

CLEARINGHOUSE



Clearinghouse Validation

Terms and Conditions for Trademark Agents

Version 1.1



These Clearinghouse Validation Terms and Conditions for Trademark Agents (these “**Clearinghouse Validation Terms and Conditions**”) are between CHIP S.A., having its registered office at Route d’Esch, 278, 1471, Luxembourg (hereinafter “**CHIP**” or “**we**” or “**us**”) and the undersigned, as a Trademark Agent (“**you**”), pursuant to which you are submitting a Trademark Record (as defined below) for inclusion in the trademark clearinghouse established by the Internet Corporation of Assigned Names and Numbers (the “**Trademark Clearinghouse**”) as part of the New generic Top-Level Domain Program (“**New gTLD Program**”).

Preamble

Whereas, The Trademark Clearinghouse is part of the New gTLD Program and one of the rights protection mechanisms established by ICANN.

Whereas, The Trademark Clearinghouse consists of two primary functions: (i) the authentication of contact information and verification of Trademark Records (as defined below) and (ii) the storage of such Trademark Records in a database in order to provide information to the new gTLD registries to support the providing of NORNs (as defined below).

Whereas, Deloitte has been selected by ICANN as the authentication and validation provider for the Trademark Clearinghouse.

Whereas, Deloitte has contracted with CHIP to be the entity that will contract with Trademark Holders and Trademark Agents for the processing of Trademark Records into the Trademark Clearinghouse.

Introduction:

This introduction provides a general overview of different legal obligations between you and us.

By entering into this Agreement, you are acknowledging that you have reviewed and agree to the following documents, which collectively constitute the “**Agreement**” between you and us:

- These Clearinghouse Validation Terms and Conditions
- The Payment Terms and Conditions, available at www.trademark-clearinghouse.com.
- The Fee Schedule, available at www.trademark-clearinghouse.com.
- The Trademark Clearinghouse Guidelines, available at www.trademark-clearinghouse.com.
- The Dispute Resolution Procedures, available at www.trademark-clearinghouse.com.



1. TERMS AND CONDITIONS

I. Definitions

Activation (or Activated): A Trademark Record is activated when we have determined that a Trademark Record meets the Eligibility Requirements as stated in the Trademark Clearinghouse Guidelines (i.e. a “verified” status in the Clearinghouse User Interface).

Automated Interface: The application-programming interface available to Trademark Agents that allows Trademark Agents to submit Trademark Records in bulk and access the Verification Services in an automated way.

Clearinghouse User Interface: The online web-application made available through the Website that enables you to, among other things, (i) create and manage your account with us, and (ii) submit Trademark Records in order to receive the Verification Services.

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 Deloitte in connection with the Verification Services has not been provided by you in the time periods specified in the Trademark Clearinghouse Guidelines, or (iii) a Trademark Record has been successfully disputed under the Dispute Resolution Procedures.

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

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

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

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

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

Notification of Registered Name (NORN): Notifications sent by us to you during a Sunrise Period or Trademark Claims Period that a domain name has been registered that matches labels for one of your Trademark Records.

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

SMD File: If you elect to participate on behalf of a Trademark Holder in Sunrise Periods and the Trademark Record meets the requirements related thereto specified in the Trademark Clearinghouse Guidelines, the file that is generated that we will give to you once such Trademark Record is Activated. The SMD File allows you 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 Agent: A person or organization that acts on behalf of a Trademark Holder under the terms of this Agreement.

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

Trademark Clearinghouse Guidelines: The Trademark Clearinghouse 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 Trademark Clearinghouse.

Trademark Holder: Owner, licensee or assignee of a trademark or other mark for which you are acting as a Trademark Agent.

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

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

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

II. Representations, Warranties and Covenants of the Trademark Agent

On the terms of this Agreement, we recognize you as being a Trademark Agent and therefore able to act as a Trademark Agent on behalf of Trademark Holders. As a Trademark Agent, you represent and warrant, as of the date of this Agreement and throughout the duration of this Agreement, the following:

1. You have obtained an authorization from all Trademark Holders that you are acting on behalf of that states that:
 - a. You are authorized to submit Trademark Records for such Trademark Holder as its Trademark Agent for inclusion in the Trademark Clearinghouse;
 - b. The Trademark Holder acknowledges that, upon Activation, the Trademark Record may be transferred to the Database Operator in order to obtain NORNs;
 - c. If applicable, you have obtained the right to download and use the Trademark Holder's SMD Files;
 - d. The Trademark Holder understands that you will be responsible for receiving from us and distributing to them their NORNs and that you are responsible for any selections made in the Clearinghouse User Interface 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);
 - e. The Trademark Holder understands that the Trademark Holder's Trademark Record may not be transferred by you to another Trademark Agent or other third party;
 - f. You have been 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;



- g. You are authorized to act on the Trademark Holder's behalf with respect to the Dispute Resolution Procedures; and

You are authorized to perform any other obligation under this Agreement.

