

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the Internet Corporation for Assigned Names and Numbers (“ICANN”), a not-for-profit public benefit corporation organized under the laws of California, Employ Media, LLC (“Employ Media”), a limited liability company organized under the laws of Delaware, with its principal place of business in Ohio, and Society for Human Resource Management (“SHRM”), a nonprofit corporation under the laws of the State of Ohio (collectively, the “Parties”).

RECITALS

WHEREAS, on 5 May 2005, ICANN and Employ Media executed a Registry Agreement (the “Registry Agreement”) relating to the .JOBS Internet top level domain (“TLD”), which is a sponsored TLD created to serve the defined needs of the international human resource management community (“.JOBS Community”);

WHEREAS, under the Registry Agreement, SHRM, a not-for-profit entity whose mission is to advance the human resource profession, shall act as the .JOBS Sponsor and Policy Delegate, responsible for creating policy implemented and enforced by Employ Media, in the interests of the .JOBS Community;

WHEREAS, on 5 August 2010, ICANN’s Board approved a Registry Agreement amendment, sponsored by Employ Media, to permit the registration of noncompanyname.jobs domain names in the .JOBS TLD, as well as a Phased Allocation Program (the “Phased Allocation Program”), as described in Employ Media’s Registry Services Evaluation Process Request submitted to ICANN on 9 June 2010, to allocate noncompanyname.jobs domain names in the .JOBS TLD;

WHEREAS, on 27 February 2011, ICANN issued to Employ Media a Notice of Breach letter (“Notice of Breach Letter”) asserting that Employ Media was in violation of the Registry Agreement due to the manner in which it was permitting noncompanyname.jobs domain names to be used in the .JOBS TLD and the manner in which Employ Media allocated certain noncompanyname.jobs domain names in the .JOBS TLD under the Phased Allocation Program;

WHEREAS, on 3 May 2011, Employ Media instituted an arbitration proceeding before the International Chamber of Commerce, International Court of Arbitration (“ICC”), Case No. 17917/VRO (“ICC Arbitration”), claiming, *inter alia*, that ICANN improperly issued the Notice of Breach Letter;

WHEREAS, ICANN submitted an Answer in the ICC Arbitration (the “Answer”), responding to the allegations asserted by Employ Media in the ICC Arbitration by claiming, *inter alia*, that its Notice of Breach Letter was appropriate; and

WHEREAS, based on the materials the Parties have submitted in the ICC Arbitration, further discussions and representations by the Parties and their counsel, and the uncertainty and cost of further litigation, the Parties desire to amicably resolve this dispute, without any Party admitting any wrongdoing or liability of any kind whatsoever;

NOW THEREFORE, in consideration of the Recitals and mutual promises contained herein, and for other good and valuable consideration hereby deemed received, the Parties enter into this Settlement Agreement and agree as follows:

TERMS OF SETTLEMENT AGREEMENT

1. **Assurances From Employ Media and SHRM.** Employ Media has caused SHRM to provide ICANN with a written and public statement, dated December 3, 2012,

regarding the operation of the .JOBS TLD, use of noncompanyname.jobs domain names in the .JOBS TLD and the manner in which Employ Media allocated certain noncompanyname.jobs domain names in the .JOBS TLD under the Phased Allocation Program, a copy of which is attached hereto as Exhibit A and is incorporated by reference as though fully set forth herein. Employ Media hereby assures ICANN that, to its knowledge, all statements in SHRM's December 3, 2012 letter are accurate and complete.

2. Assurances from ICANN: Having reviewed the materials submitted by Employ Media in the ICC Arbitration, the assurances provided by Employ Media and SHRM as set forth in Paragraph 1 of this Settlement Agreement, and all other information known to ICANN as of the date of this Agreement, ICANN hereby confirms that: (a) all issues raised by ICANN in the Notice of Breach Letter and the ICC Arbitration, including, without limitation, all use and allocation issues and all issues with respect to the Phased Allocation Program, allocation of domain names to DirectEmployers, and the use of third-party job boards within .JOBS TLD, have been resolved to ICANN's satisfaction; (b) as of the date of ICANN's execution of this Settlement Agreement, Employ Media is in full compliance with the Registry Agreement and is in good standing as the Registry Operator of .JOBS; (c) ICANN will not object to, or claim violation of the Registry Agreement due to, Employ Media proceeding with the allocation of noncompanyname.jobs domain names under the Phased Allocation Program, provided that such allocation is in compliance with the Registry Agreement, the .JOBS Charter and policies approved by SHRM pursuant to its role as the .JOBS Sponsor and Policy Delegate; (d) Employ Media is not precluded from registering .JOBS domain names within the .JOBS TLD to itself through a request made to an ICANN-accredited registrar, as provided for in Section 7.1(b) of

the Registry Agreement; (e) Employ Media's renewal of the .JOBS Registry Agreement (as set forth in Section 4.2 of the Registry Agreement) will not be provided special consideration or prejudice due to the issues raised in the Notice of Breach Letter or the ICC Arbitration, and gTLD applications submitted by entities that have common ownership with or are otherwise related to Employ Media will be evaluated pursuant to the same criteria as all other applications, and the applications will not be provided special consideration or prejudice during the application evaluation process due to the issues raised in the Notice of Breach Letter or the ICC Arbitration; and (f) as set forth in the Registry Agreement, ICANN has delegated policy making authority—including decisions on allocation, registration, and usage of domain names—to Employ Media and to SHRM, as the .JOBS Sponsor and Policy Delegate, to the extent such decisions and policies are consistent with the Registry Agreement and the .JOBS Charter.

3. **Effective Date of Settlement Agreement.** This Settlement Agreement shall become effective upon the Parties' execution of this Agreement (the "Effective Date").

4. **Withdrawal of Notice of Breach Letter.** Within five (5) business days after the Effective Date of this Settlement Agreement, ICANN shall issue a public letter to Employ Media stating that the issues raised in ICANN's 27 February 2011 Notice of Breach Letter have been resolved to ICANN's satisfaction, that the Notice of Breach letter is withdrawn, and that Employ Media is in good standing under the Registry Agreement with respect to the issues raised in the Notice of Breach Letter and ICC Arbitration. In this same letter, ICANN shall re-confirm that the policy-making authority for .JOBS has been delegated to SHRM, as the .JOBS Sponsor and Policy Delegate, and to Employ Media, and that ICANN will not impose any restrictions on new or existing policy initiatives within .JOBS as long as such conduct is consistent with the .JOBS

Charter and the terms of the Registry Agreement.

5. **Dismissal of Arbitration.** Within one (1) business day of the issuance of the Withdrawal of Notice of Breach Letter described in Paragraph 4 of this Agreement, Employ Media and ICANN shall jointly file a dismissal of the ICC Arbitration with prejudice.

6. **Mutual Releases.** Except for the rights and obligations created by this Settlement Agreement, (i) ICANN hereby releases and forever discharges Employ Media and SHRM and their respective past and present officers, directors, principals, partners, employees, shareholders, agents, attorneys, representatives, affiliates, successors, heirs, and assigns from any and all claims, demands, obligations, losses, causes of action, costs, expenses, attorneys' fees and liabilities of any nature whatsoever, whether based on contract, tort, statutory or other legal or equitable theory of recovery, known or unknown, arising out of, or related to, the Notice of Breach Letter, including the claims and defenses asserted in the ICC Arbitration, which ICANN has, had, claims to have, or will have against Employ Media or SHRM, and (ii) Employ Media and SHRM hereby release and forever discharge ICANN and its past and present officers, directors, principals, partners, employees, shareholders, agents, attorneys, representatives, affiliates, successors, heirs, and assigns from any and all claims, demands, obligations, losses, causes of action, costs, expenses, attorneys' fees and liabilities of any nature whatsoever, whether based on contract, tort, statutory or other legal or equitable theory of recovery, known or unknown, arising out of, or related to, the Notice of Breach Letter, including the claims and defenses asserted in the ICC Arbitration, which either Employ Media or SHRM have, had, claim to have, or will have against ICANN. The claims covered by Paragraphs 6(i) and (ii) are referred to herein as the "Released Claims." Subject to the provisions of this Settlement Agreement, the

Released Claims do not include or inhibit ICANN's on-going duties, rights and obligations to monitor Employ Media's future compliance with the Registry Agreement or ongoing non-compliant activity of which ICANN is unaware and that is unrelated to the Released Claims. The Released Claims do not include or inhibit Employ Media's right to claim that ICANN's exercise of its on-going duties, rights, and obligations, as described in the preceding sentence, violate this Settlement Agreement, in which event Employ Media may invoke the dispute resolution provisions set forth in Paragraph 11 of this Agreement. The Released Claims do not include any claim arising out of the statements in the SHRM December 3, 2012 letter attached hereto as Exhibit A.

7. **Waiver and Release of Unknown Claims: California Civil Code Section**

1542. The Parties expressly waive and relinquish any and all rights and benefits they now have or may have in the future that arise out of the Released Claims under the terms of Section 1542 of the Civil Code of the State of California, which section reads in full as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING
THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

Being aware of this statutory provision, the Parties hereby expressly, knowingly and intentionally waive any rights they may have thereunder, as well as any other statute or common law of similar effect as they relate to the Released Claims. In connection with such waiver and

relinquishment, the Parties acknowledge that they are aware that, after executing this Settlement Agreement, they or their attorneys or agents may discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims described in Paragraph 6 above, or the Parties hereto, but that it is the Parties' intention to fully, finally and forever settle and release all of the Released Claims, which now exist, may exist, or heretofore may have existed against each other relating to the Released Claims. In furtherance of this intention, the releases herein given shall be and remain in effect as full and complete releases in accordance with Paragraph 6 and this Paragraph 7, notwithstanding the discovery or existence of any such additional or different claim(s) or fact(s).

8. **Warranty Against Assignment.** The Parties warrant and represent that there has been no assignment, sale or transfer, by operation of law or otherwise, of any claim, right, or interest in the Released Claims. The Parties agree to indemnify, defend and hold harmless one another from any claim, liability, or expense that may be incurred as a result of the assertion of any such claim, right, or interest by any person by reason of any such assignment, sale or transfer.

9. **No Admissions.** This Settlement Agreement is the result of a compromise and the desire of the Parties to avoid the cost, time, and uncertainty of the ICC Arbitration and further litigation. Nothing in this Settlement Agreement shall be considered or construed to be an admission of liability or responsibility by any of the Parties as to any cause or causes of action or claims.

10. **Entire Agreement; Modification; Construction.** This Settlement Agreement (and the Exhibits hereto) contain the entire agreement between the Parties relating to the subject

matter of this Settlement Agreement. All prior or contemporaneous agreements, written or oral, between the Parties regarding the subject matter hereof are superseded by this Settlement Agreement. This Settlement Agreement may not be modified except by written document signed by an authorized representative of each Party. Each Party acknowledges and represents that it (i) has fully and carefully read this Settlement Agreement prior to execution, (ii) has been fully apprised by its attorneys of the legal effect and meaning of this document and all terms and conditions hereof, (iii) has had the opportunity to make whatever investigation or inquiry it deemed necessary or appropriate in connection with the subject matter of this Settlement Agreement, (iv) has been afforded the opportunity to negotiate as to any and all terms hereof, and (v) is executing this Settlement Agreement voluntarily, free from any undue influence, coercion, duress, or menace of any kind. No term of this Settlement Agreement is to be construed or interpreted in any manner based on which Party drafted its language.

11. Governing Law and Dispute Resolution for Claims Arising out of the Settlement Agreement. This Settlement Agreement is being made in and shall be deemed to be performed in the State of California and shall be governed by, construed, and enforced in accordance with the laws of the State of California without giving effect to the provisions, policies, or principles thereof relating to choice of law or conflict of laws. Each of the Parties hereto hereby consents to the jurisdiction of the state and federal courts located in the County of Los Angeles, in the State of California with respect to any dispute relating to or arising out of this Settlement Agreement, provided, however, that all such other disputes relating to the Registry Agreement shall be resolved pursuant to Article V of the Registry Agreement.

12. Enforcement of Settlement Agreement. In any action to enforce the terms of

this Settlement Agreement, including any action to recover damages for any violations herein, the prevailing party shall be entitled to recover its reasonable attorney's fees and disbursements in addition to costs of suit.

13. **Attorneys' Fees, Costs and Expenses.** The Parties shall each bear their own attorneys' fees, costs and expenses arising from this matter, the Released Claims, and the ICC Arbitration and hereby release one another from any and all claims for attorneys' fees, costs and expenses arising from this matter, the Released Claims, and the ICC Arbitration.

14. **Severability.** Should any provision of this Settlement Agreement be held invalid or illegal, such invalidity or illegality shall not invalidate the whole of this Settlement Agreement, but, rather the Settlement Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

15. **Counterparts.** This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement as of the Effective Date of this Settlement Agreement.

Dated: 11 December 2012

ICANN

By: 

John O. Jeffrey, Esq.
General Counsel and Secretary

Employ Media LLC

Dated: _____

By: _____

Thomas J. Embrescia
Chairman and CEO

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13. Attorneys' Fees, Costs and Expenses. The Parties shall each bear their own attorneys' fees, costs and expenses arising from this matter, the Released Claims, and the ICC Arbitration and hereby release one another from any and all claims for attorneys' fees, costs and expenses arising from this matter, the Released Claims, and the ICC Arbitration.

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ICANN

Dated: _____

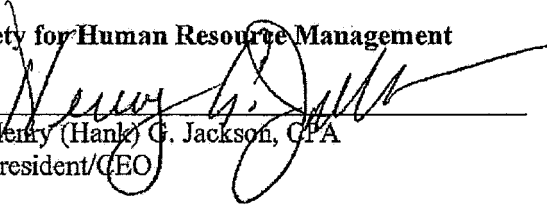
By: _____
John O. Jeffrey, Esq.
General Counsel and Secretary

Dated: 12.4.12

Employ Media LLC

By: _____
Thomas J. Embrescia
Chairman and CEO

Dated: 12/3/2012

Society for Human Resource Management
By: 
Henry (Hank) G. Jackson, CPA
President/CEO

AS TO FORM ONLY:

JONES DAY

Dated: _____

By: _____
Eric P. Enson, Esq.
Attorneys for ICANN
WEIL, GOTSHAL & MANAGES LLP

Dated: _____

By: _____
Arif H. Ali, Esq.
Attorneys for Employ Media LLC

STEPTOE & JOHNSON, LLP

Dated: _____

By: _____
James E. Rocap, III, Esq.
Attorneys for Society for Human Resource
Management

Society for Human Resource Management


Dated: _____

By: _____
Henry (Hank) G. Jackson, CPA
President/CEO

AS TO FORM ONLY:

JONES DAY

Dated: 12/6/12

By: 
Eric P. Enson, Esq.
Attorneys for ICANN
WEIL, GOTSHAL & MANAGES LLP

Dated: _____

By: _____
Arif H. Ali, Esq.
Attorneys for Employ Media LLC

STEPTOE & JOHNSON, LLP

Dated: _____

By: _____
James E. Rocard, III, Esq.
Attorneys for Society for Human Resource
Management

Society for Human Resource Management

Dated: _____

By: _____
Henry (Hank) G. Jackson, CPA
President/CEO

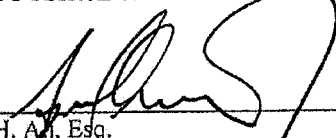
AS TO FORM ONLY:

JONES DAY

Dated: _____

By: _____
Eric P. Enson, Esq.
Attorneys for ICANN
WEIL, GOTSHAL & MANAGES LLP

Dated: 12/4/2012

By: 
Arif H. Ali, Esq.
Attorneys for Employ Media LLC

STEPTOE & JOHNSON, LLP

Dated: 12/3/2012

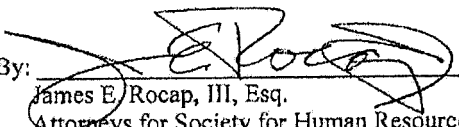
By: 
James E. Rocab, III, Esq.
Attorneys for Society for Human Resource
Management

EXHIBIT A



December 3, 2012

John O. Jeffrey
General Counsel and Secretary
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Dear John:

On behalf of the Society for Human Resource Management ("SHRM"), in its capacity as the Sponsor for the .JOBS TLD, I hereby confirm the following:

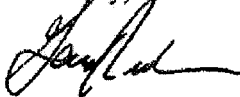
1. SHRM currently has in place a standing and, in its view, independent PDP Council tasked with addressing policy issues relating to .JOBS as set out in the Registry Agreement. SHRM appointed the current PDP Council in early 2012 and will continue to appoint such councils at the beginning of each calendar year for as long as it remains the Sponsor of the .JOBS TLD. The PDP Councils consist of individuals who, in SHRM's view, represent the varied interests and perspectives of the .JOBS Community. SHRM has appointed and will continue to appoint a Staff Manager who is independent of Employ Media and independent of any entity (other than SHRM) that has a direct interest in the issues under consideration by the PDP Council.¹ As you know, I am serving as the Staff Manager of the current PDP Council.
2. SHRM re-confirms that, based upon its knowledge and previous PDP work, SHRM believes that the .JOBS domain names currently being utilized by DirectEmployers are being used consistently with the terms of the .JOBS Charter, specifically, that such serve the needs of the .JOBS Community, and is consistent with the recommendation of the .JOBS PDP Council (and its underlying research findings) concerning expansion of the .JOBS sTLD to include use of non-company names in the operation of third-party job boards. SHRM further believes, based upon its knowledge, that Employ Media's implementation to date of the phased allocation program is also consistent with serving the needs of the .JOBS Community.

¹ For purposes of this sentence, "independent" shall mean that the Staff Manager is not a director, officer or employee of such entity.

3. SHRM's statements in Section 2 above are based upon the June 3, 2010 recommendation of the .JOBS PDP Council (and its underlying research findings) concerning expansion of the .JOBS sTLD to include use of non-company names in the operation of third-party job boards, and our understanding of the facts set forth below in this Section 3. The statements in Section 2 above are not based upon any additional input from the .JOBS PDP Council since its June 3, 2010 recommendation; and it is SHRM's understanding that ICANN has not asked for additional input from the .JOBS PDP Council in connection with these statements of SHRM. While the list below is not necessarily all-inclusive, it includes the understandings most material to SHRM's beliefs.
- a.) Mr. William Warren is the individual who has requested all .JOBS registrations for non-company names (for Direct Employers). Mr. Warren was a member of SHRM at the time of such registration requests and continues to be so.
 - b.) Each .JOBS domain registered at the request of Mr. Warren requires a registration agreement <http://www.goto.jobs/reg.agreement.asp>. That agreement includes, among other things: (i) a representation and warranty that the person requesting the registration is qualified to request registration of a second-level domain within the .JOBS sTLD under the .JOBS sTLD Charter, and (ii) agreement to Appendix C - Sponsored TLD Compliance, which Appendix C requires that all .JOBS domains must be used in compliance with the .JOBS Charter to serve the needs of the international human resource management community.
 - c.) Employ Media's representation to SHRM that Employ Media implemented the Phased Allocation Program by requesting proposals from multiple entities and then selecting Direct Employers (and initially certain others) based upon a fair review and evaluation of the proposal(s) received.

We are confirming these views in our limited role as Policy Delegate and Sponsor of the .JOBS sTLD, as explained in our previous correspondence to ICANN.

Sincerely,



Gary Rubin
Senior Vice President of Publishing and Media
Society of Human Resource Management