

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (the “Confidentiality Agreement”) is between mTLD Top Level Domain, Limited, trading as dotMobi, a company organized under the laws of Ireland, with its principal place of business located at 10–11 Exchange Place, IFSC Dublin 1, Ireland (“dotMobi”), and [_____] with its principal place of business located at [_____] (“Registrar”) (each individually a “Party” or collectively the “Parties”), and takes effect on the date executed by the final Party (the “Effective Date”).

WHEREAS, dotMobi has entered a Registry Agreement with the Internet Corporation for Assigned Names and Numbers (“ICANN”) to operate a shared registration system, TLD nameservers, and other equipment for the .mobi top-level domain;

WHEREAS, multiple registrars will provide Internet domain name registration services within the .mobi top-level domain;

WHEREAS, Registrar wishes to evaluate whether to act as a registrar for domain names within the .mobi top-level domain; and

WHEREAS, the Parties intend to disclose to one another information which they consider to be valuable, propriety and confidential in connection with such evaluation by Registrar.

NOW, THEREFORE, in consideration of these premises and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Definition of Confidential Information. As used in this Confidentiality Agreement, Confidential Information means
 - 1.1 All information and materials of whatever nature that is provided by the disclosing Party (“Disclosing Party”) to the receiving Party (“Receiving Party”), whether oral, written or in any other medium including, without limitation, business plans, customer details and lists, financial information, market analyses, costs, valuations, utilization of information technologies, hardware and software, personnel, research, development or know-how, data, databases, protocols, reference implementation, functional and interface specifications, and any documentation, analyses, compilations, forecasts, studies; and
 - 1.2 Analyses, compilations, studies, notes, reports, presentations and any other documents prepared by the Receiving Party and/or its officers, employees, agents or advisers which contain or otherwise reflect or are generated from any such information as is specified in sub-clause 1.1 above;
2. Use of Confidential Information.
 - 2.1 The Receiving Party shall:

- 2.1.1 Keep the Disclosing Party's Confidential Information confidential and shall use all reasonable efforts to preserve the secrecy and confidentiality of the Confidential Information, including without limitation, implementing reasonable physical security measures and operating procedures;
- 2.1.2 Not disclose such Confidential Information to any third party except only to those of its officers, directors, employees, agents, advisors, consultants, contractors, affiliates or representatives ("Representative") who have a need to know such information, and only if: (a) such Representatives are informed of the confidential nature of the Confidential Information, and (b) such Representatives are subject to confidentiality obligations similar to those in this agreement;
- 2.1.3 Use such Confidential Information solely for the purposes of evaluating whether Registrar should provide domain name registration services as a registrar and not for any other purpose;

Not to use the Confidential Information, or permit or assist a third party to use the Confidential Information, to procure a commercial advantage over the Disclosing Party or an advantage which is in any way likely to be prejudicial, whether directly or indirectly, to the Disclosing Party;

- 2.1.4 Not modify or remove any confidential legends and/or copyright notices appearing on any Confidential Information.

- 3. Limitations. The Receiving Party's obligations hereunder shall not apply to such portions of the Confidential Information which:
 - 3.1 Are or become generally available to the public (other than as a result of a disclosure by a Receiving Party or its Representatives in violation of this Agreement or any other obligations of such person or entity);
 - 3.2 Are or become available to the Receiving Party on a non-confidential basis from a source which is lawfully entitled to disclose it;
 - 3.3 Are lawfully in the possession of the Receiving Party prior to the date hereof and which were not acquired or obtained from the Disclosing Party;
 - 3.4 Are developed independently by the Receiving Party.
- 4. Compliance with Legal Requirements. In the event of becoming legally compelled by any act of government or other competent or regulatory

authority to disclose any of the Confidential Information, the Receiving Party shall give notice of such fact to the Disclosing Party prior to any disclosure so that the Disclosing Party may seek an appropriate remedy to prevent such disclosure or, in the Disclosing Party's sole discretion waive compliance with the provisions of this Confidentiality Agreement and the Receiving Party will take any and all such steps as the Disclosing Party may require for such purpose.

5. Return of Confidential Information. Upon the termination of this Agreement, or otherwise upon the Disclosing Party's request, all Confidential Information furnished to the Receiving Party will be promptly returned to the Disclosing Party, or at the Disclosing Party's request, will be destroyed, with any such destruction confirmed by the Receiving Party in writing to the Disclosing Party.
6. No Rights to Intellectual Property. Nothing herein shall grant to the Receiving Party any intellectual property rights in the Disclosing Party's Confidential Information. No commercial use rights or any licenses under any patent, patent application, copyright, trademark, know-how, trade secrets or any other proprietary rights are granted by the Disclosing Party to the Receiving Party by this Confidentiality Agreement or by any disclosure of any Confidential Information to the Receiving Party under this Confidentiality Agreement. The Receiving Party agrees not to make any derivative works based on the Confidential Information.
7. Remedies. Each of the Parties, as the Receiving Party, acknowledges that, in the event of any breach of this Agreement by it, the Disclosing Party would be irreparably and immediately harmed and could not be made whole by monetary damages. It is accordingly agreed that, in addition to any other remedy to which it may be entitled, the Disclosing Party shall be entitled to seek an injunction to prevent breaches of, and to compel specific performance of, this Agreement. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that this Agreement has been breached by either of the Parties, then such breaching Party will reimburse the non-breaching Party its costs and expenses (including, without limitation, legal fees and expenses) incurred in connection with all such litigation.
8. Term. The term of this Agreement shall begin on the Effective Date and shall expire five (5) years thereafter unless terminated earlier by written agreement of the parties or superseded by a new agreement in respect of the subject matter hereof.
 - 8.1 The entire of the undertakings and obligations of confidentiality set out in this Agreement shall survive termination of this Agreement for any reason (save to the extent that they are amended, substituted or replaced by a new written agreement between the parties).
9. Return of Confidential Information. Once Evaluation Process is complete, or this Agreement is terminated and is not replaced with another confidentiality agreement in respect of the Confidential Information, the Receiving Party undertakes that it will if so directed by the Disclosing Party, immediately;

- 9.1 Return to the Disclosing Party all Confidential Information insofar as the same is in tangible form together with all copies thereof;
 - 9.2 Delete or expunge all Confidential Information from any computer, word processor or other device containing such information,
 - 9.3 Provide a signed statement to the Disclosing Party certifying that all Confidential Information has either been redelivered to Disclosing Party or destroyed/expunged from any computer, word processor or other device containing such information.
10. Data Protection In discharging their respective obligations under this Agreement, the Parties shall each be responsible for their compliance with the provisions of the Data Protection Acts, 1988 and 2003, as amended and extended and any applicable national data protection legislation.
11. Indemnity Each Party hereby agrees to indemnify, hold harmless and keep indemnified the other Party and its officers, employees, advisors, agents, representatives, contractors, sub-contractors, and consultants from and against any liability for loss and from and against any damages, costs, awards, proceedings, claims, demands, expenses and inconvenience whether incurred or suffered by the other Party or by any other person which arise as a result of the other Party's negligent acts or omissions or as a result of a breach by the other Party of any term of this Agreement.
- 11.1 Neither Party shall be liable to the other Party in contract, tort or otherwise for any special, punitive, incidental, or indirect loss, loss of business, loss of profits, loss of revenue, loss of reputation, loss of goodwill, or loss of anticipated savings, or for any financial or economic loss of any nature whatsoever which arises out of the actions of either Party under this Agreement or as a result of the activities of the officers, employees, advisors, agents, representatives, contractors, sub-contractors, or consultants of either of them.
12. Governing Law and Application. This Agreement shall be governed by the laws of Ireland and shall inure to the benefit of and be binding upon each Party and its respective affiliates, successors and assigns, including, without limitation, any successor to all or substantially all of such Party's assets or business.

Both Parties hereby submit to the exclusive jurisdiction of the Irish Courts provided that nothing in this clause shall limit:

- 12.1 The right of the parties to seek provisional or protective relief in the courts of another State prior to, during or after any substantive proceedings have been instituted in Ireland; or
- 12.2 The right of the parties to bring enforcement proceedings in another State on foot of a judgment of the Irish Courts.



- 13. No Representation. EXCEPT AS MAY OTHERWISE BE SET FORTH IN A SIGNED, WRITTEN AGREEMENT BETWEEN THE PARTIES, THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE ACCURACY, COMPLETENESS, CONDITION, SUITABILITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY OF ANY CONFIDENTIAL INFORMATION.

- 14. Counterparts. All executed copies of this Confidentiality Agreement are duplicate originals, equally admissible as evidence. This Confidentiality Agreement may be executed in counterparts, and such counterparts taken together shall be deemed the Confidentiality Agreement. A facsimile copy of a signature of a party hereto shall have the same effect and validity as an original signature.

- 15. Relationship. The Parties do not intend that any agency or partnership relationship be created between them by this Confidentiality Agreement.

- 16. General. This Confidentiality Agreement shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both of the Parties. If any part or parts of this Agreement are found invalid or unenforceable, such part or parts shall be deemed stricken herefrom and the remainder of this Confidentiality Agreement shall remain at all times in full force and effect. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of a Party, its agents, or employees, but only by an instrument in writing signed by an authorized officer of such Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or the same provision on another occasion.

IN WITNESS WHEREOF, and intending to be legally bound, duly authorized representatives of dotMobi and Registrar have executed this Confidentiality Agreement on the dates indicated below.

dotMobi:

By: _____
Title: _____
Date: _____

Registrar:

By: _____
Title: _____
Date: _____