

Service Level Agreement for the IANA Numbering Services

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Service Level Agreement for the IANA Numbering Services

Date

2016

Parties

Internet Corporation for Assigned Names and Numbers

of 12025 Waterfront Drive, Suite 300, Los Angeles, CA 90094-2536, USA
("ICANN")

(In this agreement ICANN is referred to as "**Operator**")

AND

AFRINIC Ltd

of 11th Floor, Standard Chartered Tower, Cybercity Ebene, Mauritius
("AFRINIC")

APNIC Pty Ltd, for the Asia Pacific Network Information Centre

of 6 Cordelia Street, South Brisbane, Queensland, 4101, Australia
("APNIC")

American Registry for Internet Numbers, Ltd

of 3635 Concorde Parkway, Suite 200, Chantilly, VA 20151-1125, USA
("ARIN")

Latin American and Caribbean Internet Addresses Registry

of Rambla República de México 6125 CP 11400, Montevideo, Uruguay
("LACNIC")

Réseaux IP Européens Network Coordination Centre

of Singel 258, 1016 AB Amsterdam, The Netherlands
("RIPE NCC")

(AFRINIC, APNIC, ARIN, LACNIC and RIPE NCC are, collectively, "**RIRs**")

Background

- A. ICANN, by virtue of a contract with the US Government (“IANA Function Contract”), has since 1998 been performing the functions of the Internet Assigned Numbers Authority (IANA) which includes allocating Internet number resources to the Regional Internet Registries (“RIRs”), which is a crucial element to the continued operation of the Internet.
- B. The Parties have determined that it is important to set forth their agreements with respect to the necessity of the provision of continuous coordination of the number resource administrative function.
- C. The Parties each recognize and affirm the respective roles and responsibilities of the others, with respect to Internet addressing and number resources, in particular:
 - (i) the role of ICANN as the entity responsible for maintaining the stability and global interoperability of the root of the Internet addressing system; and
 - (ii) the role of each of the RIRs as the entity responsible for maintaining the globally unique Internet address and AS number registries for its respective region.
- D. Both the IETF and ICANN have recognized the RIRs as representing the affected community making use of number resources.
- E. The unassigned portions of the Internet number registries are administered by the IANA, which has been a function performed by ICANN pursuant to an agreement with the IETF and per the IANA Function Contract.
- F. The Parties share a set of commitments to the health and wellbeing of the Internet, including:
 - (i) Ensuring that decisions related to the global technical coordination of Internet resources, are made in the public interest and are accountable and transparent;
 - (ii) Preserving the security, stability and resiliency of the Internet;
 - (iii) Promoting trust in the system of Internet governance;
 - (iv) Facilitating international participation in the technical coordination of Internet resources; and
 - (v) Preserving the multi-stakeholder, open, transparent and bottom-up policy development model for technical coordination that acts for the benefit of global Internet users.
- G. The Parties each commit individually to abide at all times by the results of their respective Policy Development Processes, as amended from time to time, including those of the Address Supporting Organization and those of each of the regional Internet numbering communities.
- H. The Parties agree to undertake and be subject to a transparent review of their adherence to these commitments, as set out in Article 8.

Article 1: Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context indicates a contrary intention, the following terms have the following meanings:

Business Day: Monday to Friday other than public holiday in the principle place of business of the Operator.

Commencement Date: The date on which the Condition Precedent is satisfied.

Condition Precedent: The occurrence of any event or circumstance under which (i) the Operator is released from its obligations to provide services substantially similar to the IANA Numbering Services, under its contract with the National Telecommunications and Information Administration, United States Department of Commerce (“**DOC**”), dated on or about July 2012 (or any extension thereof) and (ii) the Operator has accepted the responsibility to provide the IANA Numbering Services.

Global Policies: Global Internet number resource policies adopted in accordance with the Global Policy Development Process.

Global Policy Development Process (gPDP): The RIR Community’s process for the development of policy relating to management of the global Internet number registries. The gPDP is formally defined in Attachment A of the ICANN Address Supporting Organization Memorandum of Understanding, dated October 21, 2004 (referred to as ASO MoU).

IANA Number Registries: Refers collectively to the unicast IPv4, unicast IPv6, and ASN registries (as defined in IETF RFC 7249), as well as the associated IN-ADDR.ARPA and IP6.ARPA DNS zones.

IANA Numbering Services: The administration of the IANA Number Registries in accordance with Global Policies and any applicable and mutually acceptable and agreed upon guidelines and procedures, including allocation of Internet Number Resources to RIRs, the management of returned Internet Number Resources, general IANA Number Registries maintenance, and the administration of the unicast portion of the special-purpose “IN-ADDR.ARPA” and “IP6.ARPA” DNS zones.

Internet Number Resources: IP unicast addresses (IPv4, IPv6) and Autonomous System (AS) Numbers.

Parties: The RIRs and the Operator, collectively.

Party: The RIRs (collectively) or the Operator, individually.

RIR Community: Collaborative forum operating through decision-making processes that are bottom-up, inclusive and open to all parties interested in the IANA Numbering Services as well as in the services of the five RIRs.

1.2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

1.2.1 headings are for convenience only and do not affect interpretation;

- 1.2.2 the expression "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- 1.2.3 a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- 1.2.4 a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- 1.2.5 a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- 1.2.6 words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- 1.2.7 a reference to a party, clause, article, schedule, exhibit, attachment or annexure is a reference to a party, clause, article, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- 1.2.8 if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 1.2.9 the expression "**includes**" in any form is not a word of limitation; and
- 1.2.10 a reference to "\$" or "**dollar**" is to United States Dollars.

Article 2: Separation of Policy Development and Operational Roles

2.1 Operational Role of the Operator

The Operator is required to perform the IANA Numbering Services in a stable and secure manner and in accordance with the Global Policies. The IANA Numbering Services are administrative and technical in nature. The Operator shall use its best efforts to coordinate with operators of other IANA services, if any.

2.2 Priority of IANA Numbering Service

Without reducing the Operator's obligations to meet the specifications for the provision of IANA Numbering Services under this Agreement, the Operator shall treat the IANA Numbering Services with equal priority as the other IANA functions that the Operator services, if any, and process all IANA Numbering Services requests as described in Article 4. Notwithstanding the foregoing, it is the RIRs expectation and Operator's obligation for Operator to leverage efficiencies and synergies, to the extent commercially reasonable, by virtue of Operator providing services to IANA functions other than the IANA Numbering Services.

2.3 IANA Numbering Services Staff

The Operator shall ensure that staff performing the IANA Numbering Services will not advocate any public position regarding policy development related to the IANA Numbering Services. Notwithstanding the foregoing, the Operator's staff may (a) communicate with interested and affected parties to inform ongoing policy discussions and may (b) request guidance or clarification as necessary for the performance of the IANA Numbering Services.

Article 3: Joint obligations and rights of RIRs

3.1 Joint obligations of RIRs

An obligation or a liability assumed by the RIRs in this Agreement binds the RIRs jointly, and each of them severally.

3.2 Joint rights of RIRs

Subject to Article 3.3 below, a right conferred on the RIRs in this Agreement benefits the RIRs jointly, and each of them severally.

3.3 Exercise of powers

The RIRs can only exercise their rights and/or powers under this Agreement by acting collectively and unanimously.

Article 4: Distribution of services provided to RIRs

4.1 Provision of IANA Numbering Services

The Operator shall perform the IANA Numbering Services in accordance with the terms of this Agreement. By way of example and demonstrating the general expectation of the RIRs for the IANA Numbering Services, a general description representing the current IANA business interaction with the RIRs is found in Article 4.3 of this Agreement.

4.2 The IANA Numbering Services

The Operator shall operate the IANA Numbering Services as defined in Article 1 of this Agreement and in accordance with Article 2 of this Agreement.

4.3 IANA Numbering Service Operational Requirements

The Operator shall perform the IANA Numbering Service in accordance with the following requirements:

Process for handling of requests to the Operator by an RIR:

- (a) A requesting RIR will submit an initial request to the Operator by electronic mail (e-mail), or in a format mutually agreed upon in writing by all Parties. The request of an individual RIR under this Section 4.3 shall be held in confidence by ICANN and not disclosed to third parties (including the other RIRs) without the prior written consent of the requesting RIR, provided that ICANN may disclose such requests without the consent of the requesting RIR (i) to the extent disclosure thereof is required by applicable law or legal process and (ii) to a successor operator in connection with the transition of the IANA Numbering Services to such successor operator.
- (b) The Operator shall acknowledge receipt of the initial request within two (2) Business Days by return e-mail, or in a format mutually agreed upon in writing by all Parties. The date on which the Operator acknowledges the receipt of the initial requests will be referred to as the "Operator Acknowledgement Date". If, after its initial assessment, the Operator believes additional information is needed, the Operator shall send a specific and complete request for any additional required information to the requesting RIR within four (4) Business Days following the Operator Acknowledgement Date.
- (c) Following receipt of the initial request or additional information, whichever is later, the Operator shall take the following steps if it determines that it will fulfill the request:
 - (i) update the registry in accordance with the request within four (4) Business Days following the Operator Acknowledgement Date, or receipt of the additional information if requested, whichever is later;
 - (ii) send a detailed announcement to the requesting RIR as well as a simultaneous announcement to the other RIRs, informing them of the action taken;
 - (iii) make modifications to the appropriate pages of the Operator's website and such other places from which the IANA Number

Registries are accessible and may make announcements of such modifications.

- (d) If the Operator is for any reason unable or unwilling to fulfill a request within ten (10) Business Days following the Operator Acknowledgement Date or the receipt of the additional information if requested, whichever is later, the Operator shall provide the requesting RIR in writing, with a copy to the other RIRs (both of which notices may be transmitted simply by e-mail), a report apprising them of the status of the open request, and the reason the Operator is unable or unwilling to comply with the request. The Operator shall be obligated to provide updates to this RIR and the other RIRs periodically thereafter, including, but not limited to, when requested to do so by this RIR or the other RIRs, until the request has been satisfied. If the valid request in conformance with an applicable Global Policy is not satisfied thirty (30) Business Days following the Operator Acknowledgement Date or the receipt of the additional information if requested, whichever is later, the RIRs may assert this as a failure to perform if the requirements of Article 9 are satisfied.

4.4 Registry Data

The Operator acknowledges and agrees that any public registry data is, and shall remain, in the public domain. The Operator must make available to the RIRs upon request:

- 4.4.1 copies of, or links to, the publicly available text for all processes, performance standards, request templates and other pages used to support operations or provide context to reporting;
- 4.4.2 a copy of all registry data for IANA Number Registries, including copies of the IP6.ARPA and IN-ADDR.ARPA zone files, in a non-proprietary format;
- 4.4.3 a copy of all information about open requests and requests in progress in a non-proprietary format;
- 4.4.4 copies of any published reports and paper records it holds supporting the request histories in a non-proprietary format; and
- 4.4.5 other non-proprietary information necessary and essential for the provision of the IANA Numbering Services.

Article 5: Fees

5.1 Obligation to reimburse cost

The RIRs shall reimburse the Operator for the cost of performing the IANA Numbering Services, including costs relating to staff, equipment and other matters incurred in the performance of the IANA Numbering Services. Parties acknowledge that the RIRs intend to continue the contribution to ICANN contemplated by the exchange of letters between ICANN and the NRO in 2007 and 2009 but reduce it by this reimbursement amount.

5.2 Reimbursement

The amount the RIRs shall reimburse the Operator pursuant to Article 5.1 above shall be Six Hundred Fifty Thousand U.S. Dollars (\$650,000.00 USD) per calendar year unless otherwise agreed to in writing by all Parties.

Article 6: Transparency and accountability

6.1 Implementation of Global Policies

6.1.1 The Operator, in collaboration with the RIRs, shall:

- (a) post the existing Global Policies on its website; and
- (b) document the procedures, according to which it will apply these existing Global Policies and post them on its website.

6.1.2 Additionally the Operator, in collaboration with the RIRs shall:

- (a) post any new or amended Global Policy on its website within thirty (30) calendar days of the adoption of a new Global Policy or the amendment of an existing Global Policy; and
- (b) document the procedures, according to which it will implement a new Global Policy or the amendment of an existing Global Policy and post them on its website within thirty (30) calendar days from the adoption of this Global Policy or from the submission of any clarification needed by the Address Supporting Organization Address Council, whichever happens later.

6.2 Obligation to Issue Reports

6.2.1 Public Informational Performance Standards Reports – The Operator shall collaborate with the RIRs to develop informational reports for the IANA Numbering Services. The Performance Standards Metric Reports will be published by the Operator via the Operator's web site every month (no later than fifteen (15) calendar days following the end of each month) starting no later than six (6) months after the Commencement Date.

6.2.2 Numbering Service Survey (NSS) – The Operator shall collaborate with the RIRs to develop and conduct an annual service survey consistent with the performance standards for the IANA Numbering Services. No later than thirty (30) calendar days after conducting the survey, the Operator and the RIRs shall use commercially reasonable efforts to mutually agree on what, if any, actions should be taken based on the outcome of the survey.

6.2.3 Security and Systems Audit – The Operator shall conduct an annual audit of the systems used by the Operator in the implementation of the IANA Numbering Services (Article 4) for the previous year and provide an annual report to the RIRs. The Operator shall retain these records and shall provide specific audit record data to the RIRs upon request.

Article 7: Security requirements

7.1 Secure Systems

The Operator shall install and operate all computing and communications systems used to perform the IANA Numbering Services in accordance with best business and security practices. The Operator shall implement a secure system for authenticated communications between it and the RIRs when carrying out all IANA Numbering Services requirements. The Operator shall use commercially reasonable efforts to document practices and configuration of all systems.

7.2 Secure Systems Notification

The Operator shall implement and thereafter operate and maintain a secure notification system at a minimum, capable of notifying all relevant stakeholders of the discrete IANA Numbering Services, of such events as outages, planned maintenance, and new developments. In all cases, the Operator shall notify the RIRs of any outages.

7.3 Secure Data

The Operator shall ensure the authentication, integrity, and reliability of the data in performing the IANA Numbering Services.

7.4 Security Plan

The Operator shall develop and execute a security plan that meets the requirements of this Agreement and Article 7. The Operator shall document in the security plan the process used to ensure information systems including hardware, software, applications, and general support systems have effective security safeguards, which have been implemented, planned for, and documented. The Operator shall deliver a copy of the plan to the RIRs after each annual update.

Article 8: Review of IANA Numbering Services

8.1 Periodic Review

The RIRs may periodically perform a review of the IANA Numbering Services, namely the deliverables and reports articulated in Article 6.2.

8.2 Cooperation

During any review as identified in Article 8.1 above, the Operator is obligated to cooperate with and facilitate any such review.

Article 9: Failure to perform

9.1 Discussion period

- 9.1.1 The resolution of any dispute between the Operator and the RIRs, arising out of or relating to this Agreement, whether arising before or after termination of this Agreement, shall include the following steps. If the RIRs believe that a Failure to Perform pursuant to the requirements of Article 9.2 has occurred, the RIRs and ICANN shall undertake the following steps prior to the RIRs asserting a Failure to Perform under Article 9.
- 9.1.2 An aggrieved Party must set out the dispute in writing ("**Dispute Notice**") and deliver it to the other Party, utilizing its reasonable efforts to deliver the Dispute Notice within thirty (30) calendar days after the aggrieved Party learns, or with reasonable efforts should have learned, of the cause for the dispute. If a Dispute Notice is not delivered within one (1) year after the aggrieved Party learns, or with reasonable efforts should have learned, of the cause for dispute, the aggrieved Party shall be deemed to have waived all of its rights under this Agreement relating to such dispute.
- 9.1.3 Following a Party's receipt of a Dispute Notice, the Parties shall attempt to reach a mutually agreeable resolution to the dispute through discussions. If the Parties are unable to resolve the dispute within sixty (60) calendar days after the date the Parties first meeting (whether in person or remotely), the dispute shall be brought to mediation pursuant to Article 13.1 below. If the RIRs are the aggrieved Party, the RIRs may assert a Failure to Perform pursuant to Article 9.2 below.

9.2 Failure to Perform

If, following the discussion period according to Article 9.1 the RIRs still determine that the Operator has materially failed to perform the IANA Numbering Services as required by this Agreement, including but not limited to those described in Articles 4, 6 and 8, or otherwise has materially breached the terms of this Agreement, then the RIRs may invoke the Resolution of Disputes procedures set forth in Article 13 of this Agreement. If, pursuant to Article 13, a determination is made that the Operator has materially failed to perform the IANA Numbering Services as required by this Agreement or otherwise has materially breached the terms of this Agreement, this Agreement may be terminated pursuant to Article 10 of this Agreement. For clarity the RIRs may invoke Resolution of Dispute procedures if the Operator has failed to perform due to restrictions of applicable law.

Article 10: Term and termination

10.1 Condition Precedent

10.1.1 This Agreement has no force or effect unless the Condition Precedent is satisfied on or before 1 October 2017.

10.1.2 If the Condition Precedent is not satisfied on or before 1 October 2017, then this Agreement automatically comes to an end on that date, and both Parties are released from all obligations under this Agreement.

10.2 Term

The term of this Agreement shall commence as of the Commencement Date and unless earlier terminated in accordance with this Article 10 of this Agreement, the term of this Agreement shall continue for five (5) years after the Commencement Date. This Agreement shall renew automatically for consecutive five (5) year term unless earlier terminated or not renewed in accordance with this Article 10 of this Agreement.

10.3 Right not to renew

Either Party may elect not to renew this Agreement by providing a notice of non-renewal to the other Party at least twelve (12) months prior to the expiration of the then-current term (a "**Non-Renewal Notice**"). Any Party that delivers a Non-Renewal Notice may, in its discretion, withdraw such notice at any time prior to the expiration of the then-current term, in which case this Agreement shall renew in accordance with Section 10.2, provided that any such withdrawal shall be by mutual agreement of the Parties and occur in a timely manner that insures the continuity and security of operations.

10.4 Right to terminate

Notwithstanding the foregoing, if at any time during the term of this Agreement the Operator is deemed to have failed to perform pursuant to Article 9 above, then the Operator shall have thirty (30) calendar days from the date of the decision of a majority of the arbitrators as described in Article 13.2.8 to remedy any such failure to perform (referred to as "Cure Period"). If, in the sole judgment of the RIRs, the Operator has failed to remedy any such failure to perform following the conclusion of the Cure Period, the RIRs may, in their sole discretion, immediately terminate this Agreement.

Article 11: Continuity of operations

11.1 Transition framework

The Operator shall develop a transition framework for the transition of the IANA Numbering Services to the successor operator pursuant to Section 11.3 while maintaining continuity and security of operations. This transition framework shall be presented by the Operator to the RIRs within one hundred eighty (180) calendar days following the Commencement Date.

11.2 Submission of a transition plan

Upon notice of non-renewal or upon commencement of arbitration process in accordance with Article 13.2 the RIRs may notify ICANN of their selection of a successor operator. Following such notification (if any), the Operator shall work cooperatively with the RIRs and the selected successor operator to develop a detailed plan (based on the transition framework) for transitioning the IANA Numbering Services to the successor operator while maintaining continuity and security of operations. This detailed plan shall be presented by the Operator to the RIRs and the successor operator within ninety (90) calendar days after RIRs have informed the Operator of the selected successor.

11.3 Transition to Successor Operator

11.3.1 The Operator recognizes that the IANA Numbering Services are vital to the RIRs and must be continued without interruption and that, upon the termination of this Agreement, a successor operator shall continue them. The Operator agrees to exercise best efforts and cooperation to effect an orderly and efficient transition to a successor operator and, notwithstanding Article 5.2, the RIRs shall reimburse the Operator for all pre-approved in writing expenses reasonably incurred by the Operator in connection therewith.

11.3.2 The Operator shall, upon the RIRs' written notice,

- (a) exercise best efforts to effect an orderly transition for up to ninety (90) calendar days after this Agreement terminates; and
- (b) negotiate in good faith a plan with a successor operator to determine an orderly transition.

Article 12: Intellectual property rights and rights over data

12.1 Assignment of intellectual property rights and rights over data

- 12.1.1 Except as otherwise provided in this Article 12, each of ICANN and the RIRs shall own and retain, respectively, all intellectual property rights owned or controlled by such Party, and all rights, title and interest in and to any and all discoveries, inventions and other subject matter (whether patentable or not) conceived, reduced to practice or otherwise discovered by its or its affiliates' employees, consultants or agents.
- 12.1.2 To the extent that the Operator possesses rights in and to the IANA Number Registries or other intellectual property rights used exclusively in the performance of the IANA Numbering Services by the Operator in accordance with this Agreement, Operator hereby agrees to not assert any such rights against any lawful use of such rights by a third party.
- 12.1.3 To the extent that the Operator possesses any rights over published IANA Number Registry data necessary for the performance of the IANA Numbering Services by the Operator in accordance with this Agreement, Operator hereby releases and dedicates any and all right, title, and interest in and to such IANA Number Registry data to the public domain.
- 12.1.4 To the extent that the Operator possesses any non-proprietary rights over unpublished IANA Number Registry data necessary for the performance of the IANA Numbering Services by the Operator in accordance with this Agreement, Operator hereby releases and dedicates any and all right, title, and interest in and to such IANA Number Registry data rights to the RIRs.

If requested by the RIRs in connection with transitioning the IANA Numbering Services to a successor operator pursuant to the terms of this Agreement, the Operator shall cooperate with the RIRs to identify and transfer to the successor operator any non-proprietary and unpublished IANA Number Registry data necessary for the performance of the IANA Numbering Services.

12.2 Rights created in performance of Agreement

To the extent the Operator, in the performance of its obligations under this Agreement, creates any IANA Number Registry data necessary for the performance of the IANA Numbering Services over which there are rights, such creation shall be deemed to be on behalf of the RIRs and shall be a "work for hire" as defined under applicable law.

12.3 License to use intellectual property and rights over data

- 12.3.1 In the performance of this Agreement and in order to meet its obligations under this Agreement, the Operator may be provided the use of intellectual property or rights over data through a license from the holder of such intellectual property assets. Except as expressly stated herein, this Agreement does not grant the Operator any other intellectual property rights or data rights in such intellectual property assets.
- 12.3.2 In the performance of this Agreement, and in order to meet its obligations under this Agreement, the Operator may create intellectual property in certain works. Notwithstanding the Operator's rights in any such intellectual property, Operator shall maintain all records, metadata, request data, historical information,

correspondence and any other information essential and necessary to the successful performance of the IANA Numbering Services in a non-proprietary format and shall hold no intellectual property rights in such data and information.

12.4 Further assurance

The Operator shall execute such further documents and do any and all such further things as may be necessary to implement and give effect to this Article 12.

Article 13: Resolution of disputes

13.1 Mediation

- 13.1.1 If a dispute is not resolved pursuant to Article 9.1, the Parties shall attempt to resolve the dispute through mediation in accordance with this Article 13.1.
- 13.1.2 A Party shall submit a dispute to mediation by written notice to the other Party (“**Mediation Notice**” and the date that the Dispute Notice is delivered to the aggrieving Party, the “**Mediation Notice Date**”). The mediation shall be conducted by a single mediator selected by the Parties. If the Parties cannot agree on a mediator within twenty (20) calendar days of the Mediation Notice Date, the Parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity’s selection, designate a mediator who has a technical and legal or judicial background, familiarity with application of California contract law and experience with the Internet industry and Internet governance. The mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, consultant, advisor or security holder of any of the Parties. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Article 13.1.2.
- 13.1.3 The mediator shall conduct the mediation in accordance with the rules and procedures that the mediator determines following consultation with the Parties. The Parties shall discuss the dispute in good faith and attempt, with the mediator’s assistance, to reach a mutually agreeable resolution of the dispute. The mediation shall be treated as a settlement discussion and shall therefore be confidential and may not be used against either Party in any later proceeding relating to the dispute, including any arbitration pursuant to Article 13.2. The mediator shall not testify for either Party in any later proceeding relating to the dispute.
- 13.1.4 Each Party shall bear its own costs in the mediation. The Parties shall share equally the fees and expenses of the mediator. Each Party shall treat information received from the other Party pursuant to the mediation that is appropriately marked as confidential as confidential information of such other Party.
- 13.1.5 If the Parties have not resolved the dispute for any reason by the date that is sixty (60) calendar days following the date the mediator is selected pursuant to Article 13.1.2, the dispute may then proceed to arbitration pursuant to Article 13.2 below.

13.2 Arbitration of Disputes

- 13.2.1 The Parties agree that if any dispute arising in respect of this Agreement cannot be resolved under Article 13.1, then the dispute shall be referred, at the election of either Party, to arbitration. All disputes arising out of or in connection with this Agreement shall be finally settled under the International Chamber of Commerce’s Rules of Arbitration (“Arbitration Rules”) by arbitrators appointed in accordance with this Agreement and those Arbitration Rules, or such other rules as all Parties agree in writing shall be utilized. The Parties will carry out arbitrations subject to the terms of this Article 13.2:

- 13.2.2 There shall be three (3) arbitrators (referred to as the “Arbitral Tribunal”), each of whom must permanently reside in a different RIR region, selected as follows:
- (a) The Parties shall first attempt to mutually agree upon the selection of three (3) arbitrators. In the event that the parties are unable to mutually agree upon the selection of three (3) arbitrators, then the International Chamber of Commerce shall be asked to provide a list of potential arbitrators, with at least nine (9) potential arbitrators, with no more than three (3) from a single RIR region (referred to as the “Arbitrator List”). The International Chamber of Commerce shall only place on the Arbitrator List, arbitrators who have technical and legal or judicial backgrounds, familiarity with application of California contract law, and experience with the Internet industry and Internet governance.
 - (b) Each Party shall propose three (3) persons from the International Chamber of Commerce’s nominees that they would like to serve as arbitrators (“**Proposed Arbitrators**”). If both Parties propose the same three (3) Proposed Arbitrators, then those Proposed Arbitrators shall constitute the Arbitral Tribunal. If the Parties propose two (2) of the same Proposed Arbitrators, then those Proposed Arbitrators shall be named to the Arbitral Tribunal and shall select a third person from the Arbitrator List who was not a Proposed Arbitrator to be the third member of the Arbitral Tribunal. If the Parties propose one (1) of the same Proposed Arbitrators, then that Proposed Arbitrator shall be named to the Arbitral Tribunal and each Party shall select one (1) of its other Proposed Arbitrators to be named to the Arbitral Tribunal. If the Parties Propose none of the same Arbitrators, then each Party will be able to strike arbitrator candidates from the Arbitrator List in alternating order so that, after both Parties have exercised their strikes, three (3) arbitrators from three (3) different RIR regions remain on the list and will constitute the Arbitral Tribunal.
 - (c) The members of the Arbitral Tribunal shall elect their chairperson
- 13.2.3 The members of the Arbitral Tribunal must confirm in writing that they are not, and will not become during the term of the arbitration, an employee, partner, executive officer, director, consultant, advisor or security holder of any of the Parties. If such confirmation is not provided by an arbitrator, then a replacement arbitrator shall be appointed pursuant to Article 13.3.2.
- 13.2.4 The arbitration shall be conducted in accordance with the Arbitration Rules, except to the extent that the Arbitration Rules are supplemented by the terms of this Agreement;
- 13.2.5 The arbitration shall take place in Geneva, Switzerland, or such other location as is agreed by the Parties (the “Arbitration Location”); the arbitrator and the Parties shall use electronic communication wherever reasonably possible;
- 13.2.6 The language of the arbitration will be English;
- 13.2.7 The arbitrators shall make a decision based upon the Parties' rights and obligations under this Agreement and any rules and principles of the Governing Law of this Agreement, as defined in Article 14.1;
- 13.2.8 Subject to the timing requirements of the Arbitral Tribunal and the Arbitration Rules, the Parties shall use commercially reasonable efforts to ensure that the arbitration is completed and an award is rendered within one-hundred twenty (120) calendar days after the sooner of:

- (a) the last signature by a Party or the Arbitral Tribunal to the Terms of Reference in accordance with Article 23(2) of the Arbitration Rules or
- (b) notification of the Parties that the Terms of Reference have been approved by the International Court of Arbitration of the International Chamber of Commerce in accordance with Article 23(3) of the Arbitration Rules;

13.2.9 A decision of a majority of the arbitrators will be final and binding on the disputing Parties.

13.2.10 All Parties are to bear their own legal costs in connection with the arbitration. The remaining costs of the arbitration are to be paid as determined by the Arbitral Tribunal, bearing in mind the result of the arbitration and the Arbitration Rules.

13.3 Enforcement of arbitration award

Any Party shall have the right to institute litigation in a court to enforce an arbitration award under this Agreement. Such litigation may be filed in a court located in the Arbitration Location, but the Parties shall also have the right to enforce any judgment arising from such litigation in any court of competent jurisdiction.

13.4 Temporary injunctive relief

Any party to this Agreement shall have the right to seek, either prior to the dispute being committed to arbitration under this Article 13 or during the pendency of an arbitration, temporary or preliminary injunctive relief from a court for the purpose of preserving its rights pending completion of arbitration proceedings, which shall not be a waiver of the arbitration agreement in Paragraph 13.3. Any court action under this Article 13.5 shall occur in a court of the Arbitration Location, subject to the right of the parties to mutually agree to a different court.

13.5 Further assurance

Except as provided in paragraph 13.4, and litigation to require a Party to cooperate in the arbitration or interim relief, the Parties shall not pursue litigation against one another concerning any dispute arising in respect of this Agreement.

13.6 Final document

Each Party shall be given the opportunity to file a final document with the Arbitral Tribunal before the close of arbitration in support of its factual and legal contentions.

Article 14: Governing law and jurisdiction

14.1 Governing law

This Agreement shall be governed by and construed in accordance with the State and Federal laws of the jurisdiction in which Operator's principal office is located as of the Commencement Date, which for clarity, is the State of California, United States of America.

14.2 Dispute resolution

The Parties shall submit all their disputes arising out of or in connection with this Agreement in accordance with Article 13 above.

Article 15: Miscellaneous

15.1 Amendment

This Agreement may only be varied or replaced by a document duly executed by the Parties.

15.2 Entire Understanding

This Agreement contains the entire understanding between the Parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect; provided, however, that this Agreement does not supersede the ASO MoU or the letters exchanged between the Operator and the Number Resource Organization in 2007 and 2009.

15.3 Further Assurance

Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to give effect to, perfect or complete the transactions contemplated by this Agreement.

15.4 Legal Costs and Expenses

Each Party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

15.5 Waiver and Exercise of Rights

15.5.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

15.5.2 No Party will be liable for any loss or expenses incurred by the other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

15.6 Time of the Essence

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

15.7 Severability

If any of the provisions of this Agreement is invalid or unenforceable:

15.7.1 the invalidity or unenforceability does not affect the operation, construction or interpretation of any other provision of this Agreement;

15.7.2 the Parties must negotiate in good faith and use their best endeavours to reach agreement on the substitution for any such provisions which will result in equity between the parties being restored so that, as nearly as may be practicable, the Parties will in all respects be in no different position from that which would have been obtained had there been no such invalidity or unenforceability; and

15.7.3 for all purposes, the invalid or unenforceable provisions are treated as being severed from this agreement.

15.8 Rule of Construction

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the Party preparing the document on the basis that it put forward this Agreement or any part of it.

15.9 Sub-Contracting

15.9.1 Operator shall not sub-contract or delegate to a third party entity for its provision of the IANA Numbering Services under this Agreement without the prior written consent of the RIRs, such consent not to be unreasonably withheld.

15.9.2 Notwithstanding the foregoing, any sub-contracting or delegation approved by a Party shall not release to other Party from, or diminish, its contractual obligations under this Agreement and the sub-contracting or delegating Party shall remain fully liable to the RIRs under this Agreement.

Signing Page

EXECUTED by the parties as an agreement.

SIGNED for and on behalf of the)
INTERNET CORPORATION FOR)
ASSIGNED NAMES AND NUMBERS by)
GÖRAN MARBY, its President and Chief)
Executive Officer:

SIGNED for and on behalf of **AFRINIC**)
LTD by ALAN BARRETT, its Chief)
Executive Officer:)
.....

SIGNED for and on behalf of the **APNIC**)
PTY LTD, FOR THE ASIA PACIFIC)
NETWORK INFORMATION CENTRE by)
PAUL WILSON, its Director General:)

SIGNED for and on behalf of the)
AMERICAN REGISTRY FOR INTERNET)
NUMBERS, LTD by JOHN CURRAN, its)
President & CEO:)

SIGNED for and on behalf of the **LATIN**)
AMERICAN AND CARIBBEAN)
INTERNET ADDRESSES REGISTRY by)
OSCAR ROBLES, its CEO/Executive)
Director:

SIGNED for and on behalf of the)
RÉSEAUX IP EUROPÉENS NETWORK)
COORDINATION CENTRE by AXEL)
PAWLIK, its Managing Director:)