



CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

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This Confidentiality and Nondisclosure Agreement ("**Agreement**") is made and entered into effective as of _____ ("**Effective Date**"), between NANOG, Inc., a Delaware nonprofit corporation d/b/a North American Network Operator's Group (hereinafter, "**NANOG**"), with its principal office located at 305 E. Eisenhower Parkway, Suite 100, Ann Arbor, Michigan 48108, and _____, an individual residing at:

("**Recipient**"), each a "**Party**," or, collectively, the "**Parties**."

WHEREAS, Recipient is a member or officer of, advisor to or other person expected to receive confidential information about NANOG and/or the NANOG Board of Directors ("**Board**"); and

WHEREAS, NANOG desires to receive from Recipient covenants and agreements not to disclose its confidential information, and the aforesaid receipt of confidential information is contingent upon NANOG receiving such covenants and agreements.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Position.** Recipient provides services to NANOG on a volunteer or advisory basis. Even though the Recipient is or may become a full-time employee of another entity, Recipient will use reasonable business efforts to coordinate Recipient's respective commitments, and will use Recipient's best efforts to promote NANOG's interests. In addition, to the extent applicable, the Recipient agrees to disclose any actual or potential conflicts of interest to the Board in accordance with the Board's Conflicts of Interest Policy, as may be amended from time to time.

2. **Term.** This Agreement shall commence on the Effective Date and shall expire (__) year(s) from the Effective Date, provided that either Party may terminate this Agreement upon not less than ten (10) days' written notice to the other Party at the Party's address shown above and may be extended only by a writing signed by both Parties. Except as otherwise agreed in writing signed by both Parties with respect to any particular Confidential Information (as defined herein), each Party's rights and obligations under this Agreement shall survive the expiration or termination of this Agreement.

3. **Non-Disclosure of Confidential Information.** While engaged with NANOG and thereafter, Recipient agrees to keep strictly confidential and not disclose, or cause or permit to

be disclosed to any third person or entity, any Confidential Information (as defined herein), except as may be consented to in writing by NANOG or otherwise excluded as provided in Section 5 below.

4. **Confidential Information.** For purposes of this Agreement, “**Confidential Information**” includes non-public information, material, data, or matter disclosed to Recipient in the performance of Recipient’s services to NANOG, whether or not marked as confidential, that is: (a) related to the business operations and financial condition or affairs of NANOG, including trade secrets; (b) related to the business operations and financial condition or affairs of any individual member or any organization that is affiliated with NANOG; (c) specified or identified by any Director, officer or committee member as sensitive or subject to any rights of privacy or contractual confidentiality obligations (including, sensitive personally identifiable information such as social security numbers, bank/credit account numbers, passport or immigration information, medical or health related information, government issued identification numbers, and the like); (d) required by law, rule, regulation, or policy of NANOG to be kept confidential; (e) requested by any Director or officer to be kept confidential and not publicly disclosed or disseminated; (f) identified by the Board or any committee thereof to be confidential; or (g) related to any actions taken by the Board or a committee thereof that relates to any information, material, data, or matter described above. Confidential Information includes all non-public information entrusted or obtained by Recipient due to Recipient’s position as a Director of the Board, committee member, or advisor to the Board, including information regarding Board discussions and deliberations, regardless of whether such discussions or deliberations arise out of any formal, informal, special or regular meeting of the Board, any committee of the Board, or within designated electronic communication channels of the Board.

5. **Exclusions from Confidential Information & Defend Trade Secrets Act Notice.** Confidential Information does not include any information to the extent it is or becomes: (a) available to the public other than by breach of this Agreement by Recipient or any member of the Board; (b) at the time of disclosure or discussion is in the public domain, or after disclosure becomes, through no fault of Recipient or any member of the Board, part of the public domain as evidenced by generally available documents or publications; (c) was available to Recipient on a non-confidential basis prior to its disclosure to Recipient by NANOG; (d) no longer treated as confidential by NANOG; or (e) approved for release or use by prior authorization of the Board. The obligations of this Agreement will not apply to prevent Recipient from disclosing Confidential Information to the extent the disclosure is required by law, regulatory requirement or legal or administrative process, provided Recipient notifies the Board promptly on receiving notice of such requirement (unless prohibited from doing so by applicable law or legal process) so that NANOG may seek a protective order or other appropriate remedy. In addition, Recipient will not be held criminally or civilly liable under a federal or state law for the disclosure of a trade secret or Confidential Information that is made in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. If Recipient files a lawsuit for retaliation by NANOG for reporting a suspected violation of law, Recipient may disclose the trade secret or Confidential Information to Recipient’s attorney and use the trade secret or Confidential Information in the court proceeding, provided that Recipient must file any document containing the trade secret or Confidential Information under

seal, and must not disclose the trade secret or Confidential Information, except pursuant to court order.

6. **Ownership.** Recipient will have no right, title, or interest in or to any Confidential Information or any material developed therefrom. Recipient must, at any time at the request of NANOG, immediately return to NANOG (or, with the prior agreement of NANOG, destroy and provide NANOG with written confirmation of such destruction) all Confidential Information (including notes, writings, and other material developed from it by Recipient) and all copies thereof and retain none for Recipient's files.

7. **Remedies.** Recipient acknowledges that Recipient's breach of this Agreement will cause irreparable injury to NANOG which cannot be fully compensated by money and for which NANOG will have no adequate remedy at law. Recipient therefore agrees that in the event of any breach or threatened breach of this Agreement by Recipient, NANOG shall be entitled, without proving or showing any actual damage sustained, to a temporary restraining order, preliminary injunction, permanent injunction, or order compelling specific performance to prevent or cease the breach of Recipient's obligations under this Agreement. Nothing in this Agreement will be interpreted as prohibiting NANOG from obtaining any other remedies otherwise available to it for such breach or threatened breach, including the recovery of damages. NANOG shall be entitled to an award of its reasonable attorneys' fees and costs expended in enforcing or litigating Recipient's violation of any covenant or obligation in this Agreement.

8. **General Provisions.**

a. The recitals set forth above are incorporated into this Agreement as if fully rewritten and restated in the body of this Agreement.

b. This Agreement shall be governed by and construed according to the laws of the State of Delaware, excluding principles of conflicts of law. Each Party irrevocably consents to the personal jurisdiction of federal and state courts located in Delaware for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in Delaware, such personal jurisdiction shall be nonexclusive. Additionally, notwithstanding anything in the foregoing to the contrary, a claim for equitable relief arising out of or related to this Agreement may be brought in any court of competent jurisdiction.

c. This Agreement will be binding on and inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns, but this Agreement will not be assignable by Recipient without the prior written consent of NANOG.

d. If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and shall continue in full force and effect.

e. This Agreement sets forth all of the promises, agreements, conditions, understandings and covenants between the Parties hereto with respect to the subject matter referred to herein, and there are no promises, other than as set forth herein. Any and all prior

agreements with respect to such subject matter are hereby revoked. This Agreement is and is intended by the Parties hereto to be, an integration of any and all prior agreements or understandings, oral or written, with respect to such subject matter. No provision of this Agreement may be modified or waived unless agreed in writing and signed by both Parties.

f. Section headings contained in this document are for convenience of reference only and shall not be considered in any interpretation of this Agreement. This document shall be considered as equally drafted by both Parties, the doctrine of *contra preferendum* shall not apply, and any ambiguity herein shall not be interpreted either for or against either Party. As used in this Agreement, “including” means including without limitation.

g. This Agreement may be executed in counterparts and validly exchanged and delivered by facsimile, PDF, email or other electronic means. Each counterpart shall be regarded as an original, and all the counterparts shall together constitute one and the same instrument.

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

RECIPIENT

NANOLOG, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title:

Date Signed: _____

Date Signed:

HISTORY OF REVIEW/REVISIONS				
Date	Version	Action	Description	Approved By
11/14/13		Adopted	Mutual Non Disclosure Agreement	Board of Directors
10/7/15	v1	Revised	Complete revision from 1 page to 3 pages, corporate address change	Board of Directors
3/20/18	v1.1	Revised	Corporate address change, Executive director change	Board of Director
12/15/2019	v2	Revised	Name change from Newnog to NANOG, added logo	Board of Directors