

# Agreement

In this Services Agreement (this "Agreement") "you," "your," "Subscriber" and "Customer" refer to each customer and "we," "us" and "our" refer to ICM Registry LLC ("ICM"). This Agreement explains our obligations to you, and explains your obligations to us regarding your use of the ICM Industry Reservation Service (IR Service). By submitting a reservation request (IR Request), you acknowledge that you have read and agree to be bound by all terms and conditions of this Agreement and any other pertinent rules or policies that are or may be published by ICM or the International Foundation for Online Responsibility (IFFOR) from time to time.

Notwithstanding any other written or oral statements you believe ICM may have made to you, this agreement constitutes the entirety of ICM's agreements with and obligations to you and the entirety of your contractual rights in your relationship with ICM with respect to the IR Service.

## Status of the .XXX Top Level Domain

In May of 2004, ICM submitted a proposal to the Internet Corporation for Assigned Names and Numbers (ICANN) to delegate .XXX as a sponsored top-level domain (sTLD) for responsible members of the online adult entertainment industry and those that supply products and/or services to it (the Online Adult Community or the Community). On 10 May 2006, the ICANN Board of Directors rejected a draft contract governing ICM's operation of the .XXX sTLD (.XXX). ICM believes that the principal concerns expressed by Board members who voted against the contract are unfounded and is pursuing various ICANN reconsideration and review procedures to win approval of a revised contract.

ICM does not and cannot guarantee that ICANN will authorize ICM to make .XXX available for registration by members of the Community.

## Industry Reservation Service

The IR Service enables eligible members of the Community to submit a request to reserve a particular domain for their registration in the event that (1) ICANN subsequently authorizes ICM to operate .XXX for the Community and (2) ICM subsequently makes .XXX available for registration.

There is no fee for using the IR Service. If your IR Request is successful, ICM will notify you that your request has been accepted and send you a Reservation Token. If ICANN subsequently authorizes ICM to operate .XXX for the Community

and ICM subsequently makes .XXX available for registration, you will be given the opportunity (but you will not be obligated) to use your Registration Token to register the reserved domain through an ICANN accredited registrar, who will charge a fee for that service.

## Eligibility

You are eligible to submit an IR Request **ONLY** if you are (A) the current operator of web site (an "Eligible Site") registered in an ICANN-recognized top-level domain before 1 May 2006 that provides (1) sexually oriented online adult entertainment or (2) products or services to members of the Community, or (B) the authorized agent of the current operator of an Eligible Site. Only operators of Eligible Sites or their agents meeting these eligibility criteria ("Eligible Participants") are permitted elect to use the IR Service.

You acknowledge and agree that you may submit an IR Request only for a name that is identical to the name of the Eligible Site (less the string corresponding to the ICANN recognized TLD in which it is registered).

By submitting an IR Request you certify that you are eligible to submit each reservation request you place. You agree that ICM may contact the registered owner of the names you request and verify your rights to register those names at any time, and may reject any and all IR Requests you submit and invalidate any Reservation Tokens you hold forms a good faith belief that you have attempted to reserve names corresponding to an Eligible Site that you are not the current operator of, or the authorized agent of such operator or have otherwise abused the IR Service.

## Adherence with Community Code of Practice

You acknowledge and agree that if and when ICANN authorizes ICM to operate the .XXX domain, a separate body, the International Foundation for Online Responsibility (IFFOR) will work with the stakeholder community to develop a code of practice applicable to all registrants. The code will address practices such as unfair, deceptive, or fraudulent marketing practices; the use of malware, malicious code, spoofing, phishing; practices designed to attract children or suggest the presence of child pornography; unauthenticated use of credit cards; violations of law regarding the sending of unsolicited promotional email; or misuse of personal data. Registrants will be expected to participate in a simplified labeling program operated by the Internet Content Rating Association (ICRA) that identifies their site as an adult entertainment site.

In the event ICANN subsequently authorizes ICM to operate .XXX for the Community and ICM subsequently makes .XXX available for registration, you will be given the opportunity (but you will not be obligated) to use your Registration Token to register the reserved domain through an ICANN accredited registrar. You acknowledge and agree that your use of a Registration Token to register a reserved domain will be contingent on your written agreement to comply with the Community Code of Practice in effect at the time of such registration and as subsequently modified by IFFOR.

## Transfer

You may transfer the use of your IR Request(s) or Reservation Token(s) to another party only if, at the time of transfer, that party is or becomes the current operator of the corresponding Eligible Site. Any attempt to transfer your rights in an IR Request or Reservation Token to a third party under any other circumstances will void the IR Request or Reservation Token.

## Reservations

You acknowledge and agree that in the event more than Eligible Participant submits an IR Request for a name that they are eligible to reserve, ICM will use a tiebreak to allocate the name in an equitable manner. You acknowledge and agree that ICM will not publish the tiebreak methodology until the Industry Reservation period is over. You agree that ICM shall have no liability to you in the event that based on this tiebreak methodology ICM awards the Reservation Token to another Eligible Participant.

You also acknowledge that ICM will reserve certain names, including names that may correspond to the name of an Eligible Sites, and you agree that ICM shall have no liability to you in the event that a name corresponding to an Eligible Site for which you are the current operator or the agent of such operator is not available for reservation and/or is subsequently allocated by ICM to a third party in another manner.

## Required Data

In order for us to process your IR Request, you agree to provide certain current, complete, accurate, and reliable data about yourself and the Eligible Site at the time of submission (the "Reservation Data"). ICM will maintain Reservation Data in confidence, and will not disclose such information to any third party without your explicit consent, unless compelled to do so by applicable law.

You agree to update this information as follows: (i) if your Reservation Data changes after you have supplied it to us, but before you have registered the reserved name through an ICANN accredited registrar (unless we have notified you that your reservation request was not successful). If your Reservation Data changes after you have registered the reserved name through an ICANN accredited registrar, you agree to update your Reservation Data in accordance with ICM's Whois data policy.

Because ICM requires accurate and reliable Reservation Data to verify your status as an Eligible Participant, it is a material breach of this Agreement if you: (i) provide inaccurate or unreliable Reservation Data, (ii) fail promptly to update Reservation Data with in accordance with this Agreement, or (iii) fail to respond within fifteen days to our inquiries regarding the accuracy of the Reservation

Data. Such a breach will be a sufficient basis for us to cancel any and all IR Requests you have submitted or invalidate any Reservation Tokens that you hold.

## Modification or Termination of the Agreement

You acknowledge that the Internet, the domain name system and the policies and practices of ICANN relative to registration and administration of domain names may change rapidly. You understand and agree that ICM may modify and/or terminate this Agreement, as well as any additional rules or policies that are or may be published by ICM, as necessary to comply with any other agreements that ICM is currently bound by or will be bound by in the future, as well as to adjust to changing business circumstances; provided, however, that ICM agrees not to modify its commitment to preserve the confidentiality of Reservation Data without your explicit consent.

Any such addition, modification, or termination will be binding and effective immediately upon posting of the revised Agreement or change to the service(s) on ICM' web site, or upon notification to you by e-mail or regular mail. You agree to periodically review our web site, including the current version of this Agreement available on our web site, to be aware of any such modifications. If you do not agree to any such changes, you may withdraw your IR Request(s) and/or relinquish your Reservation Token(s). You acknowledge and agree that such cancellation will be your exclusive remedy and our sole liability if you do not wish to abide by any changes to this Agreement or any additional rules or policies that are or may be published by ICM.

## Agency

**IF YOU ARE ACTING AS AN AGENT:** You represent that you have the authority to bind your principal to all terms and conditions contained in this Agreement. You acknowledge and agree that you may submit an IR Request only for the current operator of an Eligible Site. You acknowledge and agree that ICM is entitled consider a breach of this Agreement by your principal a breach by you.

**IF YOU ARE ACTING THROUGH AN AGENT:** You agree that, if your agent (e.g., an Internet Service Provider, employee, legal counsel, etc.) submits an IR Request on your behalf, you are nonetheless bound as a principal by all terms and conditions herein, including the Dispute Policy as described later in this Agreement. By acting on your behalf, your agent certifies that he or she is authorized to submit an IR Request on your behalf, that he or she is authorized to bind you to the terms and conditions of this Agreement and that he or she has apprised you of the terms and conditions of this Agreement. In addition, you are responsible for any errors made by your agent. You acknowledge and agree that ICM is entitled to consider a breach of this Agreement by your agent a breach by you.

## Prohibited Conduct

By submitting an IR Request you agree to use the IR Service only for lawful purposes, consistent with the limitations set forth in this Agreement. ICM reserves the right to terminate your IR Request or Reservation Token, and any other IR Requests or Reservation Tokens you have submitted or hold, if it makes a good faith determination that, or has reason to believe that you are using an IR Request or Reservation Token in a manner that constitutes a material violation of this Agreement and/or any U.S. or state statute or regulation, including but not limited to violation of U.S. copyright and trademark law. Any attempts to penetrate ICM's security will result in the termination of the your IR Requests or Reservation Tokens without notice.

## Breach

ICM reserves the right to deem any failure by you to abide by any provision of this Agreement, any ICM operating rule or policy or the Dispute Policy, to be a material breach of this Agreement. We may, but are not obligated to provide written notice, describing the breach, to you. If ICM provides such written notice, and you fail within ten (10) calendar days of the date of such notice to provide evidence that is reasonably satisfactory to us that you have not breached your obligations under the Agreement, then we may terminate any IR Request submitted or Reservation Token held without further notice.

## Revocation

You agree that we may terminate your IR Request(s) and/or Reservations if the information that you are obligated to provide hereunder, or that you subsequently modify, contains false or misleading information, or conceals or omits any information we would likely consider material to your eligibility to participate in the IR Service. Furthermore, you agree that we may suspend, cancel or transfer your IR Request(s) or Reservation Token(s) in order to: (i) correct mistakes made by us or a third party in submitting and processing your IR Request(s).

## Participant Representations and Warranties

You agree and warrant that: (i) the information that you or your agent provide to us during the application process to reserve a domain new through the IR Service is, to the best of your knowledge and belief, accurate and complete, and that any future changes to this information will be provided to us in a timely manner according to the modification procedures in place at that time, (ii) to the best of your knowledge and belief neither the submission of an IR Request, your successful Reservation of the requested name, or the manner in which you intend to use such IR Request, Reservation Token, or the domain name itself will directly or indirectly infringe the legal rights of a third party, including trademark

rights, (iii) you are not submitting an IR Request for an unlawful purpose; (iv) you will not knowingly use the IR Request or Reservation Token in violation of any applicable laws or regulations, (v) you have all requisite power and authority to execute this Agreement and to perform your obligations hereunder, and (vi) you are of legal age and capacity to enter into this Agreement.

You agree and acknowledge that it is your responsibility to determine whether your IR Request and/or Reservation Token infringes or violates someone else's rights, including, but not limited to, whether any foreign language translations of your domain name, either between roman-alphabet languages, between non-roman alphabet languages, or between roman-alphabet and non-roman alphabet languages, infringe or violate someone else's rights.

## ICM Disclaimer of Warranties

You agree that your use of our service(s) is solely at your own risk. You agree that all of our services are provided on an "AS IS," and "AS AVAILABLE" basis. ICM EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. ICM MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER THAT SUBMISSION OF A RESERVATION REQUEST OR RECEIPT OF A RESERVATION UNDER THIS AGREEMENT WILL GUARANTEE YOUR ABILITY TO REGISTER THE RESERVED NAME OR IMMUNIZE YOU EITHER FROM CHALLENGES TO YOUR SUBSEQUENT REGISTRATION OF THAT DOMAIN NAME, OR FROM SUSPENSION, CANCELLATION OR TRANSFER OF THE IR REQUEST, RESERVATION TOKEN, OR SUBSEQUENTLY REGISTERED DOMAIN NAME.

We make no warranty that our services(s) will meet your requirements or that the service(s) will be uninterrupted, timely, secure or error free; nor do we make any warranty as to the results that may be obtained from the use of the service(s) or as to the accuracy or reliability of any information obtained on our web site. You understand and agree that any material and/or data downloaded or otherwise obtained through the use of our website is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of such material and/or data. We make no warranty regarding any goods or services purchased or obtained through any of our services or any transactions entered into through such services. No advice or information, whether oral or written, obtained by you from us or through web site shall create any warranty not expressly made herein. To the extent that any jurisdiction does not allow the exclusion of such warranties, these disclaimers will apply to the greatest extent possible.

You further acknowledge and agree that your IR Request(s) and/or Reservation Token(s) is subject to suspension, cancellation, transfer or modification pursuant to the terms of any rules or policies applicable to your domain name registration for any Eligible Site, including, but not limited to (i) the Uniform Domain Name Dispute Resolution Policy (UDRP), (ii) any policy adopted by the Internet

Corporation for Assigned Names and Numbers (ICANN), (iii) any registrar (including ICM) or registry administrator procedures, or (iv) any other ccTLD registry administrator procedures.

You also agree that ICM shall have the right in its sole discretion to suspend, cancel, transfer or otherwise modify your IR Request(s) and/or Reservation Token(s) at such time as ICM receives (i) a properly authenticated notification from a court of competent jurisdiction, or (ii) an arbitration award requiring the suspension, cancellation, transfer or modification of your domain name registration for the corresponding Eligible Site.

## Right of Refusal

You grant ICM, in our sole discretion, the right to refuse to accept your IR Request or to terminate your Reservation Token at any time. You agree that we will not be liable to you for any loss or damages that may result from any such refusal or termination.

## Dispute Policy

We do not check to see whether the IR Request you submit infringes the legal rights of others. You agree to assume all responsibility in selecting a domain name to reserve. Should we be sued or threatened with a lawsuit in connection with your IR Request or Reservation Token, you agree to hold us harmless and indemnify us pursuant to the Indemnification provision of this agreement. Similarly, you recognize that we have no responsibility to determine whether domain names reserved by others through our site infringe your own rights in trademarks or domain names, and you agree to release ICM from any legal claims asserting such a responsibility.

We will not participate in any way in any dispute between you and any party other than us regarding your IR Request, Reservation Token, and/or use of an Eligible Site or domain name. You will not name us as a party or otherwise include us in any such proceeding. In the event that we are named as a party in any such proceeding, we reserve the right to raise any and all defenses deemed appropriate, and to take any other action necessary to defend ourselves.

### 14. Limitation of Liability

ICM AND ITS PARTNERS, AFFILIATES AND CONTRACTORS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF ICM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WE EXPLICITLY DISCLAIM ANY AND ALL LOSS OR LIABILITY RESULTING FROM, BUT NOT LIMITED TO:

(a) SUSPENSION, LOSS, OR MODIFICATION OF YOUR IR REQUEST, RESERVATION TOKEN, AND/OR DOMAIN REGISTRATION;

- (b) USE OR MISUSE OF YOUR IR REQUEST, RESERVATION TOKEN, AND/OR DOMAIN NAME REGISTRATION;
- (c) INTERRUPTION OF YOUR BUSINESS, WEB SITE, EMAIL, OR OTHER SERVICES;
- (d) ACCESS DELAYS OR INTERRUPTIONS TO THIS WEB SITE OR ANY WEB SITES ACCESSED BY YOU;
- (e) NON-DELIVERY, MIS-DELIVERY, CORRUPTION, DESTRUCTION, OR MODIFICATION OF DATA;
- (f) USE OR MISUSE OF YOUR USER NAME OR PASSWORD;
- (g) FAILURE TO ACQUIRE OR RE-ACQUIRE A RESERVATION TOKEN AND/OR DOMAIN NAME;
- (h) ERRORS, OMISSIONS, OR MISSTATEMENTS IN ANY AND ALL INFORMATION OR SERVICES PROVIDED UNDER THIS AGREEMENT;
- (i) EVENTS BEYOND THE REASONABLE CONTROL OF ICM, INCLUDING WITHOUT LIMITATION FAILURE OF ELECTRICAL OR TELECOMMUNICATIONS SERVICES; or
- (j) APPLICATION OF ANY RELEVANT DISPUTE POLICY OR ANY OTHER ICANN (OR SIMILAR GOVERNMENTAL OR SUCCESSOR ORGANIZATION) ADOPTED POLICIES.

ICM' entire liability, and your exclusive remedy, with respect to any ICM services provided under this Agreement and any breach of this Agreement is limited solely to the amount you paid for such services. IN NO EVENT WILL ICM'S MAXIMUM AGGREGATE LIABILITY EXCEED THE LESSER OF THE TOTAL AMOUNT PAID BY YOU FOR USE OF ANY OF OUR SERVICES OR THE SUBMISSION OF A RESERVATION REQUEST OR RESERVATION TOKEN OR FIVE HUNDRED (\$100.00) DOLLARS. Some states do not allow the exclusion or limitation of liability for consequential or incidental damages; in such states, our liability is limited to the greatest extent permitted by law.

## Indemnity

You agree to release, defend, indemnify, and hold ICM and its directors, officers, employees, contractors, agents, strategic partners and affiliates harmless from all liabilities, claims and expenses (including attorney's fees, expenses, and ICM' reasonable out-of-pocket costs) relating to or arising under this Agreement ("Claims"), your IR Request, Reservation Token, and/or domain name or the use or renewal thereof, the ICM services provided hereunder, or your use thereof, including without limitation infringement of any intellectual property or other proprietary right of any person or entity, or from the violation of any ICM operating rule or policy relating to the services provided. You shall not enter into any settlement or compromise of any Claims without ICM' prior written permission, which permission shall not be unreasonably withheld. If, in the opinion of ICM' legal counsel, a conflict of interest exists or may reasonably be expected to exist in connection with your assumption of ICM' defense, ICM shall be entitled to conduct and control its own defense. This indemnification is in addition to any indemnification required under the UDRP or any similar policy. When ICM is threatened with suit by a third party, ICM may seek written assurances from you concerning your promise to indemnify ICM; your failure to provide those assurances may be considered by ICM to be a breach of your Agreement and may result in cancellation of your IR Request and/or invalidation

of any Reservation Token and/or any other ICM service.

## Miscellaneous.

The laws of the United States and the State of New York, without reference to rules governing choice and conflicts of laws, will govern this Agreement, and the services provided hereunder. Any action relating to this Agreement must be brought in the federal or state courts located in New York City, and both parties irrevocably consent to the exclusive jurisdiction and venue of such courts. You may not assign this Agreement, by operation of law or otherwise, without ICM's prior written consent. Subject to that restriction, this Agreement will be binding on, inure to the benefit of and be enforceable against the parties and their respective successors and assigns. Neither party's failure to enforce performance of any provision of this Agreement will not constitute a waiver of such party's right to subsequently enforce such provision or any other provision of this Agreement. If any provision of this Agreement, or portion thereof, is found to be unenforceable, such provision will be enforced to the maximum extent possible and the remainder of this Agreement will continue in full force and effect.

**ICANN has not authorized ICM to operate the .XXX domain, and may not do so in the future. It is possible that ICANN might authorize a third party to operate the .XXX domain, in which case that third party will have no obligation to honor your IR Request or any Reservation Token you hold. Your use of the IR Service constitutes your acknowledgment of these facts, and your agreement that ICM shall have no liability to you for any damages you suffer arising from ICANN's failure to authorize ICM to operate .XXX, ICM's use of any such authority if and when granted by ICANN, and/or ICANN's authorization of a third party to operate .XXX.**