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To Whom It May Concern:

Consensus Reply Comment on ICANN Auction Rules and Bidder Agreement

The New TLD Applicant Group (NTAG), the stakeholder group representing applicants under the New gTLD Program, thanks ICANN for the opportunity to file this consensus comment during the Reply Period for comments on the ICANN Auction Rules and processes.

Several constructive comments were filed during the initial Comment Period including by individual NTAG members. The NTAG would like to add its views with respect to five of these comments which it believes focus on a few of the most critical parts of the process:

I. ICANN Should Publish Indirect Contention Set Auction Rules Prior to the First Auction.

The NTAG believes that ICANN should publish the rules regarding resolution of indirect contention sets prior to issuance of the first Intent to Auction notice. It is important that parties that are involved in indirect contention know and understand the rules to which they will be subject; moreover, these rules could impact the bidding strategy in direct contention sets. The NTAG wishes to emphasize, however, that the development and publication of these rules should not further delay the timeline proposed for the first ICANN auction, targeted for April 2014. There is ample time for ICANN to formulate indirect contention set rules without impacting the anticipated schedule for auctions.

II. Clarify Inconsistency within the Applicant Guidebook regarding the Deadline for Executing the Registry Agreement.

Additionally, where inconsistencies exist within the Applicant Guidebook, ICANN should provide clarity to Applicants. For instance, AGB 5.1 allows all applicants nine (9) months

to execute the RA, whereas AGB 4.3.2 requires applicants prevailing in an auction to execute their Registry Agreement within ninety (90) days. The NTAG believes that, out of fairness, applicants prevailing at auction should be given the same nine (9) months to execute the Registry Agreement as all other applicants, and that this should be made explicit within the auction rules.

III. ICANN Should Permit Applicants to Go To Auction Earlier or Postpone Participation if Agreed to By the Parties Involved.

The NTAG strongly believes that applicants should have both the right to advance the date of the auction for their contention set or to postpone the date of the auction, so long as all of the parties involved in the contention set agree. ICANN should accommodate requests by parties to add their strings to an earlier auction round in order to avoid unnecessary delays where applicants are pursuing alternate methods of contention set resolutions or await the resolution of name collision issues. Similarly, ICANN should permit a second extension given unanimous approval of the members of the contention set. Furthermore, ICANN should endeavor to have all auction rounds completed by the end of the 2014 calendar year absent applicant consent.

IV. ICANN Should Modify The Language in the Bidder Agreement Related to the “Anti-Collusion” Restriction to Include a Continued Desire by ICANN to Resolve Contention Sets Prior to Auction.

The NTAG believes that ICANN should add language to the Bidder Agreement that reaffirms ICANN’s commitment to resolution of contention sets prior to the last resort auction and make clear that arrangements reached prior to the deposit deadline, including arrangements for joint bidding, do not violate the anti-collusion provision. The NTAG obviously supports penalties for collusion among auction parties; however, we are concerned that by not clearly restating the desire for applicants to work together to resolve contention sets prior to the deposit deadline, ICANN is inadvertently discouraging negotiation prior to this date. Parties in contention may become Bidders in the auction, after having already engaged in some form of negotiation. Further, the language should be abundantly clear that negotiations prior to the Deposit Deadline are contractually appropriate and that the post-Deposit Deadline negotiation restriction is limited solely to the contention set that is in that upcoming auction. Applicants with multiple applications may be concurrently negotiating resolution for some strings while simultaneously being involved in auctions for others, wherein such contact is prohibited. Without further clarification, concerns may arise over whether previous or concurrent contacts create actual or apparent, explicit or tacit coordination between Bidders in the

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auction. Absent these clarifications, there could be a significant chilling effect on the pre-auction negotiations that the AGB encourages.

V. ICANN Should Not Have a Unilateral Right to Change Bidding Rules At Its Sole and Absolute Discretion Without Adequate Notice.

Section 7.6 of the Bidder Agreement permits ICANN to amend the Auction Rules and the Bidder Agreement at its sole discretion prior to the Deposit Deadline without prescribed notice. ICANN should only be able to make amendments with a showing of good cause or exceptional circumstance and any amendments should not be inconsistent with the auction language already mandated by the Applicant Guidebook. Furthermore, ICANN should be required to give at least 15 days advance notice of any change or amendment to each contention set member and post such notice on its website.

The NTAG is pleased to submit this comment, which was drafted in consensus. The NTAG wishes to note, however, that during the Comment Period, some individual members of the NTAG have submitted comments, which relate to different points than the above five, and thus their respective opinions may differ from this consensus view. Moreover, individual members of the NTAG may be submitting additional constructive comments on the auction process during this Reply Period.

About the NTAG

The New TLD Applicant Group (NTAG) is an interest group formed under Article III.D. of the Charter of the gTLD Registries Stakeholder Group (RySG), which is a recognized entity within the Generic Names Supporting Organization (GNSO) of the Internet Corporation for Assigned Names and Numbers (ICANN). The NTAG represents 102 new gTLD applicants as of January 2014. Together, NTAG members submitted over half of all new gTLD applications received by ICANN (994 total, representing US\$ 184M in application fees). The primary role of the NTAG is to represent the interests of entities that applied for a new gTLD(s) in ICANN's 2012 gTLD round. The NTAG represents the views of its members to the RySG, the GNSO Council, the ICANN Board of Directors, and other influential bodies.

The guiding principles for the NTAG are fairness, openness, and transparency in all NTAG policies, practices, and operations. The service standards for leadership positions include impartiality, accountability, and conflicts of interest declarations. The behavioral expectations of all NTAG members include adhering to ICANN Bylaws and Policies and the RySG Charter; supporting the consensus model; treating others with dignity, respect, courtesy, and civility; listening attentively to understand others; acting with honesty, sincerity, and integrity; and maintaining community good standing.