# Terms and Conditions

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## New gTLD Program: Next Round Applicant Support Program and Registry Service Provider Evaluation Program

By submitting this application **[FOR ASP PROGRAM]** [for financial and non-financial support through the New gTLD Program: Next Round Applicant Support Program (the "Applicant Support Program")] **[FOR RSP EVALUATION PROGRAM]** [for evaluation as a Registry Service Provider for a generic top-level domain (gTLD) (the "RSP Evaluation Program")] to ICANN through ICANN's online interface or other designated mechanism (this "Application"), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) (collectively, "Applicant") agrees to the following terms and conditions (these "Terms and Conditions") without modification. Applicant understands and agrees that these Terms and Conditions are binding on Applicant and are a material part of this Application.

1. Applicant warrants that the statements and representations contained in this Application (including any documents or written materials submitted in connection with the Application) are true, accurate, and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this Application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject this Application **[FOR RSP EVALUATION PROGRAM]** [without a refund of any fees paid by Applicant]. Applicant agrees to promptly notify ICANN in writing of any material inaccuracies in any documents or written materials submitted in connection with the Application and through the evaluation process, and any change in circumstances that would render any documents or written materials provided in this Application false or misleading in material respects.

2. Applicant warrants that it has the requisite organizational power and authority to submit this Application on behalf of Applicant, and is able to make all agreements, representations, waivers, and understandings stated in these Terms and Conditions and to comply with the requirements of the [New gTLD Program: Next Round Applicant Support Program Handbook] [Registry Service Provider Evaluation Program Handbook] (the "Handbook").

3. Applicant acknowledges that [the Applicant Support Program] [the RSP Evaluation Program] are components of ICANN's New gTLD Program. Applicant further

acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider, and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. Further, the decision to review, consider, and approve any application submitted to the [Applicant Support Program] [RSP Evaluation Program] is entirely at ICANN's discretion.

4. **[FOR RSP EVALUATION PROGRAM]** Applicant agrees to pay all fees associated with this Application, including any fees associated with the progress of this Application through optional technical evaluation for certain registry services that may be offered by Applicant. Applicant acknowledges that the initial fee due upon submission of this Application is only to obtain consideration of this Application. ICANN makes no assurances that an application will be approved. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, Applicant will forfeit any fees paid up to that point and this Application will be canceled. Except as expressly provided in the Handbook, ICANN is not obligated to reimburse Applicant, nor to return any fees paid to ICANN in connection with the application process.

**[FOR ASP PROGRAM]** While there is no fee to apply to the ASP Program, Applicant acknowledges that the intent of the ASP Program is to make the New gTLD Program evaluation fee and process accessible to entities that would like to operate a gTLD but would otherwise be unable to apply to the New gTLD Program because of financial and resource constraints. The ASP Program is not intended to provide support to entities that were created by, are affiliated with existing gTLD Registry Operators or prospective applicants to the New gTLD Program that would not meet the criteria of the ASP Program, or have sufficient ongoing funding or investment from other sources at the time this Application is submitted or when ICANN proposes to delegate the new gTLD. If Applicant is found to have abused the intent of the ASP Program, Applicant may be excluded from participation in the New gTLD Program entirely.

Before submitting an Application to participate in the ASP Program, Applicant should carefully review the eligibility requirements for the ASP Program set forth in the Handbook to determine whether Applicant meets such criteria. If prior to the delegation of a new gTLD ICANN determines, in its sole discretion, that the Applicant's financial conditions has changed and the Applicant would not have qualified for the financial support under the ASP Program, then (a) at ICANN's request the Applicant will pay ICANN the full gTLD evaluation fee promptly upon request, or (b) ICANN may reject the Application without any liability or recourse to the Applicant.]

