requests; (vi) to comply with any dispute resolution process; (vii) to defend any legal action or threatened legal action without consideration for whether such legal action or threatened legal action is eventually determined to be with or without merit; or (viii) to avoid any civil or criminal liability on the part of ICANN, our respective officers, directors, employees and agents, as well as our respective affiliates and subcontractors.

9 **Disclaimer.**

9.1 **WE WARRANT THAT WE WILL PROVIDE THE TRADEMARK CLEARINGHOUSE AND THE SERVICES WITH REASONABLE CARE AND SKILL.**

9.2 **WE DO NOT WARRANT UNINTERRUPTED, SECURE OR ERROR-FREE OPERATION OF THE TRADEMARK CLEARINGHOUSE OR THE SERVICES, OR THAT WE WILL BE ABLE TO PREVENT THIRD PARTY DISRUPTIONS OF THE SERVICES OR THAT WE WILL CORRECT ALL DEFECTS. SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, WE MAKE NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF**

SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF NON-INFRINGEMENT.

9.3 **YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY US, OUR OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS OR AGENTS (INCLUDING OUR CUSTOMER SUPPORT REPRESENTATIVES) WILL CREATE A WARRANTY OF ANY KIND WITH RESPECT TO THE TRADEMARK CLEARINGHOUSE OR THE SERVICES, AND YOU SHOULD NOT RELY ON ANY SUCH INFORMATION OR ADVICE.**

9.4 **THE FOREGOING DISCLAIMERS CONTAINED IN THIS SECTION 5 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW, AND SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.**

10 Limitation of Liability.

10.1 In no event shall we, our officers, directors, employees, subcontractors or agents be liable to you or any other person or entity for any indirect, incidental, special, punitive or consequential damages, including but not limited to loss of business opportunity, business interruption, loss of profits or costs of procurement of substitute goods or services, including any damages that may result from (i) the accuracy, completeness or content of the Trademark Clearinghouse; (ii) the Services; (iii) third-party conduct of any nature whatsoever; (iv) any unauthorized access to or use of the Trademark Clearinghouse or the Clearinghouse Content; (v) any interruption or cessation of services to or from the Trademark Clearinghouse; (vi) any viruses, worms, bugs, Trojan horses or similar code, files or programs which may be transmitted to or from the Trademark Clearinghouse; or (vii) any loss or damage of any kind incurred as a result of your use of the Trademark Clearinghouse or the Services, whether based on warranty, contract, tort or any other legal or equitable theory, and whether or not we are advised of the possibility of such damages. In no event shall you, your officers, directors, employees or agents be liable to us or any other person or entity for any indirect, incidental, special, punitive or consequential damages.

10.2 You specifically acknowledge and agree that any cause of action arising out of or related to the Trademark Clearinghouse or the Services must be commenced within one (1) year after the cause of action accrues, otherwise such cause of action shall be permanently barred.

10.3 You specifically acknowledge and agree that in no event shall our total aggregate liability to you exceed the total amount paid by you for access to the Trademark Clearinghouse and for the Services.

10.4 The foregoing limitation of liability contained in this Section 6 shall apply to the fullest extent permitted by law, and shall survive any termination or expiration of this Agreement.

11 **Indemnification.** You agree to protect, defend, indemnify and hold harmless ICANN and our respective officers, directors, employees, subcontractors and agents, from and against any and all claims, demands, costs, expenses, losses, liabilities and damages of every kind and nature (including, without limitation, reasonable attorneys' fees) imposed upon or incurred by ICANN or our subcontractors, directly or indirectly, arising from (i) your use of and access to the Trademark Clearinghouse or the Services; (ii) your violation of any provision of this Agreement or the policies or agreements which are incorporated herein; and/or (iii) your violation of any third-party right, including without limitation any intellectual property or other proprietary right. The indemnification obligations under this section shall survive any termination or expiration of this Agreement or your use of the Trademark Clearinghouse or the Services.

12 General

12.1 **Assignment.** You may not assign this Agreement, in whole or in part, without the prior written consent of ICANN. Any attempt to assign without such consent is void. We may assign our respective rights without obtaining your consent. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

12.2 **No Third Party Beneficiaries.** Except as expressly set forth in this Agreement, nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

12.3 **Compliance with Applicable Law.** We will comply with laws applicable to us generally with respect to the Trademark Clearinghouse and the Services. Your use of the Trademark Clearinghouse and the Services, including any Registration Content you submit, will comply with this Agreement and all applicable local, state, national and international laws, rules and regulations. Each party will comply with applicable export and import laws and regulations.

12.4 **Interpretation.** The titles and headings of this Agreement are for convenience and ease of reference only and shall not be utilized in any way to construe or interpret the agreement of the parties as otherwise set forth herein. Each covenant and agreement in this Agreement shall be construed for all purposes to be a separate and independent covenant or agreement. If a court of competent jurisdiction holds any provision (or portion of a provision) of this Agreement to be illegal, invalid, or otherwise unenforceable, the remaining provisions (or portions of provisions) of this Agreement shall not be affected thereby and shall be found to be valid and enforceable to the fullest extent permitted by law.

12.5 **Electronic Notice.** To the extent permissible under applicable law, the parties consent to the use of electronic means to send and receive communications in connection with this Agreement, and such communications are acceptable as a signed writing.

12.6 **Changes.** This Agreement may be revised to reflect material changes following a thirty (30) calendar day public comment period. This Agreement may be revised to reflect administrative changes by ICANN without stakeholder discussion or Board resolution. Your use of the Trademark Clearinghouse or the Services after such changes or modifications have been made shall constitute your acceptance of this Agreement as last revised. If you do not agree to be bound by this Agreement as last revised, do not use (or continue to use) the Trademark Clearinghouse or the Services.

12.7 **Survival.** Any terms of this Agreement that by their nature extend beyond the termination of Services remain in effect until fulfilled, and apply to both parties' respective successors and assigns.