

## Agent Agreement for TMCH Service

Version 2020.1

This contract (the "Agreement") is concluded between Gandi International, a Luxembourg limited liability corporation whose registered office is located 7, rue des Mérovingiens, L - 8070 Bertrange, Luxembourg, with a share capital of 12,500€ (hereinafter referred to as "Gandi" or "We", "Our", "Us", "Our") and any legal entity or individual acting in their own name via their Gandi User Account (hereinafter referred as the "Customer", "You", "Your", or "Yours").

### Article 1. Definitions

**Extension:** designates the suffix located to the right of the domain name, after the dot.

**ICANN** (Internet Corporation for Assigned Names and Numbers): refers to the non-profit organization under American law that is the regulatory authority for all generic top-level domain names.

**TMCH Service:** refers to the Trademark Clearinghouse mechanism set up by ICANN for the opening of general Extensions and managed by Clearinghouse for Intellectual Property S.A. ("CHIP").

The main features of the TMCH are:

- authentication of contact information and verification of submitted trademark files,
- storage of validated trademarks in a database managed by IBM, the operator designated by ICANN.

**SMD (Signed Mark Data) file:** means a unique file issued by CHIP certifying that Your trademark has been verified by CHIP, and that You have met the eligibility requirements to apply for domain name registration during the Sunrise Period of an Extension.

**Sunrise:** refers to the pre-opening phase of an Extension set up by the Registries at the time of the opening of the said Extension. This phase is reserved for trademark holders in order to protect their trademarks by allowing them to make requests for the registration of domain names corresponding to their trademarks before the general opening of the Extension. A mandatory sunrise period will be implemented before the general opening of each generic Extension granted by ICANN.

**TMCH** (Trademark Clearinghouse): refers to the database of trademarks validated for the purposes of trademark protection under ICANN's New gTLD Program.

### Article 2. Contractual framework

**2.1.** The present Agent Agreement for TMCH Service (hereinafter the "Agreement") is concluded in application of the General Terms and Conditions of Service and supplement them.

Capitalized terms used in this Agreement have the meanings given to them in the General Terms and Conditions of Service, unless otherwise defined in this Agreement.

In the event, of any inconsistency or difficulty of interpretation between this Agreement and the General Terms and Conditions of Service, the provisions of this Agreement shall prevail.

This version of the Agreement supersedes the versions that You have previously agreed to.

**2.2** By subscribing to the TMCH Service, You acknowledge that You have read and agreed to abide by all the eligibility rules and conditions defined by ICANN and CHIP, which can be consulted at the following address : <http://www.trademark-clearinghouse.com/downloads>

**2.3** By subscribing to this Agreement, You acknowledge that You have read and accepted:

- The Terms and Conditions for Trademark Holders: <https://www.trademark-clearinghouse.com/content/terms-and-conditions-trademark-holders>
- CHIP's privacy policy: <http://trademark-clearinghouse.com/content/privacy-notice>

### Article 3. Object

The Agreement determines the terms and conditions under which You designate Gandi as Your agent, and expressly give it a mandate to Gandi in order to submit, in Your name and on Your behalf, a registration request for one of Your trademarks with CHIP.

### Article 4. Gandi's obligations

**4.1** Gandi provides You with the list of information and mandatory documents that allow You to submit Your request with CHIP, and then Gandi sends Your documents to CHIP. Only CHIP evaluates the validity and sufficiency of the supporting documents in order to obtain the registration of Your trademark in the TMCH.

Under the present Agreement, Gandi commits to:

- Transmit to CHIP Your request for TMCH for the concerned trademark, attached with the supporting documents that You have sent via Gandi's interface during the purchase process, or via email for the additional documents requested by CHIP via Gandi;
- Inform You of any additional documents that You must provide, at the request of CHIP;
- After the issuance of the SMD file by CHIP, We will make the SMD file available to You in Your User Account, for the entire duration of the registration of Your TMCH Service.

**4.2** It is hereby specified that Gandi only acts as an intermediary between You and CHIP within the framework of the submission of Your file in order to obtain the TMCH service on the trademark of Your choice.

Gandi does not provide any advice concerning the documents to be provided, nor as to their sufficiency. Likewise, Gandi does not verify the documents that You provide as detailed in Article 7 of this Agreement.

You are informed that the registration of Your trademark with the TMCH will be subject to verification by CHIP, and that it will only be validated if it meets the eligibility conditions detailed in Article 7.1 hereof. The eligibility of Your application and the validity of the documents and supporting documents You provide are assessed by CHIP at its sole discretion. Consequently, Gandi cannot guarantee the validation by CHIP of Your request for TMCH on Your trademark.

