



APNIC and NIR Member Relationship Agreement

##DATE

PARTIES

APNIC PTY LTD ACN 081 528 010

and

##

APNIC and NIR Member Relationship Agreement

NIR Member's details

Name of organization:

[##]

Address for notes and legal correspondence:

a) *Street or postal address:*

[##]

b) *Email address:*

[##]

Country or Economy:

[##]

Following details to be inserted by APNIC Pty Ltd

Account name (as assigned by APNIC Pty Ltd):

[##]

Membership date:

[##]

Renewal dates:

Recitals

- A. APNIC is a non-profit proprietary limited company incorporated under Australian law.
- B. APNIC is committed to acting in accordance with the interests and wishes of its membership in pursuing the following objectives:
 - To support APNIC Members in fulfilling their responsibilities as managers of Internet resources;
 - To promote the representation of the APNIC membership and the Internet community of the Asia Pacific region by ensuring open and transparent communications and consensus-driven decision-making processes;
 - To promote responsible management of Internet resources throughout the Asia Pacific region, as well as the responsible development and operation of Internet infrastructures;
 - To promote and advance technical policy development in relation to APNIC services, and to Internet resource management in general;
 - To provide high-quality Internet resource management services to APNIC Members, namely resource allocation services, registration and database services, and membership administration and support services;
 - To assist Internet development activities in the Asia Pacific region, relating to the above objectives.
- C. A category has been established within the APNIC membership for National Internet Registries, which serve organizations within their respective countries or economies. National Internet Registries provide procedures and services that take account of local cultural differences, while operating in a way that remains consistent with regional and global resource management policies.
- D. APNIC recognizes the importance of National Internet Registries as APNIC's partners in contributing to the sustainable growth of the Internet in the APNIC service region, and fostering the interests of the global Internet community.
- E. APNIC recognizes the NIR Member as a Member of APNIC, as well as the National Internet Registry for the country or economy listed in this agreement. APNIC and the NIR Member enter into this agreement to record the cooperative nature of their relationship.

1. Definitions and Interpretation

1.1 Definitions

In this agreement, unless the context requires otherwise:

APNIC means APNIC Pty Ltd ACN 081 528 010, a non-profit company incorporated under Australian laws. A reference to membership of **APNIC** is a reference to membership of the special committee called "APNIC", which was established under the company's constitution.

APNIC Definition Document means the document titled "APNIC Definition Document", forming part of APNIC's corporate documents, which can be located at APNIC's website at <<http://www.apnic.net>>.

APNIC Address Management Policies means APNIC's policies for the management of Internet address space and number resources in the Asia Pacific region, including the "Criteria for the recognition of NIRs in the APNIC region" and "Operational policies for National Internet Registries in the APNIC region", as amended from time to time.

Dispute Resolution Document has the meaning given in the APNIC Definition Document.

Executive Council means the Executive Council of APNIC, established under the constitution and By-laws of APNIC.

Fee Schedule has the meaning given in the APNIC Definition Document.

Insolvency Event has the meaning given in the APNIC Definition Document.

Membership Agreement has the meaning given in the APNIC Definition Document.

National Internet Registries has the meaning given in Recital C.

NIR Member means the party described on the cover page of this agreement as the NIR Member.

RFC1591 means the request for comment numbered 1591, published by the Internet Engineering Task Force.

1.1 Interpretation

The interpretation provisions of the APNIC Definition Document apply to this agreement.

2. Term

2.1 Commencement & term

This agreement commences on the date of this agreement and is effective for one year. Upon the commencement of this agreement, and during the term of this agreement (including any renewed term), APNIC recognizes the NIR Member as a Member of APNIC, and as the National Internet Registry for the country or economy specified in this agreement.

2.2 Membership fees and renewals

- a. APNIC will invoice the NIR Member in accordance with the Fee Schedule upon signing this agreement, then annually thereafter. The NIR Member must pay the invoiced fee to APNIC, before the due date for payment.
- b. The NIR Member may renew its membership by paying APNIC the renewal fee by the due date. By renewing its membership, the NIR Member will be deemed to have agreed to the terms of the standard agreement governing the relationship between APNIC and NIR Members, as it exists at the time of renewal.

