New gTLD Auctions
BIDDER AGREEMENT
Version 2014-04-03

This Qualified Applicant / Bidder Agreement (the "**Bidder Agreement**"), is made and entered into by the Qualified Applicant or Designated Bidder (collectively the "**Bidder**"), and Power Auctions, a limited liability company organized in the State of Delaware, United States of America, with offices in Washington DC (the "**Auction Manager**"), each of the Bidder and the Auction Manager referred to as a "Party" and, together, referred to as the "Parties". The terms and conditions set forth in this Bidder Agreement are to be read together with the Auction Rules. Terms used but not otherwise defined herein shall have the meanings ascribed to them in the gTLD Applicant Guidebook (the "Applicant Guidebook") or the "Auction Rules" (as defined below). In the event of any inconsistency between the Bidder Agreement and the Applicant Guidebook or the Auction Rules, the Bidder Agreement shall prevail.

RECITALS

WHEREAS, the Qualified Applicant has submitted an application **(the "gTLD Application")** for a new generic top-level domain ("**gTLD String**"), to the Internet Corporation for Assigned Names and Numbers ("**ICANN**") pursuant to the ICANN new gTLD program (the "**gTLD Program**");

WHEREAS, ICANN has identified and published a group of applications (the "**Contention Set**") containing identical or confusingly similar applied-for gTLD Strings (the "**Contention Strings**");

WHEREAS, the Qualified Applicant's gTLD Application is for a Contention String that has been included in a Contention Set;

WHEREAS, the Auction Manager will be administering an auction on behalf of ICANN to resolve string contention for the Contention Strings in the Contention Set (the "**Auction**") pursuant to section 4.3 of the ICANN gTLD Applicant Guidebook (the "**Applicant Guidebook**");

WHEREAS, the Auction Manager will provide an auction service on the internet ("**Auction Site**") which Bidders will use to participate in the Auction;

WHEREAS, ICANN has published an auction rules document ("**Auction Rules**") on its website which is binding upon Bidders in the Auction;

WHEREAS, the Qualified Applicant will place bids in the Auction on its own behalf or may designate an agent ("**Designated Bidder**") to enter bids in the Auction on the Qualified Applicant's behalf;

NOW, THEREFORE, in consideration of the premises and agreements of the parties contained in this Agreement, and for other good and valuable consideration, the receipt and

sufficiency of which is hereby acknowledged, the Bidder and the Auction Manager agree as follows:

ARTICLE 1

STRING CONTENTION RESOLUTION BY AUCTION

Section 1.1 <u>The Bidder</u>. The Bidder represents that it is either: (a) a Qualified Applicant for one or more Contention Strings for which ICANN has provided to the Qualified Applicant a Notice of Intent to Auction; or (b) the Designated Bidder authorized by a Qualified Applicant for one or more Contention Strings for which ICANN has provided to the Qualified Applicant a Notice of Intent to Auction.

Section 1.2 <u>Effective Date</u>. This Bidder Agreement will become effective on the day that it has been executed by the Bidder and countersigned by the Auction Manager.

Section 1.3 <u>Endorsement</u>. The Parties agree that the Bidder may endorse this Bidder Agreement for additional gTLD Applications for Contention Strings for which it is the Qualified Applicant or the Designated Bidder, and that the Bidder may make such endorsement on the Auction Site by purely electronic means. If the Bidder endorses this Agreement for additional gTLD Applications, then this Agreement will apply with the same force and effect to the additional gTLD Applications as it does to the initial gTLD Application.

Section 1.4 <u>The Auction</u>. The Bidder shall participate in the Auction(s) for the relevant Contention Sets on the terms set forth herein and under the Auction Rules. The Auction(s) shall be conducted in accordance with the procedure set out in the Auction Rules. The Bidder acknowledges that it has reviewed the Auction Rules that will govern the participation of the Bidder in the Auction(s) and that the Auction(s) will be administered by the Auction Manager. By this Agreement, the Bidder agrees to be bound by the Auction Rules as published on ICANN's website.