A copy of such authorization must be provided to us upon request.

2. You will provide the name of the Trademark Holders that you are acting on behalf of and their contact information, including e-mail address, through the Clearinghouse User Interface or the API and will at all times keep such information up to date. You acknowledge that Deloitte may, from time to time and at its sole expense, verify whether the Trademark Holders' contact information that you provided us is correct, accurate and reliable, in which case we will notify you with reasonable notice. You will ensure that your Trademark Holders cooperate with us and Deloitte in this verification.
3. You will provide us with your correct contact information and keep it current so that we may annually verify that such information is correct. If such contact information is incorrect, we will take progressive measures to contact you to correct such information. If we are ultimately unable to contact you, we will suspend your account and you will need to contact us to resolve the issue.
4. Following the submission of a Trademark Record, you will promptly provide your Trademark Holders 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.
5. You will only use the services or functionalities provided to you under this Agreement for their intended purposes.
6. You agree that we will only interact with you and not directly or indirectly with any of the Trademark Holders you represent. Notwithstanding the above, we may directly interact with your Trademark Holders in situations where you have no power to act for the Trademark Holder or in the event that we have suspended your account. It will be your responsibility to notify us if any of your Trademark Holders want to withdraw their authorization for you to represent them.
7. You agree that you will remain ultimately responsible for any of your employees, agents, customers or subcontractors that use or have access to your account.
8. You 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 you or your Trademark Holder wish to transfer a Trademark Record to such Trademark Holder, you must contact us, and we will assist you in making such transfer, subject to reasonable conditions to such transfer that we may require.
9. You will inform all Trademark Holders who you are the Trademark Agent for of our privacy practices as detailed in the privacy notice found on the Website and is detailed herein.

III. Submitting a Trademark Record

1. You will comply with the Trademark Clearinghouse Guidelines, the Payment Terms and Conditions, the Fee Schedule and the Dispute Resolution Procedures in force at any particular time. We will notify you through the Website of any change to either the Trademark Clearinghouse Guidelines, the Payment Terms and Conditions, the Fee Schedule or the Dispute Resolution Procedures at least five (5) calendar days prior to such changes becoming effective.



2. You will not submit a Trademark Record when you have reason to believe that any of the following apply or could apply:
 - a. Some or all information provided to you is false, deceptive, misleading, inaccurate or incomplete;
 - b. You do not have the right to submit such information to us as a Trademark Agent; or
 - c. You do not have the necessary funds in your pre-payment account to submit the Trademark Record.
3. You agree that, to the best of your knowledge, any and all information submitted by you to us 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 you will promptly notify us of such change. In the event you request a change 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, or (g) a court order, statute or treaty that affects any of the foregoing (a)-(f), such change may be considered a new Trademark Record and you may be charged a fee for any Verification Services that Deloitte may need to perform. 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.

IV. License

1. You, on behalf of yourself and each of your Trademark Holders, grant us, Deloitte, 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 you, including but not limited to Trademark Records, for the purposes of the Trademark Clearinghouse 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, you understand that the Mandatory License is necessary for you to receive NORNS. We 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.
2. We grant you a limited, personal, non-commercial, non-exclusive, non-sublicensable, non-assignable license to access and use the Clearinghouse User Interface and Automated Interface. You will not access or use the Clearinghouse User Interface or the Automated Interface for purposes other than those stated in this Agreement.

V. Payment

1. You will not be charged any fee for entering into this Agreement.
2. Section V.1. notwithstanding, before submitting a Trademark Record, you will need to wire an amount of USD \$15,000 or USD \$5,000 into your Clearinghouse User Interface account in accordance with the Payment Terms and Conditions. In addition, upon the submission of a Trademark Record, you will be charged for each such Trademark Record in line with



the Fee Schedule. The fees will be payable by you on behalf of the Trademark Holder in accordance with the Payment Terms and Conditions even if a Trademark Holder does not pay or delays its payment to you.

VI. Term and Termination

1. This Agreement shall be effective from the moment of your acceptance of this Agreement and shall continue in full force and effect until terminated.
2. If you desire to terminate this Agreement, you may do so at any time, provided:
 - a. You notify all Trademark Holders on whose behalf you act as Trademark Agent of your intent to terminate this Agreement and that they have thirty (30) calendar days to either (i) enter into an agreement with us as a Trademark Holder or (ii) have their Trademark Record Deactivated from the Trademark Clearinghouse upon your termination of this Agreement;
 - b. You certify to us in writing that you have provided all Trademark Holders that you are the Trademark Agent for with the notice required in (a) hereof; and
 - c. Thirty (30) calendar days have passed from the date you provided the certification required in subsection (b) hereof to us.

