



Freenom ID Shield

WHOIS Privacy Service Agreement

INTRODUCTION

1.1 This Freenom ID Shield WHOIS Privacy Service Agreement ("Privacy Service Agreement") sets forth the terms and conditions of your use of the services offered by Stichting OpenTLD WHOIS Proxy, a Dutch foundation, ("ID Shield") and OpenTLD B.V., A Dutch corporation ("Freenom") pursuant to the Services Agreement by and between ID Shield and Freenom, wherein ID Shield agrees to provide consumers of Freenom's domain name registration and hosting services ("Freenom Registrant") with WHOIS privacy protection services ("ID Shield Services Agreement").

1.2 This Privacy Service Agreement serves to supplement your Domain Registration Agreement and/or Hosting Services Agreement between you on the one hand and Freenom on the other hand, and which is incorporated herein by reference. In this Privacy Service Agreement "you" and "your" refer to you or any agent, employee, servant or person authorized to act on your behalf, and the Freenom Registrant listed in the WHOIS contact information for the domain name. This Privacy Service Agreement explains Freenom's obligations to you in connection with your WHOIS privacy protection services, and explains your obligations to Freenom for privacy protection services offered by third party ID Shield under the ID Shield Services Agreement.

FREENOM ID SHIELD PRIVACY SERVICES

2.1 By subscribing to the Freenom WHOIS Privacy Protection Services ("WHOIS Privacy Services"), you are engaging ID Shield to administer and register each domain name controlled by you ("Protected Domain") in the name of ID Shield. Thus, your name, postal address, email address, phone and fax numbers shall be kept confidential, subject to this Privacy Service Agreement. The following information (and not your personal information) will be made publicly available in the WHOIS directory for each Protected Domain:

- 2.1.1 An account specific ID Shield email address, and ID Shield postal address and phone and facsimile number for the registrant, administrative, technical, and billing contacts ("ID Shield Addresses");
- 2.1.2 The primary and secondary domain name servers you designate for the Protected Domain;
- 2.1.3 The Protected Domain's original date of registration and expiration date; and
- 2.1.4 The identity of your registrar, domain name service provider (if different from registrar) and the status of the Protected Domain with the registrar (such as, "active," "Registrar Lock," "clienthold," etc.).

YOUR RIGHTS

- 3.1 You will retain the right to sell, transfer, or assign each Protected Domain.
- 3.2 You will retain the right to control and set the DNS settings for the Protected Domain(s).
- 3.3 You will retain the right to renew each Protected Domain name registration upon expiration (subject to Freenom's applicable rules and policies).
- 3.4 You will remain responsible to resolve any and all monetary or other legal claims that arise in connection with your Protected Domain(s), subject to the remaining provisions of this Privacy Service Agreement, the ID Shield Services Agreement, and your Domain Registration Agreement and/or Hosting Services Agreement with Freenom (collectively, "Agreements").

YOUR PERSONAL INFORMATION

4.1 You agree that for each Protected Domain, you will provide to ID Shield and maintain as current and accurate, the following information:

4.1.1 Your name, address, email address, postal address, phone and fax numbers;

4.1.2 The name, address, email address, postal address, phone and fax numbers for the Protected Domain's administrative, technical, and billing contacts; and

4.1.3 The primary and secondary domain name servers for the Protected Domain.

4.2 You agree to:

4.2.1 Update this information immediately as it changes over time;

4.2.2 Respond within five (5) business days to any inquiries made by ID Shield to determine the validity of personal information provided by you;

4.2.3 Promptly respond to messages regarding correspondence addressed to or involving your Protected Domain(s), as more fully set forth below.

4.3 If you do not supply primary and secondary domain name servers, you agree that ID Shield or Freenom may point your Protected Domain(s) to an IP address of its choosing until such time as you supply primary and secondary domain name servers.

RENEWAL AND FEES

5.1 If you have selected automatic renewal of the WHOIS Privacy Services administered by ID Shield, you agree:

5.1.1 That the WHOIS Privacy Services shall be automatically renewed 30 days prior to the end of term of your Domain Name Registration Agreement or Hosting Services Agreement with Freenom;

5.1.2 That ID Shield will attempt to charge your Freenom account at the then current rates;

5.1.3 That you waive any requirement to obtain your ongoing affirmative consent to any such automatic renewal.

5.2 If you do not wish to automatically renew the WHOIS Privacy Services administered by ID Shield, you agree that the exclusive method for communicating this shall be by logging into your Freenom Account to ensure that the ID Shield auto-renewal or renewal option is not selected. You understand that you must do this at least 31 days prior to the end of the then current Term (as defined below).

5.3 It is your responsibility to keep necessary funds in your Freenom Account. If ID Shield is unable to collect renewal or other fees, you agree that ID Shield may contact you, but is not obliged to do so, and you agree that ID Shield may suspend or terminate the WHOIS Privacy Services as a result of inability to obtain payment.

TERM OF SERVICES

6.1 You understand that the term of WHOIS Privacy Services administered by ID Shield begins on the date your attempt to purchase the WHOIS Privacy Services is accepted by ID Shield and that it shall run for the unit of time which you order ("Term"). You understand that the Term may be different than the registration term of the Protected Domain which is associated with Freenom. If a Protected Domain registration expires and is deleted before the end of the Term of the associated WHOIS Privacy Services, then the WHOIS Privacy Services associated with the domain will end when the Protected Domain is deleted and you understand that there will be no refund for any resulting unused portion of the Term. If the Term ends while the registration term for the Protected Domain is still ongoing, then the WHOIS Privacy Services will no longer be provided, the personal information specified in this Privacy Service Agreement shall be listed in the public WHOIS Directory output for the (then former) Protected Domain, and the communications forwarding services specified in this Privacy Service Agreement will no longer be provided.

YOUR REPRESENTATIONS & WARRANTIES

7.1 You represent and warrant that all information provided by you pursuant to this Privacy Service Agreement is truthful, complete, current and accurate and you represent and warrant that you will maintain all information in this status throughout the term of the Agreements.

7.2 You also represent and warrant that you are using the WHOIS Privacy Services in good faith and that you have no knowledge or reason to believe that your Protected Domain or the content found at any associated IP address infringes upon or conflicts with the legal rights of any third party or any third party's trademark or trade name.

7.3 You also warrant that neither the WHOIS Privacy Services nor Protected Domain(s) will be used in connection with any illegal or morally objectionable activity (as defined below), or, in connection with the transmission of unsolicited commercial email(s) ("Spam"). Further, you represent and warrant that you will not provide any third party with the ID Shield Addresses for the purpose of having such third party transmit communications to you through ID Shield.

SUSPENSION OR TERMINATION AND DISCLOSURE OF YOUR PERSONAL INFORMATION

8.1 Notwithstanding your purchase of the WHOIS Privacy Services administered by ID Shield, Freenom reserves the right in its sole judgment and discretion to disclose your personal protected information, or instruct ID Shield to disclose such information, in the event any of the following occur:

8.2 If the Protected Domain(s) is (are) alleged to violate or infringe a third party's trademark, trade name, copyright interests or other legal rights of third parties;

8.3. If you breach any provision of this Privacy Service Agreement;

8.4. If you breach any provision of the Agreements incorporated herein by reference;

8.5. If you breach any provision of your Domain Name Registration Agreement or Hosting Services Agreement with Freenom;

8.6. If necessary to comply with any applicable laws, government rules or requirements, subpoenas, court orders or requests of law enforcement;

8.7. If Freenom or ID Shield are named as a defendant in, or investigated in anticipation of, any legal or administrative proceeding arising out of your use of the WHOIS Privacy Services or a Protected Domain;

8.8. If necessary to comply with ICANN's Dispute Resolution Policy or other policies promulgated by ICANN;

8.9. If necessary to avoid any financial loss or legal liability (civil or criminal) on the part of Freenom or its parent companies, subsidiaries, affiliates, shareholders, agents, officers, directors and employees;

8.10. If necessary to protect the integrity and stability of the applicable domain name registry; or

8.11. If it comes to Backend Service Provider's attention that you are alleged to be using the WHOIS Privacy Services administered by ID Shield for purposes of engaging in, participating in, sponsoring or hiding your involvement in illegal or morally objectionable activities, including but not limited to, activities which are designed, intended to or otherwise:

8.11.1 Appeal primarily to prurient interests;

8.11.2. Defame, embarrass, harm, abuse, threaten, or harass;

8.11.3. Violate laws of the Netherlands;

8.11.4. Involve hate crimes, terrorism or child pornography;

8.11.5. Are tortious, vulgar, obscene, invasive of a third party's privacy, race, ethnicity, or are otherwise objectionable;

8.11.6. Impersonate the identity of a third party;

8.11.7. Harm minors in any way; or

8.11.8. Relate to or transmit viruses, trojan horses, access codes, backdoors, worms, timebombs or

any other code, routine, mechanism, device or item that corrupts, damages, impairs, interferes with, intercepts or misappropriates any software, hardware, firmware, network, system, data or personally identifiable information.

8.12. In the event Freenom or ID Shield decide to take any of the actions set forth above or in the event you elect to cancel the WHOIS Privacy Services administered by ID Shield for any reason, neither Freenom or ID Shield shall be liable for eventual fees paid by you for the WHOIS Privacy Services administered by ID Shield.

COMMUNICATIONS

9.1. You agree that from time to time, ID Shield (and if applicable, Freenom) will review communications sent to the ID Shield Addresses associated with your Protected Domain.

9.2. For communications received via certified or traceable courier mail (such as UPS, FedEx, or DHL), or first class mail which does not appear to be unsolicited commercial mail, you agree that ID Shield may either i) forward such communication to you or ii) may attempt to communicate to you a scanned copy of a page of the communication to ascertain how you wish ID Shield to proceed with respect to that communication.

9.3. You understand that ID Shield may, in its own judgment and discretion, elect to not forward to you such first class postal mail or email, fax, postal mail or telephone communications which appear to be unsolicited communications, which offer or advertize the sale of goods or services or which solicit charitable contributions, or communications which appear to arise from your use of the WHOIS Privacy Services administered by ID Shield as a general mail forwarding service. You authorize ID Shield to either discard all such communications or return all such communications to sender unopened.

9.4. You agree to waive any and all claims arising from your failure to receive communications directed to your domain name but not forwarded to you by ID Shield, including such failures which arise from ID Shield's mistake of judgment made in good faith in determining whether a communication is or is not an unsolicited communication.

9.5. The public WHOIS Directory generally requires an email address for every purchased domain name registration. When you purchase WHOIS Privacy Services administered by ID Shield, an email address will be automatically generated for the corresponding Protected Domain (e.g. XXXXXX.shielded@idshield.tk). Thereafter, when messages are sent to the email address listed in the ID Shield Address, ID Shield will forward such messages to the email address you provided to ID Shield, in accordance with this Privacy Service Agreement. If such email address becomes non-functioning or if the email to such address bounces, ID Shield shall not be obligated to attempt to contact you through other means. You agree that ID Shield may elect in its sole discretion, to allow you to access the email server logs if available and view email information sent to the ID Shield Addresses, though such alternative means of servicing your Account is an option and not a requirement.

9.6. When ID Shield receives a communication to the Protected Domain, ID Shield will send an email to the email address you provided to ID Shield in accordance with this Privacy Service Agreement. The email message from ID Shield to you will identify the sender of the correspondence and the date received. As an alternative, you agree that ID Shield may allow you to access your account to view full or partial scanned copies of (non-email) communications sent to the Protected Addresses and that you may be required to interact with your account to have the physical originals of such communications forwarded to you and that if you do not interact with your account in the ways indicated upon accessing your account, that the communications may not be forwarded to you. In either event, you will have seventy-two (72) hours to decide whether to have the communication(s) forwarded. If you do not respond within this time period, the communication(s) will not be forwarded. Method of forward will be determined by ID Shield. Communication(s) may not be immediately forwarded upon your election; there may be a delay and communication(s) may be aggregated to be forwarded together.

9.7. You agree to submit to fees where ID Shield may begin charging fees for forwarding communications or may change the method by which communications are forwarded without written notice.

9.8. In the event you do not respond to communications from ID Shield, irrespective of whether

ID Shield is forwarding an email or making an unrelated inquiry or communication, ID Shield may immediately reveal the information you provided in accordance with this Privacy Service Agreement and/or cancel the WHOIS Privacy Services regarding either the Protected Domain in question or with respect to all of your Protected Domains, depending on the circumstances. This means the WHOIS directory will revert to displaying your name, postal address, email address and phone number.

LIMITATION OF LIABILITY

10.1. UNDER NO CIRCUMSTANCES SHALL FREENOM OR ID SHIELD BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES FOR ANY REASON WHATSOEVER RELATED TO THIS PRIVACY SERVICE AGREEMENT, YOUR DOMAIN NAME REGISTRATION, THE WHOIS PRIVACY SERVICES ADMINISTERED BY ID SHIELD, YOUR USE OR INABILITY TO USE THE FREENOM WEBSITE(S) OR THE MATERIALS AND CONTENT OF THE WEB SITE(S) OR ANY OTHER WEB SITES LINKED TO SUCH WEB SITE(S) OR YOUR PROVISION OF ANY PERSONALLY IDENTIFIABLE INFORMATION TO BACKEND SERVICE PROVIDER OR ANY THIRD PARTY. THIS LIMITATION APPLIES REGARDLESS OF WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF FREENOM OR ID SHIELD HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE REASONABLY FORESEEABLE. BECAUSE CERTAIN JURISDICTIONS DO NOT PERMIT THE LIMITATION OR ELIMINATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, FREENOM'S OR ID SHIELD'S LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. IF ANY PROVISION OF THIS LIMITATION OF LIABILITY IS FOUND TO BE UNENFORCEABLE, ONLY SUCH PROVISION SHALL BE REMOVED AND THE REMAINDER SHALL BE ENFORCED TO THE GREATEST EXTENT PERMITTED BY LAW.

10.2. You further understand and agree that Freenom and ID Shield disclaim any loss or liability resulting from:

- 10.2.1. The inadvertent disclosure or theft of your personal information;
 - 10.2.2. Access delays or interruptions to the Freenom or ID Shield websites or the websites of affiliated parties;
 - 10.2.3. Data non-delivery or inaccurate delivery between you and the providers of the services;
 - 10.2.4. The failure for whatever reason to renew the WHOIS Privacy Services;
 - 10.2.5. The unauthorized use of your account or any of the providers of services;
 - 10.2.6. Errors, omissions or misstatements by providers of services;
 - 10.2.7. Deletion of, failure to store, failure to process or act upon email messages sent to or forwarded to either you or the email address listed for your protected domain;
 - 10.2.8. Processing of updated information regarding your account;
 - 10.2.9. Any act or omission caused by you or your agents (whether authorized by you or not).
- 10.3. YOU AGREE THAT, IN ANY EVENT, THE PRIMARY AND BACKEND SERVICE PROVIDERS' RESPECTIVE MAXIMUM LIABILITY TO YOU SHALL BE CAPPED BY THE LESSER OF THE AMOUNT OF FEES PAID BY YOU TO EACH SERVICE PROVIDER IN THE PRECEDING YEAR WITH RESPECT TO THE SERVICES WHICH GAVE RISE TO THE LIABILITY OR \$100.00 PER PROTECTED DOMAIN.

INDEMNITY AND DEFENSE

11.1. With respect to ICANN, the registry operators, Freenom and ID Shield, as well as the contractors, agents, employees, officers, directors, shareholders, and affiliates of such parties, you agree to defend, release, indemnify, and hold such parties harmless from all liabilities, claims and expenses, including attorney's fees and court costs, for third party claims relating to or arising under the Privacy Service Agreement, the WHOIS Privacy Services provided hereunder, or your use of the WHOIS Privacy Services, including, without limitation, infringement by you, or by anyone else using

the WHOIS Privacy Services provided to you, of any intellectual property or other proprietary right of any person or entity, or from the violation of any of Freenom's operating rules or policies relating to the WHOIS Privacy Services provided.

11.2. When Freenom or ID Shield may be involved in a suit involving a third party and which is related to the WHOIS Privacy Services administered by ID Shield to you under this Privacy Service Agreement, Freenom or ID Shield may seek written assurances from you in which you promise to defend, indemnify and hold Freenom and ID Shield harmless from the costs and liabilities described in this paragraph. Such written assurances may include, in Freenom's sole discretion, the posting of a performance bond(s) or other guarantees reasonably calculated to guarantee payment. Your failure to provide such assurances may be considered by Freenom to be a breach of this Privacy Service Agreement by you and may, in Freenom's sole discretion, result in loss of your right to control the disposition of domain name services for which you are the registrant and in relation to which Freenom is the registrar of record.

11.3. Should Freenom or ID Shield be forced to defend itself in any action or legal proceeding in connection with any WHOIS Privacy Services provided to you, you shall have sole responsibility to defend Freenom against any such claim by legal counsel of its choosing. This indemnification is in addition to any indemnification required under the Uniform Domain Name Dispute Resolution Policy ("UDRP").

11.4. You agree to release, defend, indemnify and hold harmless the Primary and Backend Service Providers, and their parent companies, subsidiaries, affiliates, shareholders, agents, directors, officers and employees and Your registrar, from and against any and all claims, demands, liabilities, losses, damages or costs, including reasonable attorney's fees, arising out of or related in any way to the Agreements, the web sites of the Service Providers, your Account, and/or your use of your Protected Domain.

11.5. The terms of this Section will survive any termination or cancellation of this Privacy Service Agreement.

BACKEND SERVICE PROVIDER WARRANTY DISCLAIMER

12.1. THE BACKEND SERVICE PROVIDER, ITS PARENT COMPANIES, SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, AGENTS, DIRECTORS, OFFICERS, AND EMPLOYEES EXPRESSLY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND IN CONNECTION WITH THIS PRIVACY SERVICE AGREEMENT, THE SERVICES PROVIDED HEREUNDER, THE WEB SITES OF THE BACKEND SERVICE PROVIDER OR ANY WEB SITES LINKED TO SUCH WEB SITES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. ALL BACKEND SERVICE PROVIDER SERVICES, AS WELL AS THE BACKEND SERVICE PROVIDER WEB SITE, ARE PROVIDED "AS IS". YOUR SUBSCRIPTION TO AND USE OF BACKEND SERVICE PROVIDER'S SERVICES AND ITS WEB SITE ARE ENTIRELY AT YOUR RISK. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES, IN WHICH EVENT THE FOREGOING DISCLAIMER MAY NOT APPLY TO YOU. IF ANY PROVISION OF THIS LIMITATION OF LIABILITY IS FOUND TO BE UNENFORCEABLE, ONLY SUCH PROVISION SHALL BE REMOVED AND THE REMAINDER SHALL BE ENFORCED TO THE GREATEST EXTENT PERMITTED BY LAW.

GOVERNING LAW AND JURISDICTION FOR DISPUTES

13.1. Except as otherwise set forth in the UDRP or any similar ccTLD policy with respect to any dispute over a domain name registration this Privacy Service Agreement, your rights and obligations and all actions contemplated by this Privacy Service Agreement shall be governed by the laws of the Netherlands, as if the Privacy Service Agreement was a contract wholly entered into and wholly performed within the Netherlands.

13.2. You agree that any action brought by you to enforce this Privacy Service Agreement or any matter brought by you and which is against or involves Freenom or ID Shield and which relates to your use of the Services shall be brought exclusively in the Court of the Netherlands.

13.3. You agree that service of process on you by Freenom or ID Shield in relation to any dispute arising under this Privacy Service Agreement may be served upon you by first class mail to

the address listed by you in your account and/or domain name WHOIS information or by electronically transmitting a true copy of the papers to the email address listed by you in your account and/or domain name WHOIS information.

13.4. YOU AGREE TO WAIVE THE RIGHT TO TRIAL BY JURY IN ANY PROCEEDING THAT TAKES PLACE RELATING TO OR ARISING OUT OF THIS PRIVACY SERVICE AGREEMENT.

NOTICES

14.1. You agree that any notices required to be given under this Privacy Service Agreement by Freenom or ID Shield to you will be deemed to have been given if delivered in accordance with the account and/or domain name WHOIS information you have provided.

LEGAL AGE

15.1. You attest that you are of legal age to enter into this Privacy Service Agreement.

FINAL AGREEMENT

16.1. This Privacy Service Agreement, the referenced agreements incorporated herein, the ICANN Policy and the UDRP, together with all modifications, constitute the complete and exclusive agreement between you and Freenom, and supersede and govern all prior proposals, agreements, or other communications. This Privacy Service Agreement may not be amended or modified by you except by means of a written document signed by both you and an authorized representative of Freenom.

NO AGENCY RELATIONSHIP

17.1. Nothing contained in this Privacy Service Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties hereto. Each party shall ensure that the foregoing persons shall not represent to the contrary, either expressly, implicitly, by appearance or otherwise.

NO WAIVER

18.1. Any failure on the part of Freenom to require your performance of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by Freenom of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

ENFORCEABILITY

19.1. In the event that any provision of this Privacy Service Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Privacy Service Agreement unenforceable or invalid as a whole. Freenom will amend or replace such provision with one that is valid and enforceable and which achieves, to the extent possible, the original objectives and intent as reflected in the original provision.

ASSIGNMENT AND RESALE

20.1. Except as otherwise set forth herein, your rights under this Privacy Service Agreement are not assignable or transferable. Any attempt by your creditors to obtain an interest in your rights under this Privacy Service Agreement, whether by attachment, levy, garnishment or otherwise, renders this Privacy Service Agreement voidable at the option of Freenom.

FORCE MAJEURE

21.1. Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its control including, but not limited to: earthquake; flood; fire; storm; natural disaster; act of God; war; terrorism; armed conflict; labor strike; lockout; boycott; supplier failures, shortages, breaches, or delays; or any law, order regulation, direction, action or request of the government, including any national and local governments having or claiming jurisdiction over Freenom, ID Shield or its affiliates, or of any department, agency, commission, bureau, corporation or other instrumentality of any national, or local government, or of any civil or military authority; or any other cause or circumstance, whether of a similar or dissimilar nature to the foregoing, beyond the reasonable control of the affected party, provided that the party relying upon this Section (i) shall have given the other party written notice thereof promptly and, in any event, within five (5) days of discovery thereof and (ii) shall take all steps reasonably necessary under the circumstances to mitigate the effects of the force majeure event upon which such notice is based; provided further, that in the event a force majeure event described in this Section extends for a period in excess of thirty (30) days in the aggregate, Freenom may immediately terminate this Privacy Service Agreement.

HEADINGS

22.1. The section headings appearing in this Privacy Service Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.