Section 1.5 <u>Consequences of Losing</u>. The Bidder acknowledges and agrees that failure to submit a deposit by the specified deadline, failure to participate in the Auction or losing in the Auction will result in the rejection of the Qualified Applicant's application for the Contention String and the Contention String not being assigned or delegated to the relevant Qualified Applicant.

ARTICLE 2

BIDDER REPRESENTATIONS AND WARRANTIES

The Bidder represents and warrants to the Auction Manager as follows:

Section 2.1 <u>Good Standing</u>. The Bidder (i) is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation, (ii) is in good standing under such laws and (iii) has full power and authority to execute, deliver and perform its obligations, under this Bidder Agreement.

Section 2.2   Authorization.   The Bidder Agreement has been duly and validly authorized, executed and delivered by the Bidder to the Auction Manager and constitutes the legal, valid and binding obligation of the Bidder, enforceable against the Bidder in accordance with its terms.

Section 2.3   Notifications and Instructions. Any notifications, including but not limited to the documents provided to the Auction Manager as represented by the Bidder Form or Bidder Designation Form included in this Bidder Agreement, signed by any authorized signatories of the Bidder, and delivered to the Auction Manager shall be deemed a representation and warranty by the Bidder to the Auction Manager as to the matters covered thereby.

Section 2.4   Account Information. The Bidder agrees not to disclose to any unauthorized party the Bidder's usernames, passwords, Auction Site URL or any other authentication credentials assigned to the Bidder ("**Account Information**") in connection with the gTLD Application or the Auction. The Bidder acknowledges that it shall be responsible for maintaining the confidentiality of such Account Information and for all utilizations of the Account Information.

Section 2.5   Auction Site.   The Bidder agrees not to use the Auction Site for any purpose other than participation in Auctions that the Bidder is entitled to participate or to take any actions aimed at preventing the appropriate use of the Auction Site by any party.

Section 2.6   Anti-Collusion Rules.   The Bidder and the Qualified Applicant each acknowledges for each Contention Set in an Auction, there will be a Blackout Period, extending from the Deposit Deadline for the Auction until full payment has been received in the Auction Bank Account from the Winner of the Contention Set, pursuant to Clause 55, or another Bidder, pursuant to clauses 57-59 of the Auction Rules. During the Blackout Period, all applicants for Contention Strings within the Contention Set are prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicants' bids or bidding strategies, or discussing or negotiating settlement agreements or post-Auction ownership transfer arrangements, with respect to any Contention Strings in the Auction. The prohibition against these activities applies only with respect to Contention Strings that are within Blackout Periods; during the same time periods, applicants are permitted to engage in these activities with respect to other Contention Strings that are not within Blackout Periods and applicants are permitted to engage in discussions unrelated to Contention Strings.

Section 2.7   Compliance. ICANN reserves the right to conduct due diligence on the Qualified Applicant and the Designated Bidder in an effort to ensure compliance with all applicable laws, regulations and rules governing the Auction and the transfer of funds in connection with the Auction. ICANN reserves the right to require the Qualified Applicant to substitute its Designated Bidder and/or the bank account from which Bidder wires funds to its designated Auction Bank Account if a compliance issue is identified with respect to an applicable law, regulation or rule governing the Auction or the transfer of funds in connection with the Auction.

Section 2.8   Assignment of Contention String. In the event the Bidder is designated a winner at the close of an Auction ("**Winner**") for one or more Contention Sets, its aggregate Deposits for such Auction will be automatically applied towards payment of its aggregate Winning Price(s). In the event the aggregate Deposits exceed the aggregate Winning Prices and penalties, if applicable, a refund will be initiated to the Bidder no later than 16:00 UTC on the day that is seven (7) calendar days after the conclusion of the Auction, subject to Section 2.9. If a net balance of the aggregate Winning Prices is due, the Winner is required to settle the amount owed by bank wire to its designated Auction Bank Account. Payment must be received no later than 16:00 UTC on the day that is twenty (20) "Business Days" (as defined in the Auction Rules) after the close of the Auction. In the event Bidder is a Winner and anticipates that it would require a longer payment period due to verifiable government-imposed currency restrictions, Bidder may advise Auction Manager well in advance of the Auction and Auction Manager will consider applying a longer payment period for all Winner(s) within the same Contention Set.