2.3 Termination

- a. APNIC may terminate this agreement in any of the following circumstances:
 1. The NIR Member fails to renew its membership within 45 days of the due date;
 2. The NIR Member experiences an Insolvency Event;
 3. The NIR Member undertakes any change to its nature, constitution, or circumstances, which puts it in breach of this agreement or any APNIC Address Management Policy;
 4. The NIR Member commits a substantial breach of this agreement or any APNIC Address Management Policy;
 5. Significantly interested parties (within the meaning of paragraph 3(4) of RFC1591) in the country or economy of the NIR Member agree that another party should be the National Internet Registry for that country or economy, and APNIC proceeds to recognize that other party to be the National Internet Registry for that country or economy, according to APNIC's "Criteria for the recognition of NIRs in the APNIC region".
- b. In relation to circumstance described in clause 2.3(a)(2), APNIC may immediately terminate the agreement by written notice to the NIR Member, and revoke all of the NIR Member's rights under this agreement and/or under the APNIC Address Management Policies.
- c. In relation to circumstances described in clause 2.3(a)(1), 2.3(a)(3), 2.3(a)(4) or 2.3(a)(5), the Notice, Response, and Appeal Provisions of clause 4 shall apply.
- d. Upon termination:
 1. APNIC has the right to reinstate the membership of the members of the NIR Member, as Members of APNIC, provided that such members enter into a Membership Agreement with APNIC; and
 2. At APNIC's request, the NIR Member must give all reasonable assistance (other than financial assistance) to APNIC to facilitate the efficient and effective transfer of the membership of the members of the NIR Member, to APNIC.

- e. For clarity, the NIR Member's obligations in clause 2.3(d)(2) survive the termination of this agreement.

3. Obligations

3.1 APNIC's obligations

- a. APNIC must:
 - 1. Establish and maintain mechanisms which support open communications within the Asia Pacific Internet community, for the development of policies and procedures relating to Internet resource management;
 - 2. Promote and support training and educational activities relating to the development of Internet services and responsible management of Internet resources;
 - 3. Undertake other activities as required by APNIC's Members in support of Internet development within the Asia Pacific region;
 - 4. Consider all requests relating to the operations of APNIC that are made by APNIC's Members, either directly or through the Executive Council;
 - 5. Ensure that the Executive Council considers all requests relating to the operations of APNIC that are referred to it either by APNIC's Members directly or through APNIC;
 - 6. Provide rights and services (including delegated resources) to the NIR Member in accordance with the APNIC Address Management Policies;
 - 7. Not disclose to any person (except to its general Secretariat, Internet administration authorities, staff, and contractors performing necessary work for APNIC who sign a non-disclosure agreement, or as legally required to do so) any confidential information which the NIR Member provides to APNIC;
 - 8. Maintain APNIC Address Management Policies in accordance with its policy development process, and make all reasonable efforts to keep current versions of those documents publicly available on APNIC's website;
 - 9. Recognize and recommend the NIR Member as the chosen National Internet Registry for the country or economy concerned and as the registry of choice for ISPs, end users, and other customers in the NIR Member's country or economy.
- b. The NIR Member acknowledges that if, at any time, APNIC reasonably considers that the NIR Member's organizational or technical capacity is inadequate for it to thoroughly implement all aspects of APNIC's Address Management Policies, then APNIC may, after giving the NIR Member at least 14 days advance written notice (setting out in such notice, the basis of APNIC's consideration), temporarily suspend the provision of any registration or other services to the NIR Member whilst this situation remains.

