

Terms and Conditions for Trademark Submission

1 Scope

- 1.1 These Terms and Conditions for Trademark Submission („TCTS“) are between EPAG Domainservices GmbH („Agent“), a registered Agent of the Trademark Clearinghouse (the „TMCH“) acting on behalf of Tucows Inc. or its resellers, and the accepting party, either as a Trademark Holder or as one who represents such Trademark Holder (“Customer”), pursuant to which Customer is submitting a Trademark Record (as defined below) for inclusion in the TMCH.
- 1.2 Customer has independently informed himself about the functions of the TMCH. Customer will be submitting one or more eligible Trademark Records (as defined below) to Agent for inclusion in the TMCH pursuant to the terms of this agreement as well as the terms of the TMCH. This agreement is subject to the general terms and conditions of Agent. By accepting, Customer acknowledges to have reviewed and agreed to the following documents, which are incorporated into this agreement by reference:
 - This agreement
 - The general Terms and Conditions of Agent, available on Agent's website
 - The Fee Schedule, as defined below
 - The TMCH Guidelines, available on the TMCH Website
 - The Dispute Resolution Procedures, available on the TMCH Website

2 Definitions

Activation (or Activated): A Trademark Record is activated when the TMCH Operator has determined that a Trademark Record meets the Eligibility Requirements as stated in the TMCH Guidelines.

Agent's Website: www.epag.de, or any successor website.

Database Provider: The party appointed by ICANN to operate and manage the central database for storage of Trademark Records that have achieved Activation.

Deactivated: A Trademark Record is deactivated when (i) a Trademark Record has not been renewed, (ii) when documentary evidence that has been requested by TMCH Operator in connection with the Verification Services has not been provided by Customer in the time periods specified in the TMCH Guidelines, or (iii) a Trademark Record has been successfully disputed under the Dispute Resolution Procedures.

TMCH Operator: Deloitte Enterprise Risk Services (a department of Deloitte Bedrijfsrevisoren BV owve CVBA) or any Deloitte entity or subcontractor that is providing the Verification Services.

TMCH Website: www.trademark-clearinghouse.com, or any successor website.

Eligibility Requirements: The requirements specified by ICANN from time to time that a Trademark Record must satisfy in order to be accepted into the TMCH as an Activated Trademark Record, as described in the TMCH Guidelines.

Fee Schedule: The Fee Schedule describes the various options and associated fees for submitting a Trademark Record to Agent.

ICANN: The Internet Corporation for Assigned Names and Numbers, a California public-benefit non-profit corporation.

Invalid: A Trademark Record is deemed invalid when TMCH Operator determines that the Trademark Record does not meet the Eligibility Requirements.

Notification of Registered Name („NORN“): Notifications sent by TMCH Operator to Agent during a Sunrise Period or Trademark Claims Period that a domain name has been registered that matches labels for one of Customer's Trademark Records.

Payment Terms and Conditions: The Payment Terms and Conditions describe the process by which Customer may pay for their submissions of Trademark Records.

SMD File: If Customer elects to participate in Sunrise Periods and the Trademark Record meets the requirements related thereto specified in the TMCH Guidelines, the file that is generated once such Trademark Record is Activated. The SMD File allows Agent to register labels related to the Trademark Record within a top-level domain during a Sunrise Period as long as the registry's policies are complied with.

Sunrise Period: Period of time during which a registry accepts domain name registrations prior to domain registrations becoming generally available.

Trademark Claims Period: Period of time following the opening of a top-level domain for general domain name registration during which NORNs are sent.

Trademark Clearinghouse Guidelines („TMCH Guidelines“): The TMCH Guidelines provide an overview of the Eligibility Requirements and the requirements to obtain an SMD File so as to be able to participate in Sunrise Periods, which stipulate what type of Trademark Records may be accepted for Activation in the TMCH.

Trademark Holder: Owner, licensee or assignee of a trademark or other mark submitted to Agent for processing with the TMCH Operator.

Trademark Record: A complete and correct set of information concerning a trademark or other mark submitted to the TMCH.