5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims,

damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of this Application, and any approval, rejection, or withdrawal of this Application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by Applicant in this Application and Applicant's representations and warranties herein.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by Applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party with respect to this Application including in connection with ICANN's or an ICANN Affiliated Party's review of this Application, investigation or verification, any characterization or description of Applicant or the information in this Application, any withdrawal of this Application or the decision by ICANN to recommend, or not to recommend, the approval of the application. IN ADDITION, APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY DECISION MADE BY ICANN WITH RESPECT TO THIS APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NON-ENTITLEMENT, TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO **[FOR RSP PROGRAM]** [ANY RECOVERY OF ANY APPLICATION FEES,] MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM **[FOR ASP PROGRAM]** [RECEIVING FINANCIAL AND NON-FINANCIAL SUPPORT TO SUBMIT AN APPLICATION FOR THE OPERATION OF A REGISTRY FOR THE GTLD] **[FOR RSP PROGRAM]** [THE OPERATION OF A REGISTRY SERVICES PROVIDER FOR A GTLD APPROVED THROUGH THE NEW GTLD PROGRAM]; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS, OR ANY MECHANISM INCLUDED IN THE PROGRAM FOR PURPOSES OF CHALLENGING ANY DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD-PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.

7. Applicant gives ICANN permission to use Applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's Application and any action taken by ICANN related thereto. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with this Application, including evaluations, analyses and any other materials prepared in connection with the evaluation of this Application; provided,

however, that information will not be disclosed or published to the extent that the Handbook expressly states that such information will be kept confidential, except as required by law or judicial process. Access to confidential information shall be limited to those individuals and entities who need access to complete the review process, including individuals within ICANN and any third parties conducting application evaluations or providing dispute resolution or challenge/appeals services. Except for information afforded confidential treatment, Applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of this Application or materials submitted with this Application confidential.

8. Applicant represents and certifies that it has ensured a legal basis, including but not limited to permissions or consents from the individuals, for the sharing and publication of any personally identifying information or personal data included in this Application or information or materials submitted with this Application, including for purposes of processing their personal data for background screening. Applicant acknowledges that the information that ICANN posts may remain in the public domain for a period permitted under applicable law, including in perpetuity where necessary to satisfy its transparency obligations. Applicant confirms it has informed such individuals of the processing of their personally identifying information or personal data as required under applicable data protection laws. Applicant acknowledges that ICANN will handle personal information or data collected in accordance with its gTLD Program Privacy Statement https://newgtlds.icann.org/en/applicants/agb/program-privacy, which supplements the Privacy Policy, https://www.icann.org/privacy/policy/#5, both of which are incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in this Application form necessary to conduct these background screening activities as permitted under applicable law. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:

   a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;
   b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;
   c. Additional identifying information may be required to resolve questions of identity of individuals within the Applicant organization;
   d. Applicant may be requested to supply certain information in the original language as well as in English;
   e. Applicant may be required to obtain the permission or consent of individuals whose information will be disclosed to ICANN in connection with this Application.

9. [Reserved.]

10. [Reserved.]

11. Applicant authorizes ICANN to:

    a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to this Application; and/or

    b. Consult with persons of ICANN's choosing regarding information in this Application or information otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in this Application that this Handbook expressly states will be kept confidential.

12. For the convenience of Applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials prepared by ICANN (of which these Terms and Conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls. These Terms and Conditions shall be subject to the law of the State of California.

13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of gTLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this Application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant with respect to this Application and any resultant new gTLD. Applicant further agrees that by submitting this Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of this Application to represent ICANN adverse to Applicant in the matter.

14. ICANN reserves the right to make reasonable updates and changes to the Handbook and to the application process, including the process for withdrawal of applications and timing considerations at any time by posting notice of such updates and changes to the ICANN website, including but not limited to as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that this Application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its Application prior to such updates or changes, and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to

Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

15. By submitting this Application, Applicant agrees to comply with all applicable laws and regulations, including economic and financial sanctions regulations implemented by applicable jurisdictions ("Economic Sanctions"). Applicant also agrees to notify ICANN if/when Applicant, or any of the parties listed in this Application, become the subject of any Economic Sanctions.