

## Donuts Protected Marks List Terms and Conditions

In addition to your registration agreement, the Donuts Protected Marks List (“DPML”) terms and conditions set out here shall apply. In the event of any inconsistency between the terms of your registration agreement and the DPML terms set out here, the DPML terms shall prevail.

### Definitions:

**Application Content** means all information provided in respect of a DPML Block;

**Available Domain Names** means a Domain Name that is not already registered or a Reserved Domain Name;

**Available SLDs are SLDs** that have not been blocked, reserved, registered, awarded, or otherwise previously allocated by a Registry prior to that receipt of an Application for a DPML Block;

**Domain Name** means domain name in and maintained by a Registry’s database consisting of at least the SLD and TLD together, separated by a dot (e.g., “second.top”);

**Donuts** means Donuts Inc. and its affiliates;

**Donuts Policies** means the rules, protocols, policies or procedures, including without limitation the Terms and Conditions, adopted and/or amended from time to time by Donuts;

**Donuts Website** means [www.donuts.co](http://www.donuts.co) or any other URL directed from such website;

**DPML or Domain Protected Marks List** means the service that blocks certain SLDs from Registration across Registries pursuant to the Terms and Conditions;

**DPML Applicant** means a natural person, company, or organization submitting a DPML Application;

**DPML Application** means a complete, technically correct request for a DPML Block made with Donuts, which complies with all the respective requirements provided for in these Terms and Conditions;

**DPML Block** means the block, under these Terms and Conditions, preventing the Registration of a SLD across all TLDs then owned and operated by Donuts (e.g., a DPML Block for “second” will generally block that SLD from being registered in a Domain Name in participating TLDs, such as “second.top”);

**DPML Block Request** is a request submitted by a Registrar on behalf of a DPML Applicant who desires to block from registration names contained within the SMD File;

**ICANN** means the Internet Corporation for Assigned Names and Numbers;

**ICANN Requirements** means all applicable ICANN policies, including the Registry Agreement;

**IDN** means Internationalized Domain Name;

**Override** means, consistent with the Terms and Conditions, the Registration of a Domain Name where a DPML Block currently exists by a Registrant holding an SMD File that contains the SLD String that exactly matches the SLD String in the applied-for Domain Name;

**Premium Name** is a Domain Name designated by a Registry, in its sole discretion, for non-standard pricing;

**Registered Name** means a Domain Name that has been registered in and is maintained by a Registry;

**Registrant** means the Registered Name holder;

**Registration** means a Domain Name and its associated information (e.g., WHOIS data) that has been accepted by a Registry;

**Registry** means a TLD domain name registry owned and operated by Donuts;

**Registry Agreement** means the Registry Agreement between Registry and ICANN for the operation of the TLD, as amended from time to time, and as posted on the ICANN website.;

**Registry-Registrar Agreement** is the agreement between a Registry and registrars, as amended from time to time;

**Reserved Domain Name** means a Domain Name that has been set aside by a Registry pursuant to the terms and conditions of such Registry;

**Second Level Domain or SLD** means second level domain, representing the String to the left of the dot preceding the TLD (e.g., in the Domain Name “second.top”, “second” is the SLD);

**SMD File** is the file issued by the TMCH proving that the TMCH application data for one or more TMCH-eligible terms--typically a trademark--have been successfully validated and entered into the TMCH database;

**Shared Registration System or SRS** means the system of computers, networking equipment, data stores, software services and network connectivity that allows Registrars to provision objects for the purpose of applying for, registering, modifying and maintaining Registrations and allows registrars to provision objects to apply for, register, modify and maintain DPML Blocks;

**String** means a series of alphanumeric characters, including dashes when not preceding or finishing the alphanumeric character set. For purposes of clarity only, this includes Punycode conversions of IDNs;

**Sunrise** means the period of time noted by a Registry’s terms and conditions;

**Sunrise Registration** means a Domain Name Registration resulting from an approved Sunrise Application;

**Terms and Conditions** means this document, including the annexes and any and all interpretative guidelines published by Donuts in relation hereto, as may be amended from time to time;

**TMCH** means the Trademark Clearinghouse, which is the mechanism made available for the validation and database management of rights protected terms, typically trademarks;

**TMCH Guidelines** means the then effective guidelines found at <http://www.trademark-clearinghouse.com>;

**TLD** means top-level domain, representing the String to the right of the dot (e.g., in the Domain Name “second.top”, “.top” is the TLD);

**WHOIS** means the publicly available information regarding Registrants on the Internet.

## **1. DPML Application**

1.1 Each DPML Application must include one or more SMD Files corresponding to the applied-for SLD and must meet the qualifications specified by ICANN and detailed in the TMCH Guidelines, as they may change from time to time.

1.2 Donuts’ ability to provide DPML Blocks is subject to change, including without limitation, complete discontinuation of the DPML Block service based on ICANN interpretations of the Registry Agreement or pursuant to applicable law or regulation.

## **2. Blocking of Second Level Domains**

2.1 DPML Applications can only be submitted by your registrar or, when modifying a DPML Block, a DPML Block holder. Each SLD that a DPML Application requests to be blocked will incur a separate DPML Block fee.

## **3. DPML Block Creation**

3.1 Donuts will only create or modify a DPML Block of a String insofar and to the extent that:

3.2 The String meets the criteria in Section 4 below;

3.3 The String and the information contained in the request meet the requirements in the Terms and Conditions;

3.4 The String is not already under DPML Block;

3.5 The String in the SMD File either: (i) exactly matches the applied-for SLD, or (ii) is contained in the applied-for SLD (e.g., if the String “sample” is in the SMD File, a DPML Block may be applied for any of the following SLDs: “sample”, “musicsample”, “samplesale”, or “thesamplettest”); and

3.6 The DPML Applicant is sponsored by an ICANN accredited registrar.

## **4. DPML Block Requirements**

4.1 Donuts will not accept a DPML Application unless the following criteria are met:

4.2 The SLD must consist exclusively of the letters A-Z (case insensitive), the numbers 0-9, and hyphens;

4.3 The SLD cannot begin or end with a hyphen;

4.4 For DPML Blocks in IDNs, blocked SLDs must be in the languages Donuts offers and supports as specified on the Donuts Website;

4.5 The SLD can only have two consecutive hyphens (--) in the 3rd and 4th positions, when preceded by "xn" and followed by a label that corresponds with an IDN containing characters referred to in (c) above;

4.6 The SLD cannot exceed 63 characters; and

4.7 The TMCH-eligible term in the SMD File must contain at least three characters.

## **5. DPML Block Exceptions**

5.1 DPML Blocks will not apply to Reserved Domain Names, though the SLD may be blocked in some TLDs where the SLD is not a Reserved Domain Name or Registered Names.

## **6. DPML Block Behaviour**

6.1 DPML Blocks:

6.2 Will be published to WHOIS and provide information for the DPML Block holder of any SLDs under DPML Block;

6.3 Will not result in a Domain Name that resolves on the public Internet;

6.4 Are subject to periodic review by Donuts to verify that the applicable TMCH entry remains valid;

6.5 Will be applied, at no additional cost, to SLDs that were not available at the time of a DPML Block, but that later change to Available SLDs;

6.6 Will be applied, at no additional cost, to Domain Names that are no longer categorized as Reserved Domain Names;

6.7 Will be applied to TLDs that are later owned and operated by Donuts;

6.8 May, at Donuts option, cease to be applied to TLDs that are no longer owned and operated by Donuts; and

6.9 Are subject to Override.

6.10 Donuts may revoke all or part of a DPML Block if the underlying TMCH entry for the SMD File is no longer valid.

## **7. Overrides**

7.1 An applicant for a Registration with a String in its SMD File that exactly matches the SLD under DPML Block may Override the existing DPML Block and purchase a Registration for a Domain Name containing that SLD. For the avoidance of doubt, in such a case, no refund is payable in respect of the DPML Block irrespective of the number of Overrides that may impact the DPML Block.

## **8. Representations and Warranties**

8.1 The DPML Applicant or DPML Block holder (as the case may be) represents and warrants that:

8.2 The DPML Application or DPML Block contains true, accurate and up-to-date information, and is made in good faith, for a lawful purpose and does not infringe the rights of any third party;

8.3 It shall participate in good faith in any proceedings described in these Terms and Conditions commenced by or against the DPML Applicant or DPML Block holder; and

8.4 The DPML Applicant or DPML Block holder accepts and will abide by the Donuts Policies.

## **9. Donuts Rights Regarding DPML Applications**

9.1 DPML Applicants and DPML Block holders have expressly acknowledged and accepted that Donuts shall be entitled but not obliged to reject a DPML Block, or to delete, revoke, cancel or transfer a DPML Block:

9.2 To enforce Donuts Policies and ICANN Requirements, each as amended from time to time;

9.3 That is not accompanied by complete and accurate information as required by ICANN Requirements or Donuts Policies or where required information is not updated or corrected as required by ICANN Requirements and/or Donuts Policies;

9.4 To protect the integrity and stability of the SRS or the operation or management of the Registries owned and operated by Donuts;

9.5 To comply with applicable laws, regulations, policies or any holding, order, or decision by a competent court or administrative authority or any dispute resolution service provider Donuts may hereafter retain to oversee the arbitration and mediation of disputes; or

9.6 To establish, assert, or defend the legal rights of Donuts or a third party or to avoid any actual or potential civil or criminal liability on the part of or damage to Donuts or its affiliates, subsidiaries, contracted parties, officers, directors, representatives, employees, contractors, and stockholders;

9.7 To correct mistakes made by Donuts or any registrar in connection with a DPML Block;

9.8 If Donuts receives notice that the SMD File is under dispute; or

9.9 As otherwise provided in these Terms and any Registry-Registrar Agreements entered into by the Registries.

## **10. DPML Block Period**

10.1 Each DPML Application or DPML Block renewal incurs a non-refundable one-time fee (set by the registrar) based on the requested duration of the DPML Block, which must be between five (5) and ten (10) years. Unless otherwise terminated or subject to an Override, DPML Blocks will expire on the same day of the month within which the DPML Block was created unless it was created on February 29, in which asset it will expire on March 1. DPML Blocks may be renewed in annual increments from one (1) to ten (10) years with a maximum DPML Block period of ten (10) years.

## **11. Notification**

11.1 DPML Applicant agrees that Donuts and its agents are authorized to share information relating to DPML Applicant and its DPML Application. If DPML Applicant proceeds with a DPML Block, such DPML Applicant will be deemed to be on notice of the intellectual property rights of others in the TMCH. It is not Donuts' obligation to notify a DPML Block holder in advance of the termination or expiration (for any reason) of a DPML Block. Donuts shall be entitled but not obligated to immediately suspend or cancel any DPML Block that is in breach of the Terms and Conditions, Donuts Policies, or any other applicable law or regulation.

11.2 DPML Blocks, or names that result in a DPML Blocks, will only expire, be terminated or otherwise released in accordance with Donuts Policies and ICANN Requirements.

## **12. Reserved SLDs**

12.1 Donuts may reserve at any time certain SLDs from DPML Block, including, without limitation, SLDs:

12.2 Reserved for operations and other purposes, including without limitation certain Premium Names, which Donuts may change from time to time.

12.3 Reserved or restricted to comply with applicable ICANN Requirements or Donuts Policies, including those reserved for certain third parties.

12.4 Still pending, in process, or otherwise not available, such as Domain Names that are still pending processing of Sunrise Registration.

12.5 That are already under Registration or subject to an active DPML Block, unless an exception applies (e.g., Override).

## **13. Amendments**

13.1 Donuts may amend these Terms and Conditions from time to time, which amendments will take effect at the time they are published on the Donuts Website, without prior notice to registrars, DPML Block holders or DPML Applicants. Donuts may furthermore issue interpretative guidelines on the Donuts Website regarding the Terms and Conditions.

13.2 If any part of the Terms and Conditions is found invalid or unenforceable for any reason, the remainder of the Terms and Conditions shall be valid and enforceable as if such provision was not included therein. The invalid provision shall be substituted for any such provision that, to the extent legally possible, comes nearest to the sense and purpose of the Terms and Conditions

## **14. Limitations on Liability**

14.1 To the extent permitted under governing law, Donuts shall only be liable in cases of proven wilful misconduct or gross negligence. In no event will Donuts be held liable for any indirect, consequential or incidental damages or loss of profits, whether contractual, based on tort (including negligence) or otherwise arising, resulting from or related to DPML Blocks, or use of the SRS or the Donuts Website, even if they have been advised of the possibility of such loss or damages, including but not limited to decisions taken by Donuts to apply a DPML Block or not on the basis of information from the TMCH.

14.2 To the extent allowed under applicable law, Donuts' aggregate liability for damages shall in any case be limited to the amounts paid in relation to the DPML Application concerned (excluding additional fees paid by the DPML Applicant to its registrar or its agents). The DPML Applicant agrees that no greater or other damages may be claimed from Donuts (such as, but not limited to, any fees payable or paid by the registrar in the context of any proceedings initiated against a decision by Donuts to apply a DPML Block or not). The DPML Applicant further agrees to submit to a binding arbitration for disputes arising from the Terms and Conditions and related to the application of DPML Blocks.

14.3 The DPML Applicant agrees to hold Donuts harmless from claims filed or disputes initiated by third parties, and that each shall compensate Donuts for any costs or expenses incurred or damages for which they may be held liable as a result of third parties taking action against it on the grounds that the DPML Application infringes the rights of a third party.

14.4 For the purposes of this Section, the term "Donuts" shall also refer to its stockholders, directors, employees, members, subcontractors, the TMCH and their respective directors, agents and employees.

## **15. Determinations Final**

15.1 The determinations of Donuts and the TMCH regarding any Applications, DPML Applications, Registrations, or DPML Blocks shall be final and non-appealable.

## **16. Additional Provisions**

16.1 Each DPML Applicant acknowledges and agrees:

16.1.1 to grant Donuts and its contracted parties a fully paid, nonexclusive, royalty-free, perpetual, irrevocable, and fully sublicensable licence and approval to host, cache, copy, display Application Content to WHOIS or report publicly, in whatever method or format Donuts chooses, for the purposes of and in conjunction with effectuating the DPML Service;

16.1.2 that the registered name holder owns or has permission to use and submit the Application Content and that to its knowledge, such usage and submission does not violate applicable license agreements, laws, regulations, or rights of any third party;

16.1.3 that the Application Content is and will remain accurate, current and complete throughout the applicable DPML Block period, and that if Donuts has reason to believe that the Application Content is untrue, inaccurate, out-of-date or incomplete, after providing registrar five (5) days notice to correct such information or give reasonable assurance to Donuts of such information's accuracy, Donuts reserves the right in its sole discretion to deny or cancel the underlying DPML Block;

16.1.4 that the DPML Applicant has and will keep in effect during use of the DPML Service to minimize threats to the operational stability and security of the DPML Block databases and the registries owned and operated by Donuts; provided, however, that a suspension of the DPML Service will not allow registrations to occur for SLDs under DPML Block that would not otherwise be permitted by the Donuts Policies when the DPML Service is fully implemented;

16.1.5 that the modification or cancellation of any DPML Blocks in accordance with the Donuts Policies will not result in any refund of any DPML Block fees; and

16.1.6 that the DPML Applicant agrees to the following disclaimers and limitations of liability which shall apply to the fullest extent permitted by law, and shall survive termination or expiry of any DPML Service:

(i) Donuts warrants that it will provide the DPML Service with reasonable care and skill;

(ii) Donuts does not warrant uninterrupted, secure or error-free operation of the DPML Service, or that it will be able to prevent third party disruptions of the DPML Service or related services or that it will correct all defects;

(iii) Subject to any statutory warranties that cannot be excluded, Donuts makes no warranties or conditions, express or implied, regarding the DPML Service, including, but not limited to, any implied warranties or conditions of satisfactory quality, merchantability, fitness for a particular purpose or any warranty of non-infringement;

(iv) No oral or written information of advice provided by Donuts, its officers, directors, employees, subcontractors or agents will create a warranty of any kind with respect to the DPML Service;

(v) In no event will Donuts, its officers, directors, employees, subcontractors or agents be liable to the other party or any other person or entity for any indirect, incidental, special, punitive or consequential damages, including but limited to loss of business opportunity, business interruption, loss of profits or costs of procurement of substitute goods or services, including without limitation any damages that may result from (i) the accuracy, completeness, or content of the DPML Service (ii) third party conduct of any nature whatsoever (iii) any unauthorised access to or use of the DPML Service (iv) any interruption or cessation of the DPML Service (v) any viruses, worms, bugs, Trojan horses or similar code, files or programs which may be transmitted to or from the DPML Service or (vi) any such losses or damages incurred as a result of DPML Applicant's use of the DPML Service, whether based on warranty, contract, tort or any other legal or equitable theory, and whether or not such party is advised of the possibility of such damages.

16.2 DPML Applicant acknowledges and agrees that any cause of action arising out of or related to the DPML Service must be commenced within one (1) year after the cause of action accrues, otherwise such cause of action shall be permanently waived.

16.3 DPML Applicant acknowledges and agrees that in no event shall Donut's aggregate liability exceed the total amount of the DPML Service to the DPML Applicant.

16.4 Applicant agrees to protect, defend, indemnify and hold harmless Donuts and its officers, directors, employees, affiliates, subcontractors and agents from and against any and all claims, demands, costs, expenses, losses, liabilities and damages of every kind and nature (including without limitation, reasonable attorney's fees) imposed upon or incurred by such party, directly or indirectly, arising from violation of these terms and conditions or any Donuts Policies. This indemnity shall survive the expiry of termination of the DPML Service.