Verification Services: Each Trademark Record will be verified by TMCH Operator to check that the information provided is accurate and correct and meets the TMCH Guidelines.

3 Representations, Warranties and Covenants of the Customer

Throughout the duration of this agreement, Customer represents and warrants the following:

- 3.1 Customer either is the Trademark Holder or Customer has obtained an authorization from all Trademark Holders on whose behalf he is acting. A copy of such authorization must be provided to Agent upon request and must state that:
 - 3.1.1 *Customer is authorized to submit Trademark Records to Agent for inclusion in the TMCH either for Trademark Holder or as Trademark Holder;*
 - 3.1.2 *The Trademark Holder acknowledges that, upon Activation, the Trademark Record may be transferred to the Database Operator in order to obtain NORNs;*
 - 3.1.3 *Customer grants the right to download and use the Trademark Holder's SMD Files if necessary for the performance of the Agents function;*
 - 3.1.4 *Customer understands and will inform Trademark Holder that he will be responsible for receiving from Agent and/or TMCH and, if applicable, distributing to Trademark Holders their NORNs and that Customer is responsible for any selections made in the User Interface, Automated Interface or forms that could result in the Trademark Holder not receiving a NORN (i.e. opting to not receive NORNs for a certain label for a Trademark Record);*
 - 3.1.5 *Customer understands and will inform Trademark Holder that the Trademark Holder's Trademark Record may not be transferred to another Trademark Agent or other third party;*
 - 3.1.6 *Customer ensures that Agent is given authority to grant the Mandatory Licenses (as defined below) for such Trademark Holder and that such Mandatory Licenses will be binding on the Trademark Holder;*
 - 3.1.7 *Customer and Trademark Holder have authorized Agent to act on the Trademark Holder's behalf with respect to the Dispute Resolution Procedures; and*
 - 3.1.8 *Customer and Trademark Holder have authorized Agent to perform any other obligation under this Agreement.*
- 3.2 Customer will provide the name, and where applicable the company name, of the Trademark Holders that Customer is acting on behalf of. Customer will also provide each Trademark Holder's contact information, including e-mail address, and will at all times keep such information up to date. Customer acknowledges that TMCH Operator may, from time to time and at its sole expense, verify whether the Trademark Holders' contact information provided is correct, accurate and reliable, in which case Customer will be notified with reasonable notice. Customer will ensure that Trademark Holders cooperate in a timely manner with TMCH Operator and Agent in this verification.
- 3.3 After the submission of the trademark to the TMCH, the TMCH may request additional information or documentary evidence regarding the Trademark Holder, the Trademark Record, or the Proof of Use of the Trademark. If requested, Customer will provide such documents within 15 days of the request, or the application may be declined without refund.
- 3.4 Following the submission of a Trademark Record Agent will, upon receipt from TMCH Operator, provide Customer with all information relating to such Trademark Record until the earlier of (a) the expiration of the selected Trademark's registration period (as renewed), (b) the Trademark Record is deemed Invalid, or (c) the date such Trademark Record is Deactivated. Customer is obliged to forward this information to its Trademark Holders.
- 3.5 Customer will use the services or functionalities provided under this Agreement only for their intended purposes.

- 3.6 Customer agrees that unless instructed to do so by Customer, Agent will only interact with Customer and not directly or indirectly with any of the Trademark Holders who Customer represents. Customer can instruct Agent to work directly with a Trademark Holder by listing the Trademark Holder as the Administrative Contact of the Trademark Record. When the Trademark Holder is listed as the Administrative Contact, Agent will contact the Trademark Holder directly, rather than Customer, for all communications regarding that Trademark Record.
- 3.7 Notwithstanding the above, Agent may directly interact with Customers' Trademark Holders in situations where Customer has no power to act for the Trademark Holder or in the event that Agent has suspended Customer's account. It will be the responsibility of Customer to notify Agent if any of its Trademark Holders want to withdraw their authorization for Customer or Agent to represent them.
- 3.8 Customer agrees that Customer will remain ultimately responsible for any of its employees, agents, customers or subcontractors that use or have access to its account.
- 3.9 Customer will not transfer, in any form or by any means, a Trademark Holder's Trademark Record to another Trademark Agent or other third party except as contemplated by this agreement. If either Customer or its Trademark Holders wish to transfer a Trademark Record to such Trademark Holder, Customer must contact Agent, and Agent will assist customer in making such transfer, subject to reasonable conditions to such transfer that Agent may require.
- 3.10 Customer will inform all Trademark Holders of all privacy practices as detailed in the privacy notice found on the TMCH Website and detailed herein.

4 Reverification of a Trademark Record

- 4.1 Agent will check each Trademark Record for obvious errors, missing documents, and compliance with the TMCH Guidelines before submitting the Trademark Record to the TMCH („Reverification“). Only once a Trademark Record passes Reverification, and sufficient funds are available in Customer's account, will Agent submit Trademark Record to the TMCH.
- 4.2 Reverification does not guarantee that the Trademark Record will be successfully validated by the TMCH. Agent will make best effort in Reverification but makes no assurance that the Trademark Record is complete or valid.
- 4.3 Customer agrees to submit Trademark Record to Agent well in advance of anticipated deadlines. Agent shall not be considered responsible or held liable for Trademark Records that do not complete Reverification and/or Activation before any anticipated deadline.

5 Submitting a Trademark Record

- 5.1 Customer will comply with this agreement, the TMCH Guidelines, the Fee Schedule and the Dispute Resolution Procedures in force at any particular time.
- 5.2 Customer will not submit a Trademark Record when Customer has reason to believe that any of the following apply or could apply:
 - 5.2.1 *Some or all information provided is false, deceptive, misleading, inaccurate or incomplete;*
 - 5.2.2 *Customer does not have the right to submit such information to Agent or the TMCH; or*
 - 5.2.3 *Customer does not have the necessary funds in its pre-payment account to submit the Trademark Record.*
- 5.3 Customer agrees that, to the best of its knowledge, any and all information submitted to Agent will be accurate and correct and that in the event any changes occur during the term of this Agreement or the term of a registration of a Trademark Record Customer will promptly notify agent of such change. In the event of a change request to a Trademark Record, such as a change to (a) the name of the mark or Trademark Holder, (b) the status of the Trademark Holder, (c) the jurisdiction or country of protection for the mark, (e) the classes of goods and services for the mark, (f) the description of goods and services for the mark, (g) the mark registration number or date, or (h) a court order, statute or treaty that affects any of the foregoing (a)-(h), such change may be considered a new Trademark Record and Customer may be charged a fee for any Verification Services that may be needed. Notwithstanding the above, changes to contact information, such as a change of address, will be free of charge. However, please note that a new SMD File will be generated following each change of information and the prior SMD File for such Trademark Record will be revoked.

6 License

- 6.1 Customer, on behalf of Customer and each Trademark Holder served by Customer, grants Agent, the TMCH Operator, ICANN, the Database Provider and any of such parties' successors or assigns a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any data submitted by Customer, including but not limited to Trademark Records, for the purposes of the TMCH and this Agreement (a "Mandatory License"). The Mandatory License automatically terminates for the period in which a Trademark Record has been Deactivated or upon the termination of this Agreement. For the avoidance of doubt, Customer understands that the Mandatory License is necessary to receive NORNs. Agent will not, nor will any other party that has received rights under a Mandatory License, access or use the information provided in a Mandatory License for purposes other than those stated in this Agreement.
- 6.2 Agent grants Customer a limited, personal, non-commercial, non-exclusive, non-sublicensable, non-assignable license to access and use the TMCH through the interfaces provided by Agent, provided such access or use will not be used for purposes other than those stated in this Agreement.

7 Payment and Fee Schedule

- 7.1 No fee will be charged for entering into this agreement.
- 7.2 For each submission of a Trademark Record and for each renewal of a Trademark Record registration with the TMCH, a fee is charged in accordance with the applicable pricing. This fee covers the submission of one Trademark Record to the TMCH and up to twenty (20) labels.
- 7.3 Submissions of a Trademark Record to Agent will only be processed if either the prepaid account of Customer has sufficient funds or the payment for that Trademark Record has been received and the invoice has been marked as paid. Customer will be charged for a Trademark Record after Reverification and before the Trademark Record is submitted to the TMCH in accordance with the applicable Fee Schedule at the time the Trademark Record is submitted to the TMCH. These charges cannot be refunded, regardless of the outcome of the Trademark Record submission. Agent shall not be considered responsible or held liable for any loss or damages due to a lack of funds in Customer account.
- 7.4 If Customer has made a prepayment to their Customer account, fees will be automatically deducted from Customers' prepaid account at the time the application is submitted to the TMCH. Agent cannot adjust or refund application fees that have already been invoiced and/or charged. The submission fee applies regardless of whether the application of the Trademark Record to the TMCH succeeds or is rejected. Renewals of Applications count as new applications for purposes of determining the renewal fees. Agent may adjust the Fee Schedule based on the number of submissions and renewals in the previous calendar year.
- 7.5 All prices quoted do not include value added tax (VAT); if Customer wishes to receive their invoice without VAT, Agent must be notified of this before any applicable invoices are generated and Customer must provide their VAT-ID.

8 Term and Termination

- 8.1 This Agreement shall be effective from the moment of acceptance by both Parties and shall continue in full force and effect until terminated.
- 8.2 To terminate this Agreement, Customer may do so at any time, provided:
 - 8.2.1 *All Trademark Holders served by Customer are informed of the intent to terminate this Agreement and that they have thirty (30) calendar days to either (i) enter into an agreement with Agent or TMCH Operator as a Trademark Holder or (ii) have their Trademark Record Deactivated from the TMCH upon termination of this Agreement;*
 - 8.2.2 *Customer certifies to have provided all Trademark Holders served by Customer with the notice required in subsection 8.2.1 herof; and*
 - 8.2.3 *Customer will be solely responsible for notifying any Trademark Holders whose Trademark Record is Deactivated as a result of the termination of this Agreement, and Customer will be solely responsible for any losses or damages incurred by such Trademark Holders, including reimbursement of fees, as well as for any losses or damages resulting from Customers failure to properly provide the notice required in subsection 8.2.1 hereof.*
- 8.3 In the event that all Trademark Records that submitted by Customer have either (a) been Deactivated, (b) been transferred to the Trademark Holder, or (c) been deemed Invalid, Customer may terminate this Agreement, provided, however, that such termination will not be

- deemed effective until the accuracy of the foregoing (a)-(c) is confirmed by Agent.
- 8.4 This Agreement may be terminated by Agent if, for a period of thirty (30) consecutive calendar days, Customer has (a) no Activated Trademark Records, and (b) has not submitted any Trademark Records that have not yet been deemed either Activated or Invalid (i.e. that have been submitted and are pending review).
- 8.5 Agent may terminate this Agreement if Customer is in material breach of this Agreement, which breach has not been remedied within thirty (30) calendar days from receipt of a written notice.
- 8.6 If Customer does not comply with any of the obligations contained in this Agreement, Agent and/or TMCH Operator may suspend any account of Customer with immediate effect. Customer will be notified of this suspension as well as the reason for the suspension and steps to take to be reinstated. It will be the responsibility of Customer to notify all Trademark Holders served by Customer of the suspension and Customer will be solely responsible for any losses or damages incurred by such Trademark Holders resulting from the suspension.

9 Representation and Warranties of Agent

- Agent represents and warrants that:
- 9.1 Agent is operating under a valid agreement with the TMCH as an authorized Agent of the TMCH. The TMCH Operator is party to an agreement with ICANN, that allows it to permit Agent to enter into this Agreement and provide the services set forth herein.
- 9.2 Agent will forward a Trademark Record to the TMCH for further handling, verification and recording on condition that (a) the Trademark Record has been properly submitted to Agent in the permitted form and format, (b) the Trademark Record has passed Reverification, and (c) sufficient funds exist in the Customer account at the time the Trademark Record is to be submitted to the TMCH.
- 9.3 In the event that a Trademark Record is recorded with the TMCH for a period longer than one year, the Trademark Record will be re-verified by the TMCH on an annual basis for the duration of the recording of the Trademark Record at no additional charge at the time of the re-verification.
- 9.4 Agent will inform Customer of the reason provided by the TMCH to why a Trademark Record cannot be verified or is deemed Invalid if such a determination is made.
- 9.5 If Customer elects to participate in Sunrise Periods and the applicable Trademark Record meets the requirements related thereto specified in the TMCH Guidelines, a SMD File will be generated by the TMCH operator for each Trademark Record, which Agent will provide to Customer.
- 9.6 If eligible, upon receipt of a NORN from the Database Provider of the TMCH for a label linked to a Trademark Record belonging to one of Customers' Trademark Holders, Agent will promptly forward such NORN to Customer. Customer will be responsible for notifying the applicable Trademark Holder.
- 9.7 Subject to Article 9, the User Interface, Automated Interface and entry forms have been designed and developed in a professional manner based on the specifications provided by the TMCH and shall operate in conformity with such specifications.

10 Limitation of Liability

- 10.1 Unless stated otherwise herein, neither Customer, Agent, CHIP, Deloitte, ICANN nor the Database Provider or any of their successors or assigns shall be liable to the other for any direct or indirect, special, incidental, punitive or consequential damages, including but not limited to loss of business opportunity, business interruption, loss of profits or costs of procurement of substitute goods or services, arising out of or relating to the TMCH, under any theory of liability and whether or not Customer or any such third party has been advised of the possibility of such damages.
- 10.2 Except for the express warranties stated herein, the User Interface, Automated Interface and Upload forms are provided on an "as is" and an "as available" basis, and Agent disclaims any and all other warranties, conditions, or representations (express, implied, oral or written) relating to the TMCH or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. Agent makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, or other such computer program. Agent further expressly disclaims any warranty or representation to Customer, or to any third party. Customer will hold Agent, CHIP, Deloitte, ICANN and the Database Provider and their successors and assigns harmless against any and all claims of any kind whatsoever and any damages, interests, settlements or costs of any investiga-

tion, litigation or settlement (including any reasonable attorney's fees or other legal fees) that may arise or result from (a) Customers breach of this Agreement (b) any incorrect or fraudulent use by Customer of the TMCH, (c) allegations of intellectual property infringement from third parties, or (d) incorrect or outdated information submitted by Customer and maintained in the TMCH.

11 Intellectual Property Rights

- 11.1 The Parties acknowledge that the information provided in the Trademark Records are predominantly comprised of information owned or provided by Trademark Holders and information that is in the public domain (e.g. trademark registration numbers) and that any rights in the underlying trademarks remain solely held by the applicable Trademark Holder. Agent represents and warrants that it will not disclose or use any Trademark Record information for any purpose other than providing the services contemplated by this Agreement or as required by law. Customer agrees that, even following the termination of this Agreement and the corresponding termination of the Mandatory License, copies of all information provided to Agent by Customer under this Agreement may be retained by TMCH Operator and Agent.