Section 2.9   Default. A Winner not in compliance with Section 2.8 is subject to being declared in default. Auction Manager at its sole discretion, may delay the declaration of default for a brief period, but only if Auction Manager determines in its sole discretion that receipt of full payment appears to be imminent. Once declared in default, the Winner is subject to immediate forfeiture of its position in the Auction and assessment of default penalties as set forth in clauses 58-60 in the Auction Rules. Default penalties will be forfeited and charged against the Bidder's aggregate Deposit(s) of the Auction. If a Winner defaults on multiple contention sets, ICANN reserve the right, in its sole discretion, to ban such Winner from future Auctions.

Section 2.10   Penalties. The Bidder acknowledges that it may be subject to a penalty of up to the full amount of the Deposit and forfeiture of its Applications or termination of its registry agreements for a serious violation of the Auction Rules or Bidder Agreement. Without limiting the foregoing, a violation of Section 2.6 of the Bidder Agreement shall be considered to be a serious violation of the Bidder Agreement.

Section 2.11   Reliance on Counsel. The Bidder acknowledges that it has been advised by its own counsel regarding the terms of the Bidder Agreement and Auction Rules and in participating in the Auction has not relied and is not relying on any representations, warranties or other statements whatsoever, whether written or oral, from or by the Auction Manager or ICANN, other than those expressly set out in this Bidder Agreement, the Auction Rules and the Applicant Guidebook.

ARTICLE 3

AUCTION BANK ACCOUNT

Section 3.1   Escrow Agreement. The Auction Manager represents that it and ICANN have entered into an agreement ("Escrow Agreement") whereby any funds provided by the Bidder to be used in connection with the Auction shall be held in escrow in a bank account ("**Auction Bank Account**") by an escrow agent (the "**Escrow Agent**"). The Auction Manager will provide the Bidder with Auction Bank Account details and wire instructions.

Section 3.2   Auction Bank Account. The Bidder will deposit funds by bank wire into the Auction Bank Account to be held in escrow pursuant to this Bidder Agreement and the Escrow Agreement. The Auction Bank Account is denominated in United States dollars ($US) and all transactions to and from such account must be in $US. Funds deposited into escrow by the Bidder may be applied by the Auction Manager in accordance with the Bidder Agreement and Auction Rules. Upon the occurrence of a withdrawal by a Qualified Applicant pursuant to Section 3.4 or termination of this Bidder Agreement pursuant to Section 5 or otherwise, the Auction Manager may direct the Escrow Agent to set-off and apply any amount deposited by the Bidder against any, to the extent amounts are owed, other payments due. The Auction Manager agrees promptly to notify the Bidder after any such set-off is made by the Auction Manager, provided that the failure to give such notice shall not affect the validity of the action.

Section 3.3   Deposits, Refunds, Rollovers. In all respects, including in relation to deposits, refunds and rollovers the Bidder agrees to comply with the provisions of the Bidder Agreement and Auction Rules. The deposit amount(s) made into the Auction Bank Account (the "**Deposit(s)**") including all instructions associated with Deposits and allocation of funds among Contention Sets from wires and funds rolled over from previous Auctions, must be received by the Auction Manager no later than 16:00 UTC on the day that is seven (7) calendar days prior to the commencement date of the Auction ("**Deposit Deadline**"). Failure by Bidder to deposit the Deposit(s) by the Deposit Deadline may, at the Auction Manager's sole discretion, result in the Bidder's ineligibility to participate in the Auction for the Contention Set, which will result in the rejection of the Qualified Applicant's application for the Contention String and the Contention String not being assigned or delegated to the relevant Qualified Applicant. If a Deposit(s) is received and the Bidder is determined to be ineligible for the Auction, a refund of the Deposit will be initiated to the bank account as specified by the Bidder no later than 16:00 UTC on the day that is seven (7) calendar days after the conclusion of the Auction. In the event the Bidder does not win in an Auction, or a Bidder's aggregate Deposits exceed its aggregate Winning Prices for an Auction, any excess amount will be refunded subject to Section 2.8 and 2.9. In the event a refund becomes due, a Bidder may request, by submitting rollover instructions to the Auction Manager by no later than 16:00 UTC two calendar days following the day on which the Auction concluded, that the Auction Manager, to the extent practical, assigns funds to a future Auction ("**Rollover**"). If this Bidder Agreement is terminated for any reason other than breach of contract by the Bidder, a refund of any remaining Deposit will be initiated to the Bidder no later than 16:00 UTC on the day that is seven (7) calendar days after the conclusion of the next scheduled Auction. All refunds are net of associated wire fees.

