

**AMERICAN REGISTRY FOR INTERNET NUMBERS, LTD.
SERVICE AGREEMENT**

This SERVICE AGREEMENT ("Agreement") is made by and between the AMERICAN REGISTRY FOR INTERNET NUMBERS, LTD. ("ARIN"), a Virginia nonprofit corporation, and Seattle Internet Exchange, Inc. ("Applicant").

ARIN will not accept any alterations to this Agreement. Applicant must return the signature page of this Agreement to ARIN to indicate its acceptance, without modification, of all the terms and conditions of the Agreement.

BECAUSE OF THE NECESSARY ROLE THAT ARIN PERFORMS FOR THE INTERNET COMMUNITY, ARIN RESERVES THE RIGHT TO MODIFY THIS AGREEMENT AT ANY TIME, WITH OR WITHOUT NOTICE TO APPLICANT. CHANGES WILL BE EFFECTIVE AFTER BEING POSTED ON ARIN'S WEBSITE FOR 30 DAYS, AND WILL BE APPLIED TO ALL APPLICANTS OR PERSONS RECEIVING SERVICES. CONTINUED RECEIPT OR USE OF THE SERVICES CONSTITUTES APPLICANT'S ACCEPTANCE OF THE CHANGES. ACCORDINGLY, APPLICANT SHOULD MONITOR ARIN'S WEBSITE TO REVIEW ANY CHANGES AFFECTING THIS AGREEMENT.

1. INTRODUCTION

ARIN is a Regional Internet Registry serving Canada, the United States, and several islands in the Caribbean Sea and North Atlantic Ocean and is responsible for the registration, administration, and stewardship of Internet number resources in these geographic areas. Applicant must submit this Agreement and any requested accompanying information to ARIN to apply to receive and use certain services ("Services") from ARIN, which may include, without limitation, an allocation/assignment of IP address space, assignment of Autonomous System numbers ("ASNs"), inverse addressing on network blocks, maintenance of network records, and administration of IP address space. Allocation/assignment of IP address space and assignment of ASNs shall hereinafter be defined as "number resources."

2. APPLICATION

In order to submit an application to receive or use any Services, Applicant must complete the application process on ARIN's website, located at "<http://www.arin.net>" (the "Website"). In so doing, Applicant must: (i) provide ARIN with accurate, up-to-date and complete application information, including, without limitation, the Services that it wishes to receive, (ii) promptly notify ARIN if any of its information changes during the term of this Agreement, and (iii) promptly, accurately, and completely respond to any inquiry made to Applicant by ARIN or its designee during the term of this Agreement. Applicant agrees that in applying to receive or use the Services and in using the Services, it must comply with ARIN's Number Resource Policy Manual, Certificate Practice Statement, and Guidelines ("Policies"), as published on the Website. If Applicant fails to do or comply with any of the foregoing during the term of this Agreement, ARIN may terminate this Agreement and refuse to provide the Services to Applicant.

3. EVALUATION AND ACCEPTANCE

Following Applicant's completion of the online application process, ARIN will evaluate Applicant's request for the Services. Evaluation may require additional documentation to support the application such as, but not limited to, business plans, management documentation, state registration, Dun & Bradstreet and/or taxpayer information, and/or registration under the province or country in which the entity is registered for verification purposes. If ARIN, in its sole and exclusive discretion, applying its published Policies and internal verification process, determines that it will provide the Services to Applicant, ARIN shall provide written notice to Applicant of its willingness to do so, and ARIN will promptly commence providing the Services to Applicant in accordance with the terms and conditions of this Agreement. If ARIN, in its sole and exclusive discretion, applying its published Policies and internal verification process, determines that it will not provide the Services, it will provide written notice to Applicant of its decision.

4. CONDITIONS OF SERVICE

(a) Provision. Subject to ARIN's agreement to provide the Services in accordance with Section 3 and Applicant's ongoing compliance with its obligations under this Agreement, including, without limitation, the payment of the Fees (as defined below), ARIN shall provide the Services to Applicant in accordance with this Agreement and the Policies.

(b) Change Request. If Applicant desires to change the Services that it receives from ARIN, it must provide ARIN with written notice (a "Change Request"). ARIN will evaluate Applicant's Change Request. If ARIN, in its sole and exclusive discretion, determines that it will provide the Services to Applicant as set forth in the Change Request, ARIN will commence providing the Services as modified to Applicant in accordance with the terms and conditions of this Agreement. If ARIN, in its sole and exclusive discretion, determines that it will not provide the Services as requested by Applicant to be modified, it will provide written notice to Applicant that it will not provide Services in accordance with the Change Request.

(c) Cooperation. During the term of this Agreement, Applicant shall provide ARIN complete, up-to-date and accurate information, assistance, and cooperation that ARIN requests in ARIN's provision of the Services to Applicant, including, without limitation, during its review of Applicant's utilization of allocated number resources. If Applicant does not provide ARIN with any information, assistance, or cooperation that ARIN requests, ARIN may: (i) revoke and reclaim Applicant's number resources, (ii) take such failure into account in determining Applicant's future allocation/assignment of number resources, and/or (iii) terminate this Agreement. (d) Prohibited Conduct. In using the Services, Applicant shall not: (i) disrupt or interfere with the security or use of the Services; (ii) violate any applicable laws, statutes or regulations; or (iii) assist any third party in engaging in any activity prohibited by this Agreement. In the event a private party or governmental authority obtains a judgment from an appropriate judicial tribunal against Applicant, Applicant shall send a copy of this judgment to ARIN's General Counsel at the address provided in Section 15(i). A definitive finding of a violation of law or regulation when established by a decision of a national, state, or other government authority regarding (i) through (iii) herein should similarly be sent to ARIN's General Counsel for ARIN's review and action. ARIN will cooperate with all government inquiries utilizing legally appropriate methods for obtaining information from ARIN regarding allegations of prohibited conduct.

(e) Content Control. Applicant acknowledges that content transmitted over the Internet occurs in real time. Accordingly, ARIN does not have the ability to control content accessible through or facilitated by those who receive number resources, directly or indirectly, from ARIN.

5. USE OF THE ARIN DATABASE

(a) Authorization. To obtain a digital certificate, Applicant must meet the requirements and follow the procedures as outlined in ARIN's Certificate Practice Statement ("CPS"), which is available at <http://www.arin.net/CA/>. The Administrative Point of Contact ("POC") will be the principal point of contact between Applicant and the ARIN database, and have the sole right to designate other qualifying POCs of Applicant with authority to modify the ARIN database ("Authority"). The Administrative POC will also facilitate Applicant's compliance with the terms and conditions of this Section 5. Applicant will provide ARIN with any documentation and information regarding the Administrative POC that ARIN requests. Applicant must notify ARIN immediately if: (i) an employee with Authority has or will terminate its relationship with Applicant; (ii) an employee with Authority will have that Authority revoked; (iii) Applicant has reason to believe that an employee with Authority has granted or will grant a third party unauthorized access to the ARIN database; (iv) Applicant has any reason to believe that an employee with Authority should not be trusted; or (v) if Applicant wants to designate another Administrative POC. Notices to ARIN under this Section must be given by e-mail to noc@arin.net, and will be effective when acknowledged as received by ARIN.

(b) Applicant is responsible for the timely and accurate maintenance of directory services data (WHOIS) as well as any organization to which it further sub-delegates number resources.

(c) Liability for Unauthorized Access. Applicant is solely and exclusively responsible for all acts and omissions undertaken by any of its POCs, whether or not authorized in law or in fact. Applicant is solely and exclusively responsible for the security of its access to and use of number resources in the ARIN database, and any loss or damage that Applicant suffers based on any unauthorized access thereto.

6. FEES AND PAYMENTS

(a) Fee Schedule. As a condition precedent to ARIN's duty to provide the Services, Applicant shall pay ARIN for providing the Services in accordance with ARIN's Fee Schedule, which is available at http://www.arin.net/billing/fee_schedule.html. From time to time, during the term of this Agreement and as it may be renewed, ARIN will have the right to change the amount of the fees or institute new fees relating to the Services.

(b) No Refunds. All fees paid by Applicant to ARIN are nonrefundable.

(c) Registration Fees. Applicant shall pay ARIN the applicable "registration fee," as set forth in the Fee Schedule as well as any outstanding fees for other resources received from ARIN, prior to ARIN providing Applicant with its requested allocation/assignment of number resources. Applicant shall also pay ARIN the applicable "annual renewal fee," if any, as set forth in the Fee Schedule, at least five (5) days prior to each 12 month anniversary of ARIN's first issuance of the Services to Applicant (e.g., ARIN's initial allocation/assignment of number resources to Applicant). If, for any reason, Applicant does not pay any applicable renewal registration fee or other fees that may be owed ARIN hereunder, ARIN shall have the right to: (i) revoke the number resources previously allocated and/or previously assigned or (ii) terminate this Agreement.

7. POLICIES

Pursuant to ARIN's Internet Resource Policy Evaluation Process ("IRPEP"), ARIN maintains the Policies and may amend the Policies, implement new policies (which once implemented, will be considered Policies), or make certain Policies obsolete. Applicant acknowledges and agrees it has read, understands, and agrees to be bound by and comply with the Policies, as amended. ARIN may, at any time in its sole and absolute discretion, amend the Policies or create new Policies and such amendments or new Policies shall be binding upon Applicant immediately after they are posted on the Website.

8. REVIEW OF APPLICANT'S NUMBER RESOURCES

ARIN may review, at any time, Applicant's use of previously allocated or assigned number resources or other Services received from ARIN to determine if Applicant is complying with this Agreement and the Policies, and is using the Services for their intended purposes. Without limiting the foregoing, if Applicant is a holder of a direct allocation or assignment from ARIN, Applicant agrees that it will use the number resources solely for uses consistent with its application and this Agreement, including, for example, its internal infrastructure or to provide Internet access to its customer base. If ARIN determines that the number resources or any other Services are not being used in compliance with this Agreement, the Policies, or the purposes for which they are intended, ARIN may: (i) revoke the number resources, (ii) cease providing the Services to Applicant, and/or (iii) terminate this Agreement.

9. NO PROPERTY RIGHTS

Applicant acknowledges and agrees that the number resources are not property (real, personal, or intellectual) and that Applicant shall not acquire any property rights in or to any number resources by virtue of this Agreement or otherwise. Applicant further agrees that it will not attempt, directly or indirectly, to obtain or assert any trademark, service mark, copyright, or any other form of property rights in any number resources in the United States or any other country.

10. REPRESENTATIONS AND WARRANTIES

(a) By Each Party. Each party represents and warrants to the other party that: (i) it has the full power and authority to enter into and perform its obligations under this Agreement, (ii) the assent to and performance by it of its obligations under this Agreement do not constitute a breach of or conflict with any other agreement or arrangement by which it is bound, or any applicable laws, regulations, or rules, and (iii) this Agreement constitutes a legal, valid, binding, and an executory obligation of the parties executing or assenting to this Agreement, enforceable in accordance with its terms and conditions.

(b) By Applicant. Applicant hereby represents and warrants to ARIN that during the term of this Agreement: (i) it will not infringe the patent, copyright, trademark, trade secret, right of publicity, or other right of any third party in its use of the Services, and (ii) Applicant will comply with all applicable laws, rules, and regulations in its use of the Services, including this Agreement and the Policies.

11. BANKRUPTCY

If Applicant: (i) files any petition under any chapter of the Bankruptcy Code or other insolvency or bankruptcy law; or (ii) has a petition filed against it under any insolvency or bankruptcy law; or (iii) makes a general assignment for the benefit of creditors, has a receiver appointed for it, or a trustee takes possession of all or substantially all of Applicant's assets; or (iv) ceases or intends to cease its normal business operations, Applicant will notify ARIN immediately. Upon such notice, or if ARIN otherwise learns of the occurrence of

any of the foregoing events, ARIN may intervene in any such bankruptcy or insolvency proceeding or take other appropriate, lawful action to preserve its rights under this Agreement and the Policies, and its ability to provide the Services to its other users, including, without limitation, by: (i) revoking the number resources assigned to Applicant, and/or (ii) terminating this Agreement. Applicant agrees to consent to ARIN's intervening in any such bankruptcy court proceeding so that ARIN can protect its rights under this Agreement with respect to the Policies, number resources and any other rights ARIN has under this Agreement. Applicant acknowledges and agrees that this Agreement is executory.

12. INDEMNIFICATION

Applicant shall indemnify, defend, and hold ARIN and its employees, representatives, agents, attorneys, affiliates, trustees, directors, officers, and managers, and members (the "Indemnified Parties") harmless from any damage, loss, cost, or expense (including without limitation, attorneys' fees and costs) incurred by an Indemnified Party or in connection with any claim, demand, or action ("Claim") brought or asserted against any of the Indemnified Parties alleging facts or circumstances that would constitute a breach of any provision of this Agreement by Applicant, or its employees or contractors, or arising from, relating to, or connected with: (i) unauthorized access to or use of the ARIN database by Applicant or any of its current or former employees, representatives, agents, attorneys, affiliates, directors, officers, POCs, or managers; (ii) unauthorized access to or use of Applicant's information or number resources in the ARIN database; or (iii) Applicant's use of the Services. If Applicant is obligated to provide indemnification pursuant to this provision, ARIN may, in its sole and absolute discretion, control the disposition of any Claim at Applicant's sole cost and expense. If ARIN permits Applicant to control the disposition of any Claim, Applicant shall not settle, compromise, or in any other manner dispose of any Claim without the prior written consent of ARIN. The Applicant agrees to notify ARIN promptly of the assertion against it or any other person of any claim or the commencement of any action or proceeding relating to any transaction contemplated by this Agreement, whether or not ARIN is named in the claim or action.

13. DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS

(a) **DISCLAIMER OF WARRANTIES.** ARIN PROVIDES THE SERVICES ON AN "AS-IS" BASIS. ARIN DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR THEIR USE: (i) WILL BE UNINTERRUPTED, (ii) WILL BE FREE OF DEFECTS, INACCURACIES, OR ERRORS, (iii) WILL MEET APPLICANT'S REQUIREMENTS, OR (iv) WILL OPERATE IN THE CONFIGURATION OR WITH OTHER HARDWARE OR SOFTWARE APPLICANT USES. ARIN MAKES NO WARRANTIES OTHER THAN THOSE MADE EXPRESSLY IN THIS AGREEMENT, AND HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND/OR NON-INFRINGEMENT.

(b) **EXCLUSION OF DAMAGES.** ARIN WILL NOT BE LIABLE TO APPLICANT OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES RELATING TO LOST PROFITS, LOST DATA, OR LOSS OF GOODWILL) ARISING OUT OF, RELATING TO, OR CONNECTED WITH THE SERVICES, BASED ON ANY CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) **LIMITATION OF LIABILITY.** EXCEPT IN THE EVENT OF A MATERIAL BREACH OF ARIN'S REPRESENTATIONS AND WARRANTIES UNDER THIS AGREEMENT, IN NO EVENT WILL ARIN'S LIABILITY TO APPLICANT OR ANY THIRD PARTY EXCEED THE GREATER OF (i) THE AMOUNT PAID BY APPLICANT TO ARIN DURING THE SIX MONTHS IMMEDIATELY PRECEDING THE EVENT THAT GIVES RISE TO SUCH LIABILITY OR (ii) \$100.

14. TERM AND TERMINATION.

(a) **Term.** The term of this Agreement shall commence on the date Applicant first receives the Services (the "Effective Date") and shall continue for one year thereafter. This Agreement shall renew automatically on the anniversary date of the Effective Date for unlimited one-year terms, unless earlier terminated in accordance with the termination provisions of this Agreement or if either party gives written notice to the other party of its desire not to renew this Agreement at least thirty (30) days prior to the expiration of the then-current term.

(b) **Termination for Cause by ARIN.** ARIN shall have the right to terminate this Agreement for cause in accordance with Section 15(j): (i) immediately upon written notice for the reasons as set forth in Sections 2, 3, 4(c), 4(d), 6(c), 8, 11, or if Applicant breaches any provision of Section 5; or (ii) upon written notice if

Applicant breaches any other provision of this Agreement and such breach remains uncured in ARIN's reasonable determination for ten (10) days following ARIN's written notice to Applicant.

(c) Termination for Cause by Applicant. Applicant shall have the right to terminate this Agreement for cause upon written notice if ARIN materially breaches this Agreement and such breach remains uncured for thirty (30) days after ARIN's receipt of written notice of the breach from Applicant.

(d) Termination by Applicant of Return of Number Resources. Applicant shall have the right to terminate this Agreement if it returns, without limitation, all number resources assigned and/or allocated to it by ARIN. If Applicant wishes to terminate this Agreement in accordance with this Section 14(d), the Applicant must submit thirty (30) days prior written notice to ARIN of its intent to return, in total, its ARIN assigned or allocated number resources, and must return the resources within thirty (30) days of ARIN's receipt of written notice of the Applicant's intent. This Agreement remains binding until the Applicant has returned all number resources to ARIN.

(e) Effect of Termination. If this Agreement expires or is terminated: (i) ARIN will immediately revoke the number resources and otherwise cease providing the Services and will have no liability for doing so, (ii) Applicant must immediately pay ARIN any outstanding fees that Applicant owes, but Applicant will not incur any additional fees, and (iii) Applicant will lose all membership rights and benefits in ARIN, if any.

(f) Survival. The following Sections will survive termination or expiration of this Agreement: 4(e), 5(b), 5(c), 6(a), 6(b), 9 through 13, 14(d), 14(e), and 15.

15. GENERAL PROVISIONS.

(a) Assignment and Transfer. Applicant is not permitted to assign this Agreement or any of its rights or obligations under it, including, without limitation, the exclusive right to use the number resources allocated or assigned to it, without ARIN's written permission. If Applicant attempts to assign this Agreement or any rights or obligations under it, including, without limitation, by involuntary assignment to Applicant's creditors, such assignment will be of no force or effect and ARIN shall have the right to immediately: (i) revoke any of the number resources allocated or assigned to Applicant, and/or (ii) terminate this Agreement. The event of any transaction (whether a merger, acquisition or sale) in which Applicant's controlling managerial and/or voting interest changes during the term of this Agreement shall be considered a assignment requiring ARIN's written consent to continued use of the number resources, or ARIN may invoke its remedies as set forth in this section. ARIN shall have the right to freely assign this Agreement upon written notice to Applicant. (b) Pursuant to Policies, Applicant consents to assume responsibility for ensuring information involving assignments and allocations from within its allocated or assigned number resources received from ARIN is correct and provided to ARIN in a timely manner.

(c) Relationship of Parties. The relationship between the parties is and will be that of independent contractors. No joint venture, partnership, employment, agency, or similar arrangement is created between the parties. Neither party has the right or power to act for or on behalf of the other or to bind the other in any respect other than as expressly provided for in this Agreement.

(d) Entire Agreement. This Agreement (and the Policies and the Fee Schedule, which are hereby incorporated by reference) constitutes the entire understanding between the parties and replaces and supersedes any and all prior and contemporaneous agreements and understandings, whether oral or written, express or implied, between the parties with respect to the subject matter of this Agreement.

(e) Waiver. No waiver of any provision or consent to any action under this Agreement will constitute a waiver of any other provisions or consent to any other action, nor will such waiver or consent constitute a continuing waiver or consent or commit any party to provide past or future a waiver or consent.

(f) Severability. If any provision of this Agreement is determined to be illegal, invalid, or otherwise unenforceable by a court or tribunal of competent jurisdiction, then to the extent necessary to make such provision and/or this Agreement legal, valid, or otherwise enforceable, such provision will be limited, construed, or severed and deleted from this Agreement, and the remaining portion of such provision and the remaining other provisions hereof will survive, remain in full force and effect, and continue to be binding, and will be interpreted to give effect to the intention of the parties insofar as possible.

(g) Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties and with respect to ARIN, its successors and permitted assigns, and with respect to Applicant, its permitted successors and assigns.

(h) No Third-Party Rights. This Agreement is made solely for the benefit of the parties and does not, and will not, be construed to grant any rights or remedies to any other person or entity other than as expressly provided for in this Agreement.

(i) Construction. This Agreement will be construed as if it was jointly drafted by both parties and may not be construed against either one.

(j) Written Notice. All "written notice" required or permitted to be given under this Agreement will be delivered to the other party by any of the following methods: (i) hand delivery, (ii) certified U.S. mail, return receipt requested, postage prepaid, (iii) overnight courier, or (iv) electronic mail. If Applicant gives notice to ARIN, it must use the following address: ARIN, Attention: Financial Services Department, 3635 Concorde Parkway, Suite 200, Chantilly, VA 20151, or the following e-mail address: billing@arin.net. If ARIN provides notice to Applicant, ARIN must use the contact information provided by Applicant to ARIN during the application process or other contact information provided by Applicant in accordance with the terms of this Section. All notices will be deemed received and effective as follows: (i) if by hand-delivery, on the date of delivery, (ii) if by delivery via U.S. mail, on the date of receipt appearing on a return receipt card, (iii) if by overnight courier, on the date receipt is confirmed by such courier service, or (iv) if by electronic mail, 24 hours after the message was sent, if no "system error" or other notice of non-delivery is generated.

(k) Force Majeure. ARIN shall not be deemed in default hereunder, nor shall ARIN be responsible for any cessation, interruption, or delay in the performance of its obligations under this Agreement where such failure of performance is the result of any force majeure event, including, but not limited to, earthquake, flood, fire, storm, natural disaster, act of God, civil disturbances, war, terrorism, armed conflict, riots, failure of contractors or subcontractors to perform, labor strike, lockout, boycott, or acts of governmental authorities. In the event a force majeure event extends for a period in excess of thirty (30) days in the aggregate and prevents ARIN from performing its obligations under this Agreement, ARIN may, in its discretion, terminate this Agreement immediately upon written notice to Applicant.

(l) Governing Law, Jurisdiction, and Venue. This Agreement and the parties' performance under it shall be governed in all respects by, and construed in accordance with, the laws of the Commonwealth of Virginia and the United States of America. In the event of any dispute(s) regarding any term or condition or provision or performance or conduct arising out of or relating to this Agreement, the parties each agree to first seek resolution through cooperative settlement negotiations involving themselves or their representatives as they each deem appropriate; and, second, in the event cooperative settlement negotiations are not successful after thirty (30) days, the parties agree to submit any unresolved dispute(s) to binding and final arbitration for resolution. Such arbitration shall be held in Fairfax County, Virginia, in accordance with the rules of the American Arbitration Association ("AAA") then in effect. A single arbiter shall be selected by the parties by striking in turn from a list of arbiters supplied by the AAA. Each party shall bear their own attorneys' fees, and the initiating party shall bear the costs of the arbitration's expenses. Virginia law shall be controlling. Any judgment upon the award rendered pursuant to the arbitration proceeding may be entered in any court having competent jurisdiction. Such arbitration provision will apply unless the Applicant is part of a national, state, or local government authority whose laws or regulations require that their law and jurisdiction must apply to such an agreement. In such an instance, upon written demonstration of such national, state, or local law or regulation, arbitration shall be conducted in the city or county in which Applicant's principal place of business is domiciled, in accordance with the provisions set forth above, except that Applicant's law shall be controlling.