3.2 NIR Member's obligations

The NIR Member must:

- a. Promptly pay all fees and charges due to APNIC in accordance with the Fee Schedule;
- b. Not provide any information to APNIC which is false or misleading;
- c. Inform APNIC as soon as possible of any changes in material information which the NIR Member has previously supplied to APNIC;

- d. Comply with this agreement and all APNIC Address Management Policies;
- e. Enter into a formal membership agreement or other suitable contractual arrangement with its own members or account holders who receive Internet resources from the NIR Member, requiring such members or account holders to comply with resource and address management policies which are consistent, and not in conflict, with APNIC Address Management Policies, and to take all reasonable steps to enforce compliance with such agreement or arrangement;
- f. Provide to APNIC upon a well-grounded request, material evidence of compliance with the terms of this agreement and all APNIC Address Management Policies as amended from time to time;
- g. To the extent permitted by the laws of the NIR Member's country or economy, guarantee the freedom of Local Internet Registries (LIRs), ISPs, and end users in their country or economy to choose between APNIC and the NIR Member as the registry from which they will receive Internet resources.

3.3 Liability and indemnity

- a. The NIR Member and APNIC acknowledge that the following clauses 3.3(b) and 3.3(c) are essential in order to protect the membership as a whole and APNIC's ability to pursue the aims expressed in Recital B.
- b. To the extent permitted by law, APNIC excludes all liability to the NIR Member arising out of or in connection with this agreement, the APNIC Address Management Policies, or delegated resources. This exclusion applies, without limitation, to all liability in contract or tort for actions or omissions of APNIC or its Members, employees, agents, and contractors, but does not apply to liability arising directly from:
 - 1. Personal injury, including sickness and death;
 - 2. Loss of, or damage to, tangible property (including both the property of the NIR Member and third party property);
 - 3. An intentional infringement of intellectual property rights (other than any passing off, infringement of patent or trade secret, or legal proceedings in the United States and/or Canada in respect to the infringement of intellectual property rights);
 - 4. A breach of confidentiality or privacy,

to the extent caused or contributed to by any act or omission of APNIC or its employees, agents, and contractors.

- c. The NIR Member indemnifies APNIC against the full amount of all expenses, losses, damages, and costs that APNIC may reasonably incur as a result, whether directly or indirectly, of any breach of this agreement or any APNIC Address Management Policy by the NIR Member, its employees, contractors, or agents. In such cases, APNIC must, wherever practicable to do so, immediately notify the NIR Member in writing of such claim or potential claim. However, APNIC's failure to do so does not affect the NIR Member's obligations under this clause 3.3(c).
- d. For clarity, this clause 3.3 survives the termination of this agreement.

4. Notices, responses, and appeals

4.1 Notice

- a. If APNIC believes that there is a basis to terminate this agreement under clause 2.3, then before APNIC terminates this agreement, it must send a written notice ("Notice") to the NIR Member.
- b. The Notice must:
 1. Describe the basis for termination under clause 2.3, and the course of action necessary to remedy the breach (if any), or alternatively, inviting the NIR Member to provide reasons why APNIC should not terminate this agreement;
 2. Specify a reasonable period of at least 45 days from the date of the Notice, for the NIR Member to provide a response to the Notice within the terms of clause 4.2, or to take the action necessary to remedy the breach (if any); and
 3. Advise the NIR Member of APNIC's intended action if the breach (if any) is not remedied, or alternatively, if the NIR Member is unable to provide sufficient reasons to persuade APNIC not to terminate this agreement.

4.2 Response to Notice

The NIR Member must, by the time specified in clause 4.1(b)(2), send APNIC a response to the Notice detailing either:

- a. The NIR Member has not committed the breach; or
- b. The NIR Member has remedied the breach in accordance with clause 4.1(b)(1); or
- c. Exceptional circumstances exist which justify APNIC retracting or revising the Notice.

4.3 Subsequent actions

If the period specified in clause 4.1(b)(2) expires and, taking full account of any responses received under clause 4.2, APNIC reasonably believes that either the breach (if any) has not been remedied, or that there is no exceptional circumstances which exist to justify APNIC retracting or revising the Notice, then APNIC may, in its discretion, either send the NIR Member:

- