

## **TREx Terms & Conditions**

By opting into the TREx Service, you agree to adhere to the below terms and condition ("TREx Terms & Conditions") in addition to the Clearinghouse Validation Terms and Conditions for Trademark Agents. In case of conflict between the TREx Terms & Conditions and the Terms and Conditions for Trademark Agents, the TREx Terms & Conditions will prevail for the provision of the TREx Service.

### **1. Definitions**

1.1 Clearinghouse Validation Terms and Conditions means [<http://www.trademark-clearinghouse.com/sites/default/files/files/downloads/TMCH%20terms%20and%20conditions%20-%20Trademark%20Agent%20-%201.1.pdf>]

1.2 Label means the part of a domain name to the left of the 'dot' (the 'dot' separates the label from the TLD string) that is an exact match of a label linked to a valid sunrise eligible TMCH Mark Record. Trademark Holders with a TMCH Mark Record can have multiple Labels in a single TMCH Mark Record registration as defined by the exact matching rules described in the Trademark Clearinghouse Guidelines.

1.3 Override Procedure means the verification procedure of a third party rights holder and the subsequent release mechanism of an enabled TREx Label or TREx Protected Name to an active domain name registration to that verified third party rights holder.

1.4 Registrar means the party that has entered into an agreement with CHIP to provide part of the services as described further.

1.5 Registry Operator (RO) means the entity to which the management of a TLD has been delegated by ICANN in accordance to a Registry Operator Agreement. Registry Operator is fully responsible for any acts or omissions of the Registry Service Provider and its compliance with the technical specifications. For the purpose of the TREx Service, Registry Operator has entered into an agreement with CHIP, a subcontractor of the validation provider.

1.6 Registry Service Provider (RSP) means the entity managing and performing the technical operations for a TLD who has entered into an agreement with the Registry Operator.

1.7 TLD means the Top Level Domain (right of the 'dot') that is under management of the Registry Operator for which the Registry Operator has entered into an agreement with ICANN and that has been included into the TREx Service.

1.8 TMCH Agent means the entity representing a Trademark Holder in its interactions with the TMCH.

1.9 TMCH Mark Record means a complete and correct set of information submitted by the Trademark Holder to benefit from the TMCH services.

1.10 TMCH Guidelines means the guidelines as published on the TMCH website <http://www.trademark-clearinghouse.com/sites/default/files/files/downloads/TMCH%20guidelines%20v1.2.pdf>

1.11 Trademark Holder means the owner, licensee or assignee of a Trademark for which the TMCH services are activated for which you are acting as a TMCH Agent.

1.12 TREx means TMCH - Registry Operator and/or its RSP information exchange.

1.13 TREx Label means a Label that is no longer available for a standard domain name registration via the implementation of the TREx Service directly with the Registry Operator and/or RSP.

1.14 TREx Protected Name means a Label that is no longer made available for a standard domain name registration via the implementation of the TREx Service directly with a Registrar.

1.15 TREx Service means a layer of security that a sunrise eligible SMD Label is no longer made available for registration within a TLD.

1.16 3rd Party Holder means a registrant applying to release and upgrade a TREx Label or TREx Protected Name to a full registration as defined by the Registry Operator. The 3rd Party Holder may be required to fulfill additional tasks in order to complete registration and must have a prior right on matching the TREx Label or TREx Protected Name as described in the Override Procedure.

## 2. Representations, Warranties and Covenants of the Trademark Agent

As a Trademark Agent, you represent and warrant, as of the date of the opting into the TREx Service throughout the duration thereof, the following

\* You have obtained a written authorization from all Trademark Holders on whose behalf you are acting that states that:

- a. You are authorized to represent such Trademark Holder as its Trademark Agent for the TREx Service;
- b. Your Trademark Holder understands that only sunrise eligible Labels are eligible for TREx Service;
- c. Your Trademark Holder acknowledges and agrees that CHIP nor Deloitte nor ICANN can guarantee the full coverage of the TREx Service;
- d. CHIP has the right to request the Registry Operator to make a Label unavailable for standard domain name registration either via the TREx List or via registering a TREx Protected Name;
- e. Your Trademark Holder acknowledges and agrees that in the event of a TREx Protected Name registration, CHIP has entered into agreement with the Registrar and TMCH's contact details will be listed in the WHOIS record;
- f. Both you and your Trademark Holder acknowledge and agree that you do not obtain any rights to a TREx Label or a TREx Protected Name;
- g. Both you and your Trademark Holder will not be able to use a TREx Label or TREx Protected Name for any commercial or non-commercial purposes;
- h. In the event that your Trademark Holder would like to obtain ownership or use the TREx Label or TREx Protected Name, you or your Trademark Holder must initiate the Override Procedure via a registrar;
- i. Your Trademark Holder understands that a 3rd Party Holder can override the TREx Label or TREx Protected Name via the Override Procedure. In the event that this would happen, a notification will be sent to you or your Trademark Holder (in the event that you have opted for NORN to Trademark Holder);

j. Your Trademark Holder acknowledges and agrees that CHIP has the right to provide the Label to the Registry Operator and/or the registrar in order to perform the TReX Services.

\* You understand you will be billed for a bundle of TLDs without any guarantee that the Label will be protected (either as a TReX Label or as a TReX Protected Name) as the label could either already have been registered prior to the activation of the service or other restrictions on general availability apply (such as premium pricing or ICANN reserved lists).

\* CHIP provides to best of its ability an AS IS overview based on the information at hand of the TReX coverage at the moment of purchasing the TReX Service and after the activation of the service;

\* The TMCH Mark Record must be valid during the duration of the TReX Service.

### 3. Fees and Invoicing

Your prepayment account will be debited for the full bundle per purchase of the TReX Service per Label per year.

Once you have purchased the TReX Service, no refund is possible for whatever reason.

The TReX Service is offered as a bundled package of multiple TLD's. As TReX coverage will vary per label (due to prior registrations, premium exempt or other) total coverage in the bundle for your clients' Label cannot be guaranteed. Pricing, however will always be applied for the full bundle. As more TLDs will be joining the TReX program, we will upgrade the packages.

### 4. Term

The TReX Service is valid for a period of one (1) year as of the date of purchase and may be renewed on a yearly basis for the bundle applicable at the moment of renewal and that your sunrise eligible trademark record is at least valid for 1 [one] month.. Renewal of the TReX Service will have to be done explicitly through TMCH interface or API, in the absence of which the TReX Service will terminate automatically upon expiration of the one (1) year period.

### 5. License

You, on behalf of yourself and each of your Trademark Holders, grant us, Deloitte, Registrar, Registry Operator and/or RSP 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 Labels as listed in the Trademark Record, for the purposes of the TReX Service (a "Mandatory License"). The Mandatory License automatically terminates upon the termination of the TReX Service. 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 for the purpose of the TReX Service.

### 6. Limitation of Liability

Unless stated otherwise herein, neither you, us, Deloitte, ICANN 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 TReX Service,

under any theory of liability and whether or not you or any such third party has been advised of the possibility of such damages.

EXCEPT FOR THE EXPRESS WARRANTIES STATED HEREIN, THE TREX SERVICE IS 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 HERETO 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.

You will hold us, Deloitte, ICANN 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 these TREx Terms & Conditions; (b) any incorrect or fraudulent use by you of the TREx Service (c) allegations of intellectual property infringement from third parties, or (d) incorrect or outdated information submitted by you and maintained in the Trademark Clearinghouse in relation to the TREx Service.