

## **.Brand TLD Application Process**

A Registry Operator that is able to demonstrate to ICANN that its TLD registry operations satisfy certain criteria may qualify its TLD for treatment as a .Brand TLD. If ICANN determines that the TLD qualifies as a .Brand TLD, the Registry Agreement for the TLD will include Specification 13, the current form of which is attached as **Attachment 1** to this .Brand TLD Application Process.

One provision of Specification 13 gives a .BRAND registry operator the ability to designate up to three ICANN accredited registrars to serve as the exclusive registrars for their TLD. When the NGPC approved Specification 13 on 26 March 2014, implementation of this provision was delayed for 45 days in respect of the GNSO policy Recommendation 19 on the Introduction of New Generic Top-Level Domains. After considering the matter, the GNSO Council informed ICANN in correspondence dated [9 May 2014](#) that although it found that the proposed provision was inconsistent with Recommendation 19, given the unique and specific circumstances, the GNSO Council accepted the variation from the original policy, did not object to the adoption of Specification 13 in its entirety, and so indicated in the form of a motion vote on and passed at the GNSO Council meeting of 8 May 2014. Thus, the original form of Specification 13 was not finalized until May 9, 2014. The current form of Specification 13 was finalized in parallel with the 2017 Registry Agreement Global Amendment, effective 31 July 2017.

ICANN adopted Specification 13 following discussions with members of the ICANN community (including the Brand Registry Group) who stated that brand owners required unique Registry Agreement provisions in order to, among other things, protect their brands, promote and maintain trust in their registries and foster innovation. In addition, ICANN sought community-wide input through a public comment period, which demonstrated significant community support for the designation of certain TLDs as .Brand TLDs and the adoption of Specification 13.

Specification 13 in the form attached hereto as **Attachment 1** affords TLDs designated by ICANN as .Brand TLDs with the benefit of an exemption from the Code of Conduct, the deferral of Sunrise requirements until such time as the TLD, if ever, no longer qualifies as a .Brand TLD, and a limited 2-year “cooling off” period prior to re-delegation of the TLD to a successor registry operator. If the TLD fails to continue to be qualified as a .Brand TLD by ICANN in the future, Specification 13 (other than certain Sunrise-related requirements) will no longer apply, and Registry Operator must thereafter comply with the terms of the Registry Agreement, without the benefits of Specification 13, including the implementation of the Sunrise requirements.

A TLD is not a .Brand TLD unless ICANN has qualified the TLD as a .Brand TLD in writing and ICANN has executed a Registry Agreement with Registry Operator that incorporates Specification 13 by amendment as part of the Registry Agreement. This .Brand TLD Application Process discusses the procedures for applying for this qualification.

### **Application Process**

An application for a TLD to be qualified as a .Brand TLD may be submitted to ICANN at any time after ICANN invites Registry Operator to begin the contracting process. While ICANN will consider requests and applications for .Brand TLD qualification following the execution of a Registry Agreement, Registry Operators are encouraged to apply for the .Brand TLD qualification prior to executing a Registry Agreement for the TLD. Statements made by Registry Operator in its TLD application pursuant to the New gTLD Applicant Guidebook that Registry Operator plans to operate the TLD as a .Brand TLD (or similar statements) will not be considered a formal application for a TLD to be qualified as a .Brand TLD.

The .Brand TLD application must be submitted in writing in the form specified by ICANN from time to time (a form of which is included as **Attachment 2**). The application must be accompanied by:

- (1) an accurate and complete copy of the applicable trademark registration that forms the basis of the request for .Brand TLD qualification;
- (2) a copy of Registry Operator's complete registration policies for the TLD.

ICANN encourages Registry Operator to also submit detailed information supporting its application, in particular evidence supporting the TLD's satisfaction of the .Brand TLD criteria set forth below. In addition, Registry Operator must explicitly commit to maintain the criteria specified to remain qualified as a .Brand TLD and to immediately notify ICANN of any changes in circumstances that could alter the statements made in, and the supporting materials provided with, the application, that may lead to the revocation of the TLD's qualification as a .Brand TLD, subject to the provisions of Specification 13. ICANN reserves the right to review the TLD zone files and registration data for the TLD to verify compliance.

If the application is submitted to ICANN after the delegation of the TLD to nameservers designated by Registry Operator into the root-zone, Registry Operator must warrant in its application that all domain names that are registered in the TLD are registered to and maintained in compliance with the requirements of the .Brand TLD definition. ICANN reserves the right to review the TLD zone files and registration data for the TLD to verify such statements.