12 Data Privacy & Personal Data

- 12.1 "Personal Data" refers to data provided by Customer to Agent about any identified or identifiable natural person, or as otherwise specified by applicable law.
- 12.2 The Parties acknowledge that, in the context of the services contemplated by this Agreement, Personal Data will be exchanged by and between the Parties, the TMCH Operator, the Database Provider, ICANN, registries, registrars and domain name registrants.
- 12.3 The Parties agree that any Personal Data sent by Customer and received and processed by Agent in the context of the TMCH will be treated in accordance with applicable privacy laws and regulations and Agent undertakes to take all appropriate organizational and technical measures to ensure such compliance. Agent shall only collect, process and share (a) such Personal Data which is necessary for the purpose of giving Customer access to the TMCH, (b) any Personal Data related to a Trademark Record, (c) any Personal Data necessary to allow Customer to use the TMCH, (d) any Personal Data necessary to allow Customer and Agent to manage Customers account, (e) any Personal Data that is necessary to allow TMCH Operator to perform the Verification Services, (f) any Personal Data that is necessary to allow the Database Provider to provide NORNs, (g) any Personal Data that is necessary to allow registries and registrars to provide notices to prospective domain name registrants that the domain name that the prospective domain name registrant has requested matches a Trademark Record during a Sunrise Period or Trademark Claims Period, and (h) any Personal Data that is necessary to allow ICANN to maintain the continuation of the TMCH. Agent will not process Personal Data in a way inconsistent with the above-mentioned purposes. Customer, on behalf of itself and the Trademark Holders serves by Customer, acknowledge and consent to the transfer of Personal Data provided by Customer to Agent, TMCH Operator, ICANN, the Database Provider, registries, registrars, domain name registrants and their respective subcontractors and affiliates for the performance of services contemplated by this Agreement, including transfers of such Personal Data in connection with the inclusion of Trademark Records in the database operated by the Database Provider. If Customer does not provide the minimally required Personal Data and does not consent to the transfer of such data, Agent may not be able to perform all services contemplated hereunder.
- 12.4 Customers information provided to Agent will be handled in accordance with this Agreement. By providing Agent with Personal Data, Customer may be transferring Personal Data to Agent, TMCH Operator, ICANN, the Database Provider, registries, registrars, domain name registrants and respective subcontractors and affiliates in another jurisdiction that may not have the same level of data protection as Customers jurisdiction. However, Customer agrees and consents to such collection, transfer, and processing of Personal Data in accordance with this Agreement. Customer is solely responsible for compliance with any data protection or privacy obligations in its jurisdiction when using the accesses to the TMCH provided by Agent or providing Agent with Personal Data. Regardless of where information is transferred, Agent still protect said information in the manner described in the Privacy Notice.
- 12.5 Agent shall make appropriate arrangements with its employees, directors, agents, subcontractors and any other individuals acting on its behalf in order to guarantee that any person who will have access

to such information shall be obliged to abide by the applicable rules on data protection.

13 Notifications

- 13.1 All communication between the Parties will, to the extent possible and except as otherwise agreed upon between the Parties, be organized in an electronic manner.
- 13.2 It is not possible, however, to guarantee that transmitting data electronically is totally secure, virus-free or without error and, hence, such transmissions may be intercepted, tampered with, lost, destroyed, delayed or rendered unusable. The Parties hereby recognize that no systems or procedures can wholly mitigate such risks.
- 13.3 The Parties hereby confirm that they accept these risks, duly authorize the use of electronic communications and agree to use commercially reasonable means to detect the more widely known viruses prior to sending information by electronic means. Each party shall be responsible for the protection of its own systems and interests in respect of electronic communications, and neither party shall be held liable in any manner or form, whether on a contractual, criminal (including negligence) or any other basis, for any loss, error or omission resulting from or relating to the use of electronic communications between the parties.

14 Dispute Resolution

- 14.1 In the event a dispute arises between Customer and the TMCH Operator out of or relating to the Verification Services provided by the TMCH Operator or its agents, such dispute shall be handled in accordance with the Dispute Resolution Procedures made available on the TMCH Website.
- 14.2 Venue for all disputes arising from this contract is Bonn, Germany. The contract shall be governed exclusively by the law of the Federal Republic of Germany.

15 Severability

- 15.1 If any provision of these TCTS is or becomes invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall instead be replaced by a provision which corresponds to or at least approaches the purpose of the contract and which the contracting Parties would have agreed upon to achieve the same commercial result if they had known about the invalidity of the original provision. The same shall apply in case the provisions are incomplete.

16 Final Provisions

- 16.1 This Agreement may not be assigned by Customer for any reason without prior written consent of Agent. Agent may assign all of rights and obligations under this Agreement at any time to an entity specified by Agent without consent of Customer.
- 16.2 The headings are inserted for convenience only and shall not affect the construction and interpretation of this Agreement.
- 16.3 The English language version of this Agreement is the only official version. If this Agreement is translated into any other languages, such translation shall only be for the convenience of Customer, it being agreed that the English language version of this Agreement is the authentic version, the interpretation of which shall prevail.
- 16.4 This Agreement may not be modified or amended other than by a written amendment in signed by both Parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, at law or in equity, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.
- 16.5 Except for Agent, TMCH Operator, ICANN and the Database Provider, no other person shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.