Section 3.4   Withdrawal Notices and Withdrawal Refunds. In all respects, including in relation to withdrawal refunds and the Qualified Applicant's notice of withdrawal, the Bidder agrees to comply with the provisions of the Bidder Agreement and Auction Rules. Applicants that are identified as being in contention are encouraged by ICANN to reach a settlement or agreement among themselves that resolves the contention prior to the date of the Auction, as set forth in section 4.1.3 of the Applicant Guidebook. Such settlement or agreement is allowed up until the Deposit Deadline of the Auction for such applicable Contention Set(s). In the event settlement is reached prior to the Deposit Deadline, the relevant Qualified Applicants shall send both ICANN and the Auction Manager written notice and follow the process specified by ICANN to withdraw any application(s) for such Contention Strings that will not proceed as a result of the resolution. Such notification must be received by ICANN and the Auction Manager no later than the Deposit

Deadline. The Auction Manager will remove such Contention Sets from the Auction upon receipt of instructions from ICANN applicable to such Contention Sets. A refund for the Deposit(s) corresponding to these Contention Sets will be initiated to the Bidder no later than 16:00 UTC on the day seven (7) calendar days after the conclusion of the Auction unless the Auction Manager receives rollover instructions from the Bidder by no later than 16:00 UTC two calendar days following the day on which the Auction concluded. After the Deposit Deadline each Bidder that submitted a Deposit is required to participate in the Auction.

ARTICLE 4

INDEMNIFICATION, WAIVERS OF LIABILITY AND RELEASE

Section 4.1   Auction Rules. The Auction Manager acknowledges its obligation to make a good-faith effort to administer the Auction in accordance with the Auction Rules.

Section 4.2   Indemnification and Waiver.

(a) The Bidder agrees to indemnify, defend and hold Auction Manager harmless from and against any and all claims, damages, losses, liabilities, costs or expenses, including reasonable attorneys' fees, whether direct or indirect, which may arise from or be related to the actual or alleged acts or omissions of the Bidder respecting (i) its participation in the Auction, (ii) its performance under this Bidder Agreement, or (iii) any other transaction in which the Bidder participates to which this Bidder Agreement relates.

(b) Except to the extent set forth in Section 4.2(c) below, the Bidder expressly releases Auction Manager from any liability for (i) any and all claims, damages, losses, liabilities, costs or expenses, including reasonable attorneys' fees and costs, whether direct or indirect, which may arise from or be related to any Auction, this Bidder Agreement, or any other transaction to which this Bidder Agreement relates, including without limitation the conduct of the Auction, the quality or availability of the Auction Site or any tools or materials provided by the Auction Manager, any disturbance in the technical process, the receipt, storage and/or security of bids, or the award or failure to award a Contention String to any Bidder or other person, and (ii) any incidental or consequential damage, lost profits or lost opportunity which may arise from or be related to any Auction, this Bidder Agreement, or any other transaction to which this Bidder Agreement relates.

(c) Auction Manager agrees to indemnify and hold harmless the Bidder from any and all third-party claims (including all damages, losses, liabilities, costs or expenses and claims thereof) which may arise from a claim that the Bidder's use of the Auction-Manager-provided Auction Site or participation in the Auction-Manager-provided Auction, as such use or participation is intended within the scope of this Bidder Agreement, infringes, violates or misappropriates a valid third-party patent, copyright or other intellectual property right, provided that: (1) Auction Manager is notified promptly in writing of any such claim or action; (2) Bidder has neither reached any compromise or settlement of such claim or action nor made any admissions in respect of the same; (3) Auction Manager, at its option and expense, has sole

control over the defense of any such claim or action and any related settlement negotiations; and (4) Bidder provides all requested reasonable assistance to defend the same (including, without limitation, by making available to Auction Manager all documents and information in Bidder's possession or control that are relevant to the infringement or misappropriation claims, and by making Bidder's personnel available to testify or consult with Auction Manager or its attorneys in connection with such defense). For the avoidance of doubt, this Section applies only in relation to claims of infringement, violation or misappropriation of intellectual property rights in auction technology or auction software arising directly from an Auction administered by the Auction Manager on behalf of ICANN, and, without limitation, this Section does not apply to any claims involving ownership rights, trademark rights or other rights to (or third-party agreements or rights involving) any gTLD.

(d) The Auction-Manager-Provided Auction Site and Auction-Manager-Provided Auction are provided "As Is" without warranty of any kind, either express or implied, including without limitation of any implied warranties of condition, uninterrupted use, merchantability, and fitness for a particular purpose.

Section 4.3   Force Majeure. No Party to this Bidder Agreement shall be responsible or liable for any failure or delay in the performance of its obligation under this Bidder Agreement arising out of or caused, directly or indirectly, by circumstances beyond their reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that each party to this Bidder Agreement shall use commercially reasonable efforts which are consistent with accepted practices to resume performance as soon as reasonably practicable under the circumstances; provided that Bidder's loss of access to the Internet during an Auction shall not be deemed a matter beyond Bidder's reasonable control in light of Bidder's ability to (a) designate two Authorized Individuals under the Auction Rules; and (b) employ alternative bidding mechanisms during the Auction via fax.

Section 4.4   Liability of ICANN. Qualified Applicant and Designated Bidder each understands, acknowledges and agrees that the Auction is a method of contention resolution contemplated by the gTLD Applicant Guidebook for Qualified Applicant's application and that, as between Qualified Applicant and ICANN, the provisions of Module 6: Top-Level Domain Application – Terms and Conditions of the Applicant Guidebook apply to the Auction. Without limiting the foregoing, Designated Bidder understands, acknowledges and agrees that it is participating in the Auction as an authorized agent of Qualified Applicant and its rights and remedies with respect to ICANN are limited to the same extent that Qualified Applicant's rights and remedies are limited by the provisions of Module 6: Top-Level Domain Application – Terms and Conditions of the Applicant Guidebook.

ARTICLE 5

TERMINATION

Section 5.1   Termination. This Bidder Agreement shall terminate 90 days after notice of termination is provided by either Party; provided, however, that the provisions of Section 4.2 (Indemnification), Section 6.1 (Confidentiality), Section 7.1 (Survival; Successors or Assigns),

Section 7.3 (Notices), and Section 7.8 (Governing Law) shall survive termination of this Bidder Agreement.

ARTICLE 6

CONFIDENTIALITY

Section 6.1   Confidentiality.   Except as otherwise stated in this Bidder Agreement, each Party agrees, to maintain the confidentiality of any confidential and proprietary information received by it from the other Party pursuant to this Bidder Agreement, including, without limitation, any Account Information or any material nonpublic information ("**Confidential Information**"); provided, however, that Confidential Information shall not include any information that: (a) is or becomes generally available to the public other than as a result of a disclosure by the receiving Party or its representatives; (b) is already in the receiving Party's possession, provided that such information is not subject to a contractual, legal or fiduciary obligation of confidentiality for the benefit of another; or (c) becomes available to the receiving Party on a non-confidential basis from a source not bound by a contractual, legal or fiduciary obligation to keep such information confidential for the benefit of another. The foregoing will not prohibit either Party from disclosing Confidential Information: to the extent it is required to do so by applicable law so long as the Party, prior to disclosure that is legally required, provides the Party with written notice of the Confidential Information to be disclosed and takes appropriate steps to preserve the confidentiality of such information to the extent reasonably practicable; to its affiliates, attorneys, accountants, consultants, and other professionals bound by similar confidentiality obligations. Bids in the Auction shall be deemed Confidential Information; however, the Auction Manager shall be permitted to disclose bids or bidding information to ICANN during the Auction only if reasonably necessary to inform ICANN of a potential pending dispute requiring resolution or input, and to disclose bids or bidding information publicly after the conclusion of the Auction to the extent permitted by and pursuant to the Auction Rules. Notwithstanding the above, the Auction Manager is expressly permitted to share with the Bidder such other information as may be provided or set forth in the Auction Rules.

ARTICLE 7

MISCELLANEOUS

Section 7.1   Survival; Successors and Assigns. All representations, warranties, covenants, indemnities and other provisions made by the parties shall be considered to have been relied upon by the parties, shall be true and correct as of the date hereof, and shall survive the execution, delivery, and performance of this Bidder Agreement. This Bidder Agreement, including the declarations, acknowledgments, guarantees and indemnities contained in this Bidder Agreement, shall inure to the benefit of, be binding upon and be enforceable by and against the parties and their respective successors and permitted assigns.

Section 7.2   Interpretation; Severability. The Bidder intends for this Bidder Agreement to comply with applicable state and federal laws. If any term or provision hereof is illegal or invalid for any reason whatsoever, such provisions will be replaced with a valid provision that as closely as possible resembles the purposes and intents of the invalid provision or, if not possible,

will be severed from this Bidder Agreement, and such invalid or unenforceable provision will not affect the enforceability or validity of the remainder of this Bidder Agreement.

Section 7.3   Notices. All notices, requests, demands, and other communications required under this Bidder Agreement shall be in writing, in English, and shall be delivered by electronic transmission with written confirmation of receipt via RPost or a similar service that authenticates email delivery or via acknowledgement from the recipient, or via fax. If notice is given to a Bidder, it shall be delivered to the email address or fax number for such Bidder as provided by the Bidder to the Auction Manager. It shall be the responsibility of the Bidders to notify the Auction Manager of any changes in name, address or contact information.

Section 7.4   Entire Agreement. This Bidder Agreement, including the Bidder Form and Bidder Designation Form attached hereto and made a part hereof, sets forth the entire agreement and understanding of the parties related to the Auction.

Section 7.5   Amendment. This Bidder Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Auction Manager and Bidder.

Section 7.6   Auction Rules. ICANN shall be entitled, in its sole reasonable discretion, to amend the Auction Rules for any Auction at any time at least fifteen (15) days prior to that Auction. ICANN will inform the Bidder of such changes via electronic written notice and the changes will be effective immediately. Such amendments will be published to the ICANN website. If any dispute or disagreement arises in connection with the Auction Rules, including the interpretation or application of the Auction Rules, or the form, content, validity or time of receipt of any Bid, ICANN's decision shall be final and binding.

Section 7.7   Waivers. The failure of any party to this Bidder Agreement at any time or times to require performance of any provision under this Bidder Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Bidder Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Bidder Agreement, in any one or more instances, will neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Bidder Agreement.

Section 7.8   Governing Law. This Bidder Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, United States of America, excluding any choice of law provisions.

Section 7.9   Jurisdiction. Subject to Section 8.2 on arbitration, the Bidder and the Auction Manager irrevocably and unconditionally submit to and accept the exclusive jurisdiction of the federal and state courts located in the State of Delaware for any action, suit, or proceeding arising out of or based upon this Bidder Agreement or any matter relating to it, and waive any objection that it may have to the laying of venue in any such court or that such court is an inconvenient forum or does not have personal jurisdiction over it.

Section 7.10   Third Party Beneficiary. ICANN is an intended third party beneficiary of this Bidder Agreement entitled to enforce this Bidder Agreement against the Bidder and the Auction Manager as if ICANN was a direct party to this Bidder Agreement.

Section 7.11   Execution in Counterparts.   This Bidder Agreement may be executed in counterparts. All executed counterparts constitute one document.

ARTICLE 8
DISPUTE RESOLUTION

Section 8.1   Mediation. In the event of any dispute arising under or in connection with this Bidder Agreement, before either party may initiate arbitration pursuant to Section 8.2 below, the Auction Manager and the Bidder must attempt to resolve the dispute through mediation in accordance with the following terms and conditions:

(a) - a party shall submit a dispute to mediation by written notice to the other party. The mediation shall be conducted by a single mediator selected by the parties. If the parties cannot agree on a mediator within fifteen (15) calendar days of delivery of written notice pursuant to this Section 8.1, the parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity's selection, designate a mediator, who is a licensed attorney with general knowledge of contract law and, to the extent necessary to mediate the particular dispute, general knowledge of the gTLD Program. Any mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, or security holder of ICANN, the Auction Manager or the Bidder. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Section 8.1(a);

(b) - the mediator shall conduct the mediation in accordance with the rules and procedures that he or she determines following consultation with the parties. The parties shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute. The mediation shall be treated as a settlement discussion and shall therefore be confidential and may not be used against either party in any later proceeding relating to the dispute, including any arbitration pursuant to Section 8.2. The mediator may not testify for either party in any later proceeding relating to the dispute;

(c) - each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator. Each party shall treat information received from the other party pursuant to the mediation that is appropriately marked as confidential (as required by Article 6) as Confidential Information of such other party in accordance with Article 6.

(d) - if the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the

mediation at any time and the dispute can then proceed to arbitration pursuant to Section 8.2 below. If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following the date of the notice delivered pursuant to Section 8.1(a), the mediation shall automatically terminate (unless extended by agreement of the parties) and the dispute can then proceed to arbitration pursuant to Section 8.2 below.

Section 8.2   <u>Arbitration</u>. Disputes arising under or in connection with this Bidder Agreement that are not resolved pursuant to Section 8.1, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in the State of Delaware. Any arbitration will be in front of a single arbitrator, unless the parties agree in writing to a greater number of arbitrators in which event the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. Each party shall treat information received from the other party pursuant to the arbitration that is appropriately marked as confidential (as required by Article 6) as Confidential Information of such other party in accordance with Article 6. In any litigation involving the Auction Manager concerning this Bidder Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in the State of Delaware; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction. The provisions for arbitration set forth herein shall be in lieu of any other procedure for the determination of controversies between the Parties to this Agreement or any claim by such Party against any other such Party arising thereunder and the Parties agree not to invoke the intervention of the courts of Delaware or any other jurisdiction in relation to the appointment of the arbitrators, procedures adopted by or proceedings at the sitting of the arbitral tribunal in any dispute.

[*Signature page follows*]

IN WITNESS WHEREOF, this Bidder Agreement has been duly executed by

Qualified Applicant		Designated Bidder	
Check the box if Qualified Applicant and Designated Bidder are the same entity. If so, only complete the Qualified Applicant portion of the table.		**[ ]**	
Name of Entity		**Name of Entity**	
Type of Entity (e.g. corporation)		**Type of Entity (e.g. corporation)**	
Jurisdiction of incorporation or organization		**Jurisdiction of incorporation or organization**	
TIN, corporate registration no., or equivalent		**TIN, corporate registration no., or equivalent**	
Address		**Address**	
Phone Number		**Phone Number**	
Name of Authorized Representative		**Name of Authorized Representative**	
Title of Representative		**Title of Representative**	
Authorized Signature		**Authorized Signature**	
Date **(DD-MM-YYYY)**		**Date** **(DD-MM-YYYY)**	

IN WITNESS WHEREOF, this Bidder Agreement has been duly executed by

POWER AUCTIONS LLC

Name:_____

Title:_____

Signature:_____

Date: _____