

## **AMERICAN REGISTRY FOR INTERNET NUMBERS, LTD. QUALIFIED FACILITATOR PROGRAM PARTICIPATION AGREEMENT**

This QUALIFIED FACILITATOR PROGRAM PARTICIPATION AGREEMENT ("Agreement") is made by and between the AMERICAN REGISTRY FOR INTERNET NUMBERS, LTD. ("ARIN"), a Virginia nonprofit corporation, and \_\_\_\_\_ ("Facilitator").

WHEREAS ARIN provides the Qualified Facilitator Program (hereafter "QFP") as a resource for the community to assist in identifying participants engaged in brokering the transfer of ARIN's IPv4 or Autonomous System Number (ASN) resources in accordance with ARIN's Number Resource Policy, and

WHEREAS Facilitator desires to participate in the QFP as a Qualified Facilitator.

Now therefore, the parties agree as follows:

- (1) "Qualified Facilitator" shall mean an entity that has successfully completed the QFP application process and has been approved by ARIN to be listed as a Qualified Facilitator in the QFP to facilitate transfers of IPv4 or Autonomous System Number (ASN) resources.

"ARIN" shall mean ARIN, its officers, directors, trustees, employees, and attorneys.

- (2) Right to modify or discontinue. ARIN reserves the unilateral right to modify or discontinue the QFP or any portion thereof for any reason at any time, with or without notice (actual or constructive) to any Facilitator. ARIN may also add additional features to the QFP at its sole discretion. Facilitator agrees that ARIN shall not be liable to Facilitator or to any third party for any damages, under any legal theory whatsoever, including, without limitation, incidental, consequential, or indirect damages, for any modification, suspension, or discontinuance of the QFP.
- (3) Acceptance of terms. ARIN provides the QFP, as may be modified from time to time, subject to this Agreement, as well as the QFP Terms of Use ("QFP ToU"), Qualified Facilitator Code of Conduct, and any other additional policies, rules, or guidelines applicable to the QFP (collectively, the "Terms"). All such Terms are hereby incorporated herein by reference into this Agreement. Facilitator can review the most current version of the QFP ToU at any time at: <https://www.arin.net/resources/registry/transfers/facilitators/tou/>. By participating in the QFP, Facilitator accepts the Terms. ARIN may update the Terms from time to time with or without notice (actual or constructive) by posting the revised Terms to the ARIN Website. By continuing to participate in the QFP after the revised Terms have been posted, Facilitator accepts the revised Terms. The Terms do not replace, modify, diminish, or alter any executed agreements that the Facilitator may have with ARIN, including but not limited to a Registration Services Agreement, Legacy Registration Services Agreement, Indemnification Agreement, Non-Disclosure Agreement, Web Account Terms of Service Agreement, or an Acceptable Use Policy Agreement (collectively, the "Contracts").
- (4) Conditions for QFP participation. In addition to complying with the Terms, Facilitator must:
- a. Successfully complete the application process to become a Qualified Facilitator and be approved by ARIN for listing in the QFP as a Qualified Facilitator;
  - b. Provide true, accurate, and complete information to ARIN, and immediately notify ARIN if any information provided during the application process changes during the term of this Agreement;
  - c. Promptly, accurately, and completely provide any information and cooperation in response to any inquiry made by ARIN;
  - d. Comply with ARIN policies (available at (<https://www.arin.net/policy/nrpm.html>)); and
  - e. Immediately notify ARIN in the event of any change of control or transfer of control event.

Facilitator understands that Facilitator must apply and undergo a requalification process on an annual basis to continue participation in the QFP.

- (5) Prohibited conduct. Facilitator must only participate in the QFP for the purposes intended by the QFP. Facilitator shall not:
- Use the QFP in a manner that could harm ARIN or a third party;
  - Use the QFP in violation of applicable laws or in violation of ARIN's or any third party's proprietary or legal rights;
  - Circumvent, alter, interfere, or make any unauthorized use of the QFP;
  - Engage in activities that are not intended to lead to a transfer under ARIN's policies;
  - Sell, sublicense, resell, or transfer its approval to be listed as a Qualified Facilitator; or
  - Be a member of the ARIN or any other Regional Internet Registry staff.
- (6) ARIN's Intellectual Property. Unless specifically authorized by ARIN in writing, Facilitator shall not use, modify, publish, transmit, reproduce, create new or derivative works, or in any way exploit ARIN's name, logos, trademarks, service marks, slogans, trademark designs, trade names, or other intellectual property, in whole or in part.
- (7) Indemnification. Facilitator agrees to indemnify and hold harmless ARIN and its predecessors, successors and assigns, subsidiaries, affiliates, officers, directors, trustees, employees, representatives, agents, partners, licensors, attorneys, and advisors (collectively, the "ARIN Parties") from any and all claims, demands, disputes, actions suits, proceedings, judgments, damages, injuries, losses, expenses, costs and fees (including costs and fees associated with attorneys, accountants, investigators, and experts), interests, fines and penalties of whatever nature, character or description, whether known or unknown, anticipated or unanticipated, fixed or contingent, now existing or which may hereafter accrue (collectively, the "Claims") brought or asserted by a third party against any of the ARIN Parties alleging facts or circumstances that, directly or indirectly, relate to or arise from or in connection with Facilitator's (i) participation in the QFP; (ii) Facilitator's violation of the Terms; (iii) Facilitator's violation of any rights of any person or entity; or (iv) material or information submitted, posted, transmitted, or otherwise made available by the Facilitator.
- (8) Termination. Facilitator acknowledges and agrees that ARIN may, without prior notice, terminate Facilitator's listing as a Qualified Facilitator and any access to the QFP. Cause for such termination may include, but not be limited to: (i) breaches or violations of this Agreement or other Terms; (ii) a request by a law enforcement or other government agency; (iii) a request by Facilitator; (iv) discontinuance or material modification to the QFP (or any part thereof); (v) unexpected technical or security issues or problems; (vi) extended periods of inactivity by Facilitator; (vii) termination of any Contracts between Facilitator and ARIN; (viii) use or participation in the QFP in violation of the terms of any Contracts to which the Facilitator is a party; and/or (ix) engagement by the Facilitator in fraudulent or illegal activities. Termination of Facilitator's participation in the QFP includes without limitation (a) de-listing and removal of access to all offerings and accounts, if any, in connection with the QFP, and (b) barring further participation in the QFP. Facilitator agrees that all terminations for cause shall be made at ARIN's sole discretion, and ARIN shall not be liable to Facilitator or any third party for any termination of Facilitator's account or participation in the QFP. Termination of Facilitator's account or participation by ARIN does not automatically terminate any other Contracts to which Facilitator is a party, but may constitute grounds for ARIN to do so.
- (9) DISCLAIMER OF WARRANTIES. THE FACILITATOR EXPRESSLY UNDERSTANDS AND AGREES THAT: THE FACILITATOR'S PARTICIPATION IN THE QFP IS AT THE FACILITATOR'S SOLE DISCRETION AND RISK. ARIN PROVIDES THE QFP "AS IS" AND "AS AVAILABLE," WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ARIN SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. ARIN FURTHER DOES NOT WARRANT THAT THE QFP, OR ANY INFORMATION, TOOLS, OR SERVICES OFFERED ON THE QFP OR IN CONNECTION WITH THE QFP, WILL MEET THE FACILITATOR'S REQUIREMENTS, WILL BE SUCCESSFUL IN SECURING A TRANSFER, WILL BE ACCURATE, COMPLETE OR CURRENT, OR WILL GIVE ACCURATE, COMPLETE OR CURRENT RESULTS; THAT OPERATION OF THE QFP OR ANY INFORMATION, TOOLS, OR SERVICES WILL BE TIMELY, SECURE, UNINTERRUPTED, OR

FREE FROM ERROR OR OMISSION OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS; OR THAT ANY ERRORS IN THE QFP WILL BE CORRECTED. ARIN DOES NOT REPRESENT OR WARRANT THAT ANY DATA THE FACILITATOR TRANSMITS IN CONNECTION WITH THE QFP WILL BE SECURE, AVAILABLE, UNALTERED, OR PRESERVED. ARIN DOES NOT REPRESENT OR WARRANT THAT THE QFP WILL CONTINUE TO BE OFFERED. ANY MATERIAL VIEWED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH PARTICIPATION IN THE QFP IS ACCESSED AT THE FACILITATOR'S OWN DISCRETION AND RISK, AND THE FACILITATOR WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO THE FACILITATOR'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR VIEWING OF ANY SUCH MATERIAL. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY FACILITATOR FROM ARIN OR THROUGH OR FROM THE QFP SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN.

- (10) LIMITATION OF LIABILITY. THE FACILITATOR EXPRESSLY UNDERSTANDS AND AGREES THAT IN NO EVENT SHALL ARIN BE LIABLE TO THE FACILITATOR FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF ARIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR FOR ANY DAMAGES RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE QFP OR ITS CONTENT; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE QFP; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF THE FACILITATOR'S TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE QFP OR ITS CONTENT; OR (v) ANY OTHER MATTER RELATING TO THE QFP.
- (11) Entire agreement. This Agreement, together with the Terms constitute the entire agreement between the Facilitator and ARIN regarding the Facilitator's participation in the QFP, superseding any prior agreements (written or oral) between the Facilitator and ARIN with respect to the QFP. This Agreement may only be modified in a writing signed by a duly authorized representative of ARIN. Facilitator also may be subject to additional terms and conditions that may apply when the Facilitator uses, engages or contracts certain other ARIN services, affiliate services, third-party material or third-party software. Notwithstanding the foregoing, nothing in this Agreement shall be read to limit or revise the terms of any Contracts to which the Facilitator and ARIN are parties.
- (12) No agency. Neither party is, or will be deemed to be, an agent of the other for any purpose or in any sense, as a result of any action, transaction, or activity, under or in any way related to this Agreement, the Terms, the Contracts, or the QFP.
- (13) Separability. In the event that any term or provision in this Agreement is found, for any reason, to be invalid, illegal or unenforceable in any respect, such invalidity, unenforceability, or illegality shall not impair the operation of, or affect the rest this Agreement. However, ARIN, in its sole discretion, shall have the right to immediately and without notice, terminate this Agreement or modify such term or provision.
- (14) No waiver. No delay, failure, or omission by ARIN to exercise any right under this Agreement will operate as a bar or waiver of that right or any other right, or operate as an estoppel to future exercise of that right.
- (15) 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, as applicable, 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 initially 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. The Arbitrator may reallocate the costs of the arbitration's expense between the parties, but it may not reallocate legal fees incurred by the parties. The Arbitrator is permitted to assess all arbitration costs, including any legal fees incurred by the parties, against any party that has acted in bad faith during the proceeding.

(16) Effective date. This Agreement shall become effective on the date signed and dated by ARIN below.

**FACILITATOR:**

\_\_\_\_\_  
Legal Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**American Registry for Internet Numbers, Ltd.**

By: \_\_\_\_\_

Date: \_\_\_\_\_