You will be solely responsible for notifying any Trademark Holders whose Trademark Record is Deactivated as a result of the termination of this Agreement, and you 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 your failure to properly provide the notice required in subsection (a) hereof.

3. In the event that all Trademark Records that you have submitted to us have either (a) been Deactivated, (b) been transferred to the Trademark Holder, or (c) been deemed Invalid, you may terminate this Agreement, provided, however, that such termination will not be deemed effective until we have confirmed that the foregoing (a)-(c) are true.
4. We may terminate this Agreement if, for a period of thirty (30) consecutive calendar days, you have (a) no Activated Trademark Records, and (b) have 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).
5. We may terminate this Agreement if you are in material breach of this Agreement, which breach has not been remedied within thirty (30) calendar days from your receipt of a written notice from us.
6. Upon termination, for any reason, we will refund to you the outstanding balance of your account (if any) within ten (10) calendar days. Following such refund, your account will be terminated.
7. If you do not comply with any of the obligations contained in this Agreement we may suspend your account with immediate effect. You, as well as ICANN, will be notified of this suspension as well as the reason for the suspension and steps to take for you to be reinstated. It will be your responsibility to notify all Trademark Holders who you are the Trademark Agent for of your suspension and you will be solely responsible for any losses or damages incurred by such Trademark Holders resulting from your suspension.



VII. Representation and Warranties of CHIP

We represent and warrant that:

1. We are operating under a valid agreement with Deloitte, and Deloitte is a party to an agreement with ICANN, that allows us to enter into this Agreement and provide the services set forth herein. Under our agreement with Deloitte, Deloitte has agreed that, should we suffer any direct or indirect loss or damages caused in whole or in part relating to this Agreement, under certain conditions, Deloitte will fully indemnify us and hold us harmless for such losses (including any attorney's fees or other legal fees).
2. All Trademark Records properly submitted to us through the Clearinghouse User Interface will be reviewed by Deloitte through the Verification Services.
3. In the event that a Trademark Record is recorded with us for a period longer than one year, Deloitte will re-verify the Trademark Record on an annual basis for the duration of the recording of the Trademark Record at no additional charge.
4. We will promptly inform you of the reason as to why a Trademark Record cannot be verified or is deemed Invalid if such a determination is made by Deloitte.
5. If you elect to participate in Sunrise Periods and your Trademark Record meets the requirements related thereto specified in the Trademark Clearinghouse Guidelines, Deloitte will generate a SMD File for each Trademark Record, which we will provide to you.
6. If eligible, upon our receipt of a NORN from the Database Provider for a label linked to a Trademark Record belonging to one of your Trademark Holders, we will promptly forward such NORN to you. You will be responsible for notifying the applicable Trademark Holder.
7. Subject to Article VIII, the Clearinghouse User Interface has been designed and developed in a professional manner based on the specifications provided by ICANN and shall operate in conformity with such specifications.

VIII. Limitation of Liability

1. Unless stated otherwise herein, neither you, us, 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 Trademark Clearinghouse, under any theory of liability and whether or not you or any such third party has been advised of the possibility of such damages. Your sole remedy for claims arising from or related to the Verification Services shall be through the procedures specified in Article XII below.
2. Except for the express warranties stated herein, the Clearinghouse User Interface and Automated Interface are provided on an "as is" and an "as available" basis, and we disclaim any and all other warranties, conditions, or representations (express, implied, oral or written) relating to the Trademark Clearinghouse or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. We make no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, or other such computer program. We further expressly disclaim any warranty or representation to you, or to any third party.



3. You will hold us, 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 investigation, litigation or settlement (including any reasonable attorney's fees or other legal fees) that may arise or result from (a) your breach of this Agreement (b) any incorrect or fraudulent use by you of the Trademark Clearinghouse, (c) allegations of intellectual property infringement from third parties, or (d) incorrect or outdated information submitted by you and maintained in the Trademark Clearinghouse.

IX. Intellectual Property Rights

You and we 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. We represent and warrant that we 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. You agree that, even following the termination of this Agreement and the corresponding termination of the Mandatory License, we may retain copies of all information provided to us by you under this Agreement.

X. Data Privacy & Personal Data

1. “**Personal Data**” refers to data provided by you to us about any identified or identifiable natural person, or as otherwise specified by applicable law.
2. You and we acknowledge that, in the context of the services contemplated by this Agreement, Personal Data will be exchanged by and between you, us, Deloitte, the Database Provider, ICANN, registries, registrars and domain name registrants.
3. You and we agree that any Personal Data sent by you and received and processed by us in the context of the Trademark Clearinghouse will be treated in accordance with applicable privacy laws and regulations and we undertake to take all appropriate organizational and technical measures to ensure such compliance. We shall only collect, process and share (a) such Personal Data which is necessary for the purpose of giving you access to the Trademark Clearinghouse, (b) any Personal Data related to a Trademark Record, (c) any Personal Data necessary to allow you to use the Trademark Clearinghouse, (d) any Personal Data necessary to allow you and us to manage your account, (e) any Personal Data that is necessary to allow Deloitte 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 Trademark Clearinghouse. We will not process Personal Data in a way inconsistent with the above-mentioned purposes. You, on behalf of yourself and the Trademark Holders for which you are acting as a Trademark Agent, acknowledge and consent to the transfer of Personal Data provided by you between us, Deloitte, ICANN, the Database Provider, registries, registrars, domain name registrants and our 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 you do not provide the minimally required Personal Data and do not consent to the transfer of such data, we may not be able to perform all services contemplated hereunder.

4. If you live outside the United States, and you use the Clearinghouse User Interface or provide us with Personal Data directly via the Clearinghouse User Interface, your information will be handled in accordance with this Agreement. By using the Clearinghouse User Interface or giving us Personal Data, you may be transferring Personal Data to us, Deloitte, ICANN, the Database Provider, registries, registrars, domain name registrants and our respective subcontractors and affiliates to another jurisdiction that may not have the same level of data protection as your jurisdiction, including, but not limited to, the United States. However, you agree and consent to our collection, transfer, and processing of Personal Data in accordance with this Agreement. You are solely responsible for compliance with any data protection or privacy obligations in your jurisdiction when you use the Clearinghouse User Interface or provide us with Personal Data. Regardless of where we transfer your information, we still protect your information in the manner described in the Privacy Notice.
5. We will make appropriate arrangements with our employees, directors, agents, subcontractors and any other individuals acting on our 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.

XI. Notifications

1. All communication between you and us will, to the extent possible and except as otherwise agreed upon between you and us, be organized in an electronic manner.
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. You and us hereby recognize that no systems or procedures can wholly mitigate such risks.
3. You and we hereby confirm that we 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.

XII. Dispute Resolution

In the event a dispute arises between you and us out of or relating to the Verification Services provided by us, such dispute shall be handled in accordance with the Dispute Resolution Procedures.



XIII. Severability

Should any provision of this Agreement be invalid, unenforceable, void or otherwise ineffective, the rest of this Agreement will remain valid. The parties will then interpret and modify this Agreement so as to achieve as far as possible the sense and purpose of the parts held to be invalid, unenforceable, void or ineffective.

XIV. Applicable Law

This Agreement and all matters relating to the engagement whether in contract, statute, tort (including, without limitation, negligence) or otherwise, shall be governed by, and construed in accordance with, the laws of Luxembourg (without giving effect to the choice of law principles thereof) and shall be subject to the exclusive jurisdiction of the courts of Brussels, Belgium. You hereby waive any immunity, sovereign or otherwise, that you would otherwise have to such jurisdiction and agree that your rights, obligations and liabilities hereunder shall be determined in the same manner and to the same extent as those of a private litigant under like circumstances.

XV. Miscellaneous

1. This Agreement may not be assigned by you for any reason without our prior written consent. We may assign all of our rights and obligations under this Agreement at any time to Deloitte or an entity specified by Deloitte without your consent.
2. The headings are inserted for convenience only and shall not affect the construction and interpretation of this Agreement.
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 you, it being agreed that the English language version of this Agreement is the authentic version, the interpretation of which shall prevail.
4. This Agreement may not be modified or amended other than by a written amendment in signed by both you and us. 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.
5. Except for Deloitte, 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.



As of the date of acceptance, this Agreement has been entered into between CHIP and the following Trademark Agent:

“CHIP”	
Address:	
<input type="text"/>	
<input type="text"/>	
<input type="text"/>	
City:	State/Province:
<input type="text"/>	<input type="text"/>
Zip/Postal Code:	Country/Economy:
<input type="text"/>	<input type="text"/>
E-mail address:	
<input type="text"/>	
Named Representative of the company:	
<input type="text"/>	
VAT number:	Commercial Registration Number:
<input type="text"/>	<input type="text"/>
Signature:	
<input type="text"/>	

“Trademark Agent”	
Name of the trademark agent:	
<input type="text"/>	
Address:	
<input type="text"/>	
<input type="text"/>	
<input type="text"/>	
City:	State/Province:
<input type="text"/>	<input type="text"/>
Zip/Postal Code:	Country/Economy:
<input type="text"/>	<input type="text"/>
E-mail address:	
<input type="text"/>	
Named Representative of the company:	
<input type="text"/>	
VAT number:	
<input type="text"/>	
Signature:	Date:
<input type="text"/>	<input type="text"/>