## **Article 5. Your obligations**

You agree to:

- Before subscribing to the TMCH Service, You ensure that Your trademark meets the eligibility criteria set by CHIP and described in Article 7.1 hereof;
- Provide the necessary information for the registration of Your Trademark with TMCH, as detailed in Article 7 of this Agreement, under Your sole and entire responsibility;
- Provide as soon as possible all initial and additional documents that You will be asked to provide in order to finalize Your registration application;
- Provide valid contact information (including an email address) in order to receive NORN ("Notification of Registered Names") as defined in Article 6.1.

## **Article 6. Description of the TMCH Service**

Subject to prior validation of Your trademark, TMCH offers the following services:

### **6.1 "Sunrise service".**

Registering Your trademark with CHIP allows You to participate in Sunrise periods, subject to Your eligibility to the specific criteria for each Extension defined by the Registry.

The Sunrise service includes :

- the generation of an SMD file attesting of the validation of the trademark and allowing the Customer to proceed with registration requests for one or more domain names that strictly correspond to the identical name of the trademark during the Sunrise period, subject to compliance with the eligibility conditions and rules established by the Registry at stake;
- the sending of "NORN", informing the Customer that a domain name corresponding to the trademark name has been registered by a third party during the Trademark Claim Period of the Extension at stake.

**6.2. Trademark Claim Service ("Trademark Claims")** available for a minimum of 90 days (variable depending on the Extension) following the general opening of an Extension and which includes:

- the setting up of real-time alerts when a third party registers a domain name corresponding to Your Trademark, informing it that the domain name corresponds to a Trademark registered with TMCH and providing information about the Trademark and its owner,
- if the third party accepts the alert and finalizes the registration of the domain name, sending a notification (NORN) informing the Customer that a domain name corresponding to the trademark name has been registered by a third party.

As part of the provision of these services, TMCH generates one or more labels, up to a maximum of 100 labels, which may incorporate syntactic variations of the Customer's trademark. The generation of additional labels is not possible.

If the Customer's trademark is composed of special characters that are not accepted in the composition of a domain name, the following rules apply:

- the special characters are deleted or replaced by a hyphen;
- the characters « @ » and « & » are also translated into the official language of the jurisdiction in which the trademark is protected.

If the Customer's trademark is composed of non-Latin characters, the labels will be generated in accordance with the IDNA ("Internationalizing Domain Names in Applications") standards and ICANN rules (especially, labels composed of different scripts will not be generated).

The services provided by TMCH mentioned above are based on the generated labels.

The Customer acknowledges that the NORNs will be sent by CHIP to GANDI, depending on the configuration of the NORNs carried out by GANDI via the CHIP interface according to the Customer's instructions (e.g. option not to send the NORNs for certain trademarks and that GANDI will transfer them to the Customer at the e-mail address indicated in its trademark file.

**You acknowledge that the registration of Your Trademark with TMCH does not represent proof of Your right on such Trademark nor does it confer any right on the Trademark.**

## **Article 7. Eligible trademarks - required information and documents**

### **7.1. Rules applicable to all types of trademarks**

CHIP accepts the registration of the following types of trademarks:

- trademarks registered at the national or regional level;
- trademarks validated by a court decision;
- trademarks protected by law or treaty.

CHIP may, upon request from a Registry, accept the registration of other types of trademarks (additional rules will then be adopted and published on the TMCH website).

Other intellectual property rights are not accepted by CHIP (e.g. patents, designs, know-how, trade secrets, copyrights...).

Only word or semi-figurative trademarks with a predominantly textual component are eligible.

In any case, the following trademarks are not considered eligible under the TMCH rules:

- trademarks composed of a First Level Extension (.com, ...);
- trademarks composed of a dot;
- trademarks that do not contain letters or numbers;
- trademarks composed of letters or numbers belonging to different alphabets, in fact domain names composed of different scripts are not allowed under ICANN rules;
- trademarks that have been subject to invalidation, cancellation, opposition or rectification proceedings.

Regardless of the type of trademark, the following information is required:

- exact title of the trademark;
- the nature of the Customer's right to the trademark: owner, licensee or assignee;
- the company name and Your address (as indicated on the trademark registration certificate, in the court decision validating the trademark, or in the law or treaty protecting the trademark);
- Your contact information (first name, last name, e-mail address, phone and fax).

The following additional documents may be required:

- The license declaration completed and signed if You declare to be a licensee of the trademark, and in the case of a registered trademark if the trademark license is not registered with the trademark office;
- The declaration of assignment completed and signed if You declare that You are the assignee of the trademark, and in the case of a registered trademark if the assignment is not registered with the trademark office.

In any case, in the event that CHIP requests additional information or documents, these must be provided to CHIP within twenty (20) calendar days, failing which the trademark registration will be rejected without any refund. The documents must be provided in .pdf or .jpg format with a maximum size of 10 MB.

## **7.2. Registered trademarks**

In order to register the trademark with CHIP, the following information must be provided:

- the trademark registration number;
- the trademark application number (optional);
- the trademark registration date (optional);
- the trademark filing date (optional);
- the trademark expiry date (optional);
- the jurisdiction in which the trademark was registered;
- the class numbers in which the trademark was registered according to the Nice Classification (optional);
- a copy of the certificate of the trademark and proof of use of said trademark.

If You wish to register Your trademark with CHIP in order to benefit from the Sunrise service, additional documents proving the use of Your trademark are required:

- a completed and signed declaration of use;
- a proof of trademark use (e.g. product labels, product packaging, advertising and marketing materials such as brochures, catalogs, product manuals, press releases, screen shots, etc.).

The documents provided must strictly reproduce the trademark as indicated on the registration certificate. The following examples are not accepted as proof of use: ownership of a domain name composed of the trademark name, e-mail address composed of the trademark name, business card ...

In some cases, additional documents may also be requested by CHIP, including:

- a registration certificate of the Customer, if the address indicated on the trademark certificate is not up to date ;
- a copy of the trademark certificate if the trademark office with which the trademark is registered does not have an online database (list available on the TMCH website) ;
- a copy of the Customer's request for trademark renewal if the registration of the trademark expires during the term of its registration with TMCH.

## **7.3. Trademarks validated by a court decision**

In application of the rules of the TMCH, it refers to a trademark validated at the national level by a competent judicial body.

The following trademarks are not considered eligible:

- unregistered trademarks ;
- American state-owned trademarks;
- international trademarks registered under the Madrid Protocol;
- trademarks validated by a judicial authority at a non-national level (state, sub-national region, city ...).

In order to proceed to the registration of the trademark with CHIP, the following additional information must be provided:

- the number of the court decision;
- the date of protection of the trademark (date on which the decision was rendered/published) ;
- the jurisdiction in which the decision is applicable;
- a description of the goods and services for which the trademark is protected;
- the name of the court that rendered the decision.

In addition, a copy of the judicial decision is required.

## **7.4. Trademarks protected by law or treaty**

In application of the TMCH rules, the law or treaty protecting the trademark must be applicable at the national level and be in force at the time the trademark file is submitted to the TMCH.

If You wish to register the trademark with TMCH in order to benefit from the Sunrise service, the law or treaty conferring protection of the trademark must have come into force before June 26th, 2008.

The following trademarks are not considered eligible:

- unregistered trademarks ;
- renowned, well-known trademarks, unless protected by law or treaty;
- American state-owned trademarks;
- international trademarks registered under the Madrid Protocol;
- trademarks validated by a law or treaty not applicable at the national level (at the level of a state, sub-national region, city, etc.).

In order to proceed with the registration of the trademark with TMCH, the following additional information is required:

- the trademark number (if applicable);
- the date of protection of the trademark;
- the jurisdiction in which the trademark is protected;
- a description of the goods and services for which the trademark is protected;
- the name of the law or treaty;
- the jurisdiction in which the law or treaty is applicable;
- the execution date of the law or treaty.

In some cases, additional documents may also be requested by CHIP, such as:

- a copy of the law or treaty if the law or treaty is not available in the online public databases;
- a copy of the certification if required by law or treaty to grant protection and if the certification is not available in online public databases.

It is hereby specified that the documents and supporting documents sent to Gandi as detailed in the present article will be deleted sixty (60) days after their communication to Gandi.

#### **Article 8. Prices**

The cost of the Service is communicated to You on Our Website before subscription.

The fee applies to each trademark for which a registration application is filed and depends on the duration chosen for the trademark registration or renewal with TMCH.

In any event, no reimbursement will be made, in particular in the event of (i) rejection by CHIP of Your application for registration of Your trademark with the TMCH or (ii) abandonment of Your application for registration of Your trademark with the TMCH.

A modification of the trademark associated with TMCH such as the following changes will be considered as a new application for TMCH and therefore subject to a new payment even if these modifications result from a court decision, a law or a treaty:

- change of the trademark name;
- change of the trademark owner's name;
- change of the trademark filer's status (owner, licensee, assignee),
- change of trademark jurisdiction ;
- change of classes of goods and services ;
- change in the description of products and services.

#### **Article 9. Activation of the Service - Waiver of the withdrawal right**

The activation of the Service corresponds to the date that Gandi sends Your trademark registration request to CHIP.

In accordance with Our General Terms and Conditions of Service and the provisions of the Consumer Code, and as soon as You are qualified as a "consumer" within the meaning of the Consumer Code, You acknowledge and accept that the Service provided by Gandi is fully executed for each request for trademark registration or renewal with the TMCH as soon as Your request is communicated to CHIP. You understand and accept that this execution may begin before the end of the withdrawal period from which the consumer benefits. In this context, You expressly waive Your right of withdrawal, in accordance with Article L. 222-9 (7) of Luxembourg consumption Code.

#### **Article 10. Duration of the Agreement**

This Agreement comes into force as of the subscription of the Service and is concluded for the duration that You have chosen at the time of the order, without tacit renewal. The TMCH Service is not subject to automatic renewal.

In order to renew the TMCH Service, You will need to place a new order from Your User Account. The supporting documents listed in Article 7 of this Agreement will not necessarily have to be provided again. On a case by case basis and on a random basis, CHIP may request the supporting documents listed in Article 7 hereof in order to validate the renewal of the TMCH Service. In such a case, Gandi will ask You to send these supporting documents.

#### **Article 11. Termination of the Agreement**

You may terminate this Agreement at any time, subject to one (1) month notice by registered mail with acknowledgement of receipt sent to Gandi.

Nevertheless, Your trademark will remain registered with CHIP for the duration initially chosen. Termination does not terminate the registration of Your Trademark with CHIP.

Such termination will not entitle You to any refund.

#### **Article 12. Consequence of the termination of the Agreement**

At the expiration of the present Agreement, all TMCH services (Sunrise service and Trademark Claim service) can no longer be provided by Gandi.

You acknowledge that, in application of the CHIP rules, GANDI is not authorized to transfer the trademark file at the expiration of the Agreement, even at Your request, to another trademark agent or to a third party without the prior authorization and CHIP intervention. This operation is at Your expense and under Your responsibility.

#### **Article 13. Resolution of disputes with third parties**

CHIP has adopted a dispute resolution procedure that You agree to abide by without reservation: <http://www.trademark-clearinghouse.com/dispute>

This dispute resolution procedure is applicable to the following disputes:

- litigation initiated by the owner of a trademark relating to the rejection of his trademark file;
- litigation initiated by a third party relating to the acceptance of a trademark file;
- litigation initiated by a third party relating to the fact that a trademark file is no longer valid.

#### **Article 14. Guarantee**

You guarantee that you have the necessary rights on the trademark that is the subject of the registration application in order to subscribe to the TMCH Service.

In accordance with the provisions of the General Terms and Conditions of Service, You guarantee Gandi against any recourse or legal action based on the violation of the intellectual property rights of third parties.

As such, You agree to indemnify Gandi and to bear the legal fees and attorneys' fees incurred by Gandi on the occasion of such an action, as well as the amount of the settlement indemnities and/or damages to which Gandi may be condemned.

#### **Article 15. Exclusions and limitations of Gandi's liability**

In addition to the exclusions and limitations of liability of GANDI provided in the General Conditions of Services, the liability of GANDI is excluded in the following cases:

- rejection of the Customer's trademark file by the CHIP ;
- delay in the processing of the trademark file by the CHIP;
- delay of the Customer in providing instructions and additional documents required by CHIP, at the time of registration, renewal or at any time during the term of the Service;
- error in Your instructions and notably in the information or documents provided to Gandi;
- delay or non-performance resulting from any action or omission on Your part, or non-performance, even partial, of Your obligations;
- any outcome of a dispute resolution procedure.

#### **Article 16. Miscellaneous provisions**

The fact that one of the Parties does not exercise any of its rights under the Agreement or does not claim a breach of any of its contractual obligations shall not be considered as a waiver of the exercise of the aforementioned rights or of the obligation in question.

If one or more provisions of the Agreement are held to be invalid or declared as such by a court decision that has become final, the other provisions shall retain their force and scope.

This Agreement is available in French and in English. Both language versions are considered to be equally authentic. In the event of any discrepancy between the two aforementioned versions, the French version shall prevail in determining the spirit, intent, and meaning of this Agreement.

#### **Article 17. Applicable law - Dispute resolution**

**17.1.** The Agreement is governed by and construed in accordance with Luxembourg law.

**17.2.** Prior to any litigation, the Parties shall seek, in good faith, to amicably settle their disputes relating to the validity, interpretation, performance or non-performance, interruption, termination or denunciation of the Agreement.

**17.3.** In the absence of an amicable resolution, any dispute concerning the validity, interpretation or performance of the Agreement shall be brought before Luxembourg's competent courts having jurisdiction where Gandi is headquartered.

**17.3.** In the absence of amicable resolution, any dispute concerning the validity, interpretation or execution of the Agreement will be brought before the competent Luxembourg courts within the jurisdiction of which Gandi is established.