### **Requests for Extension**

The Applicant Guidebook provides:

*Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.*

The nine-month period for execution of the registry agreement generally commences on receipt of the initial Contracting Information Request (“CIR”) invitation. For applicants who received CIR invitations prior to January 29, 2014, the nine-month period started January 29, 2014 and ends October 29, 2014.

Some applicants that wish to apply for qualification as a .BRAND pursuant to Specification 13 have expressed the view that the delay until May 9, 2014 in finalizing Specification 13 should be taken into account in considering the period of time within which an applicant must execute the registry agreement, because other applicants have known since January 29, 2014 the form of their registry agreements, but applicants for .BRAND TLD status did not see the form of their registry agreement finalized until May 9, 2014. In addition, some applicants that wish to apply for qualification as a .BRAND pursuant to Specification 13 have expressed concerns that at the time an applicant submits its CIR response, it does not know whether it will be determined to qualify for .BRAND status, and therefore the applicant does not know the form and content of the registry agreement it is expected to sign and cannot assess what contract modifications it may seek to negotiate. These applicants have requested that they not be required to attach requested changes to the registry agreement in .doc, .docx, or .pdf format (or alternatively indicate that they would like ICANN to consider a previously executed a registry agreement for another string as the baseline for the terms and conditions of the registry agreement) until they have been informed whether they have been determined to qualify for .BRAND status.

To address these concerns, ICANN has modified the CIR form and provided guidance on criteria by which ICANN will assess whether an applicant that applies for qualification as a .BRAND TLD may demonstrate that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

ICANN has modified its CIR form to provide that an applicant applying for qualification under Specification 13 as a .BRAND TLD must indicate if it intends to negotiate the terms and conditions of the base Registry Agreement by checking the appropriate checkbox, but is making optional for those applicants the requirement to attach the requested changes in .doc, .docx, or .pdf format (or alternatively indicate that it would like ICANN to consider a previously executed a registry agreement for another string as the baseline for the terms and conditions of the registry agreement) at the time of submission of the CIR Form. An applicant will be deemed to have demonstrated to ICANN’s reasonable satisfaction that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement if the applicant meets all of the following requirements (the “Specified Requirements”):

- a. The applicant submits a complete CIR form (modified as described above) to ICANN on or before September 1, 2014.
- b. The applicant submits a Specification 13 application to qualify as a .BRAND TLD on or before September 1, 2014.

- c. The TLD string is identical to the textual elements protectable under applicable law, of a registered trademark valid under applicable law, which registered trademark:
  - i. is recorded with, and issued a signed data mark file by, the Trademark Clearinghouse;
  - ii. was issued to applicant or its Affiliate prior to the filing of its TLD registry application with ICANN; and
  - iii. does not begin with a period or a dot.
- d. The applicant provides ICANN with its Specification 13 application an accurate and complete copy of such trademark registration.

An applicant meeting the Specified Requirements that requests an extension of the time period for execution of the registry agreement will be deemed to have demonstrated to ICANN's reasonable satisfaction that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement and will therefore be granted an extension for nine (9) months, from October 29, 2014 to July 29, 2015, to execute the registry agreement.

The Specified Requirements only relate to whether the applicant will be deemed to have demonstrated to ICANN's reasonable satisfaction that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement and do not in any way limit or modify the criteria for qualification as a .BRAND TLD as set forth in Specification 13.

The Specified Requirements are intended in part to establish baseline minimum criteria demonstrating that an applicant has a good faith basis for asserting that it is entitled to qualify as a .BRAND TLD, and to prevent applicants from submitting an application for qualification under as a .BRAND TLD simply to seek an extension of time for executing the registry agreement, where it is clear that the applicant does not have a good faith basis for asserting that it qualifies as a .BRAND TLD.

If an applicant does not meet the Specified Requirements, it may still demonstrate to ICANN's reasonable satisfaction that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement. ICANN may take into account the applicant's failure to meet the Specified Requirements in considering whether the applicant is working diligently and in good faith.

An applicant that is granted an extension of nine months from October 29, 2014 must provide its requested changes to the Base Registry Agreement to ICANN in .doc, .docx, or .pdf format (or alternatively (a) indicate that it would like ICANN to consider a previously executed registry agreement for another string as the baseline for the terms and conditions of the registry agreement or (b) withdraw its request to negotiate the terms of the Base

Registry Agreement) not later than ninety (90) days after the approval or rejection of that applicant's Specification 13 application or February 1, 2015, whichever is later. Failure to do so may result, at ICANN's discretion, in loss of potential eligibility to execute a registry agreement with negotiated changes, but will not impact potential eligibility to execute the Base Registry Agreement for the TLD (with Specification 13 if approved, without Specification 13 if not approved).

ICANN is not modifying the Applicant Guidebook but is simply clarifying certain criteria that ICANN will apply in making the determination, called for in the Applicant Guidebook, whether an applicant has demonstrated to ICANN's reasonable satisfaction that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement. In evaluating requests from other applicants for an extension of the time period for execution of the registry agreement, ICANN will consider all relevant facts and circumstances in assessing whether an applicant has demonstrated to ICANN's reasonable satisfaction that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement. Most applicants have known the form of the registry agreement they are expected to sign since January 29, 2014, and ICANN believes that in most cases, the nine (9) month period from January 29, 2014 to October 29, 2014 provides adequate time for execution of the registry agreement.

### **Consideration of the Application**

ICANN will review each application received for completeness. If there is not enough information provided for ICANN to reach a decision, or if ICANN has questions about the application or supporting material provided, ICANN may request additional information and ask Registry Operator to respond to ICANN's questions.

ICANN will post all applications received for public comment for a period of 30 calendar days. The posting of an application for public comment does not mean and should not be construed as a determination by ICANN that the TLD meets the criteria to be qualified as a .Brand TLD. Even if no public comments are received objecting to the designation of a TLD as a .Brand TLD, ICANN will review the application and may determine that the TLD does not qualify as a .Brand TLD.

ICANN's consideration of an application may take place in parallel to the review of the CIR and production of the Registry Agreement. ICANN anticipates that many .Brand TLD applicants will desire a resolution of the application prior to executing the Registry Agreement. As such, ICANN will notify the applicant of the determination on Specification 13, and at that time allow the applicant to request modifications to the base registry agreement if necessary. If no further modifications to the base registry agreement are requested, ICANN will send both the registry agreement and the Specification 13 amendment to the applicant for review and signature once the registry agreement is available and the applicant meets all eligibility criteria.

ICANN's review of the application and whether a TLD should be qualified as a .Brand TLD will be holistic in nature and may not be limited to whether Registry Operator satisfies the criteria set forth below. As a result, in addition to the application and supporting materials provided by Registry Operator, ICANN may consider additional information collected or received by ICANN when reviewing an application. ICANN's evaluation of an application will be guided by the following criteria (which are based on the definitions set forth in Specification 13):

- (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 recorded with, and issued a signed mark data 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 are registrants of domain names in the TLD and control the DNS records associated with domain names at any level in the TLD;
- (iii) the TLD is not a Generic String TLD (as defined in Specification 11); and
- (iv) Registry Operator has provided ICANN with an accurate and complete copy of such trademark registration.

ICANN reserves the right to modify these criteria at any time and the corresponding definitions in Specification 13 from time to time as circumstances require for any applicant. In addition, ICANN may consider modifying these definitions on a case by case basis in the event an applicant does not meet the technical requirements of the definition, but otherwise demonstrates to ICANN's satisfaction that the TLD should nonetheless be qualified as a .Brand TLD. Any modifications will be reflected in revisions to Specification 13 and may be applicable for future applicants.

## **Responding to the Application**

ICANN will review and respond to .Brand TLD applications on a timely basis. If ICANN has questions or concerns or is otherwise not prepared to approve an application, ICANN may respond with an explanation or request for additional information. Should an application be approved, ICANN will notify Registry Operator and offer it the opportunity to execute an amendment incorporating Specification 13 as part of the Registry Agreement.

ICANN will inform Registry Operator if the application is not approved. Registry Operator may re-apply for .Brand TLD designation after 90 calendar days have elapsed from the time ICANN provided notice of non-approval, but Registry Operator must demonstrate to ICANN's satisfaction that it has remedied the matters that led to the non-approval of the previous application and otherwise satisfy the criteria provided herein. ICANN will post any such re-application for .Brand TLD designation for public comment for a period of 30 calendar days. The posting of such a re-application for public comment does not mean and should not be construed as a determination by ICANN that the TLD meets the criteria to be qualified as a .Brand TLD. Even if no public comments are received objecting to the designation of a TLD as a .Brand TLD, ICANN will review the re-application and may determine that the TLD does not qualify as a .Brand TLD.

## **Results of Approval**

Approval of an application means that, subject to execution by ICANN and the Registry Operator of an amendment, the Registry Agreement for the .Brand TLD will be supplemented by Specification 13. All other provisions of the Registry Agreement will continue to apply, except as specifically provided in Specification 13.

**Attachment 1**

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## **SPECIFICATION 13**

### **.BRAND TLD PROVISIONS**

The Internet Corporation for Assigned Names and Numbers and [INSERT REGISTRY OPERATOR NAME] agree, effective as of \_\_\_\_\_, that this Specification 13 shall be annexed to the parties' [INSERT REGISTRY AGREEMENT EFFECTIVE DATE] Registry Agreement ("Agreement") for the [.TLD] top-level domain (the "TLD"), and shall continue to apply for so long as the TLD meets the requirements of the definition of a .Brand TLD as set forth herein below.

1. If at any time ICANN determines, in its reasonable discretion, that the TLD no longer qualifies as a .Brand TLD, ICANN will provide Registry Operator with written notice of its determination. 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 (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.
2. If Registry Operator initiates 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 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 (i) ICANN's determination is upheld in full by the arbitrator or (ii) ICANN's determination is upheld in part and overturned in part by the arbitrator and Registry Operator does not commit in writing to comply with the portion of ICANN's determination that was upheld within 5 days of the date the arbitrator released his or her findings and actually comply with the portion of ICANN's determination that was upheld within 30 days of the date such findings were

released, (a) the TLD shall immediately cease to be a .Brand TLD effective on the date the arbitrator released his or her findings, (b) 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 (c) the provisions of this Specification 13 (other than Section 2 hereof) shall no longer have any effect as of 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'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."

3. Registry Operator is exempt from complying with the requirements of the Registry Operator Code of Conduct ("Code of Conduct") of Specification 9 to the Agreement, notwithstanding the provisions of Section 6 of Specification 9. Any previously issued "Notice of Exemption" respecting the Code of Conduct shall be automatically and immediately void upon the effective date of this Specification 13. Thereafter, the provisions this Specification 13 shall alone govern any exemption to the Code of Conduct.
4. Trademark Clearinghouse.
  - 4.1 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.
  - 4.2 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.

- 4.3 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.
5. 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) designate no more than three ICANN accredited registrars at any point in time to serve as the exclusive registrar(s) for the TLD.
6. Section 4.5 of the Agreement is superseded by the following:

**4.5 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 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 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 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. 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 the Agreement.

7. 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 registrylegalnotices@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 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.

8. 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.
9. Definitions.
  - 9.1 "Applicable Brand Registry Agreements" means this Agreement and all other registry agreements that contain this Specification 13 between ICANN and the Applicable Brand Registry Operators.
  - 9.2 "Applicable Brand Registry Operators" means, collectively, the registry operators of top-level domains party to a registry agreement that contains this Specification 13, including Registry Operator.
  - 9.3 ".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 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 are registrants of domain names in the TLD and control the DNS records associated with domain names at any level in the TLD;
  - (iii) the TLD is not a Generic String TLD (as defined in Specification 11); and
  - (iv) Registry Operator has provided ICANN with an accurate and complete copy of such trademark registration.

9.4 “Brand Registry Operator Approval” means the receipt of each of the following: (i) the affirmative approval of the Applicable Brand Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable, at the prevailing exchange rate published the prior day in the U.S. Edition of the Wall Street Journal for the date such calculation is made by ICANN) paid to ICANN by all the Applicable Brand Registry Operators during the immediately previous calendar year pursuant to the Applicable Brand Registry Agreements, and (ii) the affirmative approval of a majority of the Applicable Brand Registry Operators at the time such approval is obtained. For the avoidance of doubt, with respect to clause (ii), each Applicable Brand Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Brand Registry Agreement.

9.5 “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 Registry Operator or its Affiliate, for use of the registered trademark owned by Registry Operator or its Affiliate, the textual elements of which correspond exactly to the .Brand TLD string operated by Registry Operator, where:

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

- (ii) such license is for the use of such trademark in the regular course of that 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 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.
10. Except as specifically provided for in this Specification 13, all other provisions of the Agreement will continue to apply. All capitalized terms not defined in this Specification 13 shall have the meaning given to them in the Agreement.
11. Notwithstanding Sections 7.6 and 7.7 of the Agreement, if any amendment contemplated by Section 7.6 or 7.7 of the Agreement (other than bilateral amendments between ICANN and Registry Operator and Board Amendments) would, if effective, amend the express terms of this Specification 13, such amendment shall not amend the express terms of this Specification 13 unless such amendment also receives Brand Registry Operator Approval. For the avoidance of doubt, (i) nothing in this Section 11 of this Specification 13 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Specification 13 or any other provision of the Agreement, (ii) the requirements of this Section 11 of this Specification 13 shall not apply to any Board Amendment or otherwise restrict the adoption of Board Amendments pursuant to Section 7.6 of the Agreement, and (iii) if any amendment does not receive the required Registry Operator Approval under Section 7.6 or 7.7 of the Agreement, as applicable, the terms of this Specification 13 shall not be amended by such amendment even if such amendment receives Brand Registry Operator Approval.

IN WITNESS WHEREOF, the parties hereto have caused this Specification 13 to be executed by their duly authorized representatives as of the effective date of this Specification 13 first stated above.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

By: \_\_\_\_\_  
Name:  
Title:

**[INSERT REGISTRY OPERATOR NAME]**

By: \_\_\_\_\_  
Name:  
Title:



## Attachment 2

### **.Brand TLD Designation Application**

Internet Corporation for Assigned Names and Numbers (“ICANN”)  
12025 Waterfront Drive, Suite 300  
Los Angeles, California 90094  
Attention: New gTLD Program Staff

RE: Application for .Brand TLD Designation

[Dot Brand, Inc.] (“Registry Operator”), in connection with the execution of the Registry Agreement for the [.brand] TLD (the “Registry Agreement”), hereby applies for [.brand] TLD to be qualified by ICANN as a .Brand TLD.

Registry Operator confirms and represents to ICANN that the TLD meets each of the criteria for the TLD to be qualified as a .Brand TLD, as described in the .Brand TLD Application Process and Specification 13 attached thereto, and that all supplemental material accompanying this application is accurate and not misleading in any respect. Registry Operator also represents that the trademark registration attached hereto as Exhibit A, the registration policies attached hereto as Exhibit B, and the SMD file ID number attached hereto as Exhibit C are complete and accurate copies of the official trademark registration, Registry Operator’s registration policies for the TLD, and the SMD file ID for the TLD for which this application is submitted respectively.

*[Note to applicant: If an applicant’s TLD does not meet the criteria for the TLD to be qualified as a .Brand TLD, please revise the foregoing paragraph accordingly and insert a detailed description of which criteria is not met and why, and the justification for the TLD to nonetheless be qualified as a .Brand TLD.]*

Registry Operator agrees that if Registry Operator makes any changes to its registration policies for the TLD (whether before or after this application has been approved) that may disqualify the TLD as a .Brand TLD, it will promptly provide ICANN with a complete and accurate copy of the revised registration policies. In addition, if Registry Operator fails to maintain the trademark registration underlying its .Brand TLD application, it shall promptly notify ICANN of such failure. Registry Operator also agrees to maintain the criteria required to qualify as a .Brand TLD and to immediately notify ICANN of any changes in circumstances that could alter the statements made, and supporting materials provide with, this application.

*[If applicable, insert the following: Because this application is submitted to ICANN after the delegation of the TLD to nameservers designated by the Registry Operator into the root-zone, Registry Operator represents to ICANN that all domain names that are registered in the TLD are registered to and maintained in compliance with the requirements of the .Brand TLD definition.]*

Registry Operator acknowledges and agrees that this letter is binding on Registry Operator and, if any of the foregoing representations and agreements becomes untrue or not complied with, it shall be deemed a breach of the Registry Agreement by Registry Operator, and ICANN may assert its rights under the Registry Agreement, including by determining that the TLD no longer qualifies as a .Brand TLD pursuant to the terms of Specification 13. Questions about this request should be directed to [*Registry Operator to provide*].

Submitted by: \_\_\_\_\_  
Position: \_\_\_\_\_  
Dated: \_\_\_\_\_  
Email: \_\_\_\_\_

*Please be advised that by submitting your personal data in the .Brand TLD Designation Application, you agree that your personal data will be processed in accordance with the ICANN [Privacy Policy](#) and the website [Terms of Service](#).*

**Exhibit A**

**Trademark Registration**

*[to be attached by Registry Operator]*

**Exhibit B**

**TLD Registration Policies**

*[to be attached by Registry Operator]*

**Exhibit C**

**Signed Mark Data File ID Number**

*[to be provided by Registry Operator]*