

# ICANN

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (hereinafter "Agreement") effective 25 October 2005 ("Effective Date") between

**Internet Corporation for Assigned Names and Numbers**, a California public benefit nonprofit corporation having its principal place of business at 4676 Admiralty Way, Suite 330, Marina del Rey, CA 90292, USA, on behalf of itself and the **Internet Assigned Numbers Authority** (hereinafter individually and collectively "ICANN" or "Discloser"); and

\_\_\_\_\_, **Inc.**, a Delaware corporation (hereinafter referred to as "Consultant," together with Consultant's affiliates and subsidiaries). Consultant's principal place of business is \_\_\_\_\_.

**WHEREAS** Discloser possesses certain ideas and information relating to its \_\_\_\_\_ that is confidential and proprietary to Discloser (hereinafter "Confidential Information"); and

**WHEREAS** Consultant is willing to receive disclosure of the Confidential Information pursuant to the terms of this Agreement for the purpose of performing [consulting] services;

**NOW, THEREFORE**, in consideration of the promises and mutual obligations contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE 1 DEFINITIONS

As used herein, the following terms and conditions and other capitalized words shall have the meanings ascribed to them.

**"Affiliate"** means, with respect to any Party to this Agreement, any person or entity directly or indirectly controlling, controlled by, or under common control with (e.g. the power to direct affairs by reason of stock ownership, contract, or otherwise) the Party and any member, director, officer, or employee of such Party.

**"Confidential Information"** means information, of any nature and in any form, whether disclosed in writing, orally, or electronically (including without limitation all

writings, memoranda, copies, reports, records, papers, surveys, analyses, drawings, letters, computer printouts, computer programs, computer applications, specifications, customer data, business methods, business processes, business techniques, business plans, data, graphs, charts, sound recordings, pictorial representations, inventions, prototypes, samples, and trade secrets) that has been identified by the Discloser at or about the time of disclosure as confidential or proprietary pursuant to Section 3.1.

## **ARTICLE 2 CONFIDENTIALITY, DISCLOSURE, AND USE**

- 2.1 Confidentiality Obligation.** Except as otherwise provided in this Agreement, Consultant shall utilize the degree of care used to safeguard Consultant's own similar information or material to avoid disclosing any Confidential Information to any person or entity. Consultant shall use ICANN's Confidential Information only for the purposes of \_\_\_\_\_.
- 2.2 Permitted Disclosures.** Consultant may make ICANN's Confidential Information available to Consultant's directors, officers, employees, representatives, advisors or other third parties ("Permitted Disclosees") in order for such persons or entities to carry out their functions with respect to the threat assessment. Prior to making Discloser's Confidential Information available to such Permitted Disclosees, Consultant shall:
- 2.2.1** Advise such Permitted Disclosees of the obligation of confidentiality hereunder;
  - 2.2.2** Require that such Permitted Disclosees be bound by a written obligation to Consultant to maintain the confidentiality of such Confidential Information; and
  - 2.2.3** Require that such Permitted Disclosees use the degree of care used to safeguard Consultant's own similar information or materials in preserving the confidentiality of Discloser's Confidential Information.
- 2.3 Required Disclosures.** Should Consultant be put on notice that Consultant is required to disclose the Confidential Information received hereunder by statute, rule, regulation, order, or other requirement of a governmental agency, legislative body, court of competent jurisdiction, or binding arbitral body, Consultant shall notify the Discloser thereof within seven (7) days or as soon as practicable. Discloser may contest the disclosure, and, if time allows and upon Discloser's request, Consultant shall reasonably cooperate with the Discloser in contesting the disclosure. If, after such contest, disclosure is still required, then Consultant shall request appropriate confidential treatment of such information from the governmental agency, legislative body, court, or arbitral body. Except in connection with a failure to discharge the responsibilities set forth in the preceding sentence, Consultant shall not be liable for any disclosure pursuant to such

governmental, legislative, judicial, or arbitral order, statute, rule, regulation, or other requirement.

- 2.4 Notification.** If Consultant loses or makes unauthorized disclosure of Discloser's Confidential Information, Consultant shall notify Discloser immediately and take reasonable steps to retrieve the lost or improperly disclosed information.

### **ARTICLE 3 EXCEPTIONS TO CONFIDENTIALITY OBLIGATIONS**

- 3.1 Information Not Subject to Confidentiality Obligation.** Consultant's obligations pursuant to Article 2 shall not extend to Confidential Information that is:

- 3.1.1** Part of the public domain at the time of disclosure to Consultant or becomes part of the public domain, other than by breach of this Agreement, after disclosure to Consultant;
- 3.1.2** Known by Consultant at the time the Confidential Information is received from Discloser, as shown by Consultant's records;
- 3.1.3** Lawfully and independently received by Consultant from a third party, provided such third party is not, to Consultant's knowledge, in breach of any confidentiality obligation with respect to such information;
- 3.1.4** Developed by Consultant independently, as shown by Consultant's records;
- 3.1.5** Disclosed by Consultant as required by governmental, legislative, judicial, or arbitral order, statute, rule, regulation, or other requirement pursuant to Section 2.3; or
- 3.1.6** Disclosed by Consultant with Discloser's consent pursuant to Section 3.3.

- 3.2 Consent or Waiver.** Any obligation imposed by Article 2 may be waived in writing (including by e-mail or other electronic means) by Discloser as to particular Confidential Information and to a particular use or disclosure of such information. Any such waiver shall be construed according to its terms and the surrounding circumstances under which such waiver is made, unless otherwise indicated by Discloser in writing.

### **ARTICLE 4 RETURN OF CONFIDENTIAL INFORMATION**

All Confidential Information in tangible form of expression, which has been delivered or thereafter created by derivation or reproduction, shall be and remain the property of Discloser. With the exception of any Confidential Information or any reproductions thereof retained for the purposes of the threat assessment, all

Confidential Information and any and all copies, derivations, and reproductions thereof shall be, at the Discloser's discretion, either promptly returned to Discloser or destroyed within thirty (30) days after written request by Discloser. In the event of such requested destruction, Consultant shall provide to the Discloser, within thirty (30) days of such request, written certification of compliance.

## **ARTICLE 5 PROPRIETARY RIGHTS**

The disclosure of Confidential Information pursuant to this Agreement shall not, by itself, be construed as granting a license of any patent, patent application, copyright, or trade secret or a grant of any other rights with respect to the Confidential Information, except those rights necessary for the threat assessment.

## **ARTICLE 6 LIABILITIES, AND REMEDIES**

**6.1 Injunctive Relief.** Consultant acknowledges that use or disclosure of the Confidential Information in breach of this Agreement may result in irreparable and continuing harm to Discloser for which there may be no adequate remedy at law. In the event of an actual, threatened, or intended breach of this Agreement by Consultant, Discloser shall have the right to seek injunctive relief to prevent or restrain such actual, threatened, or intended use or disclosure in breach of this Agreement, in addition to all other remedies available to Discloser at law or in equity.

**6.2 Limitation of Liability.** Consultant's liability to discloser shall not exceed the amount of fees paid by Discloser to Consultant.

## **ARTICLE 7 NO OTHER BUSINESS RELATIONSHIP**

This Agreement does not represent nor imply:

- (a) A partnership, joint venture, or other commercial relationship between the Parties;
- (b) An authorization for either Party to act as the agent or representative of the other;  
or
- (c) An agreement or commitment by either Party to purchase, acquire, develop, or use the products or services of the other Party.

## **ARTICLE 8 TERM, TERMINATION, AND SURVIVAL**

- 8.1 Term.** This Agreement shall be effective as of the Effective Date above and shall remain in full force and effect until terminated by either Party upon thirty (30) days prior written notice.
- 8.2 Survival.** The Parties' respective rights and obligations hereunder, with respect to any particular Confidential Information disclosed in accordance with and prior to termination of this Agreement, shall remain in full force and effect for a period of three (3) years after disclosure of such information, notwithstanding termination of the Agreement pursuant to Section 8.1.

## **ARTICLE 9 AMENDMENT, ASSIGNMENT, AND SEVERABILITY**

- 9.1 Amendment.** No addition or modification of this Agreement is valid unless made in writing and signed by both Parties hereto.
- 9.2 Assignment.** This Agreement may not be assigned in whole or in part, by operation of law or otherwise, by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld. Consent for assignment is not required where the assignment occurs through a merger, consolidation, or sale of all or substantially all of the assets of the assigning Party. This Agreement shall benefit and be binding upon the successors and assigns of the Parties hereto.
- 9.3 Severability.** If any provision of this agreement shall be found to be invalid, illegal, or unenforceable, then, notwithstanding such provision, all other provisions of this Agreement shall remain in full force or effect, unless deletion of the invalid, illegal, or unenforceable provision will defeat the essential purposes of this Agreement.

## **ARTICLE 10 GOVERNING LAW**

This Agreement shall be governed and construed by and in accordance with the laws of the State of California, without regard to principles of conflict of laws, and the applicable laws of the United States of America. Any legal proceedings relating to this Agreement shall be adjudicated and maintained in the state and federal courts of Los Angeles County in the State of California, and the parties consent and agree that such jurisdiction and venue for these proceedings shall lie exclusively with such courts.

**ARTICLE 11  
ENTIRE AGREEMENT**

This Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and merges and supersedes all prior agreements, understandings, and representations with respect to such subject matter.

**ARTICLE 12  
COUNTERPARTS**

This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and which will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed in Los Angeles, California, U.S.A. by their authorized representatives as of the day and year first above written.

INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS

\_\_\_\_\_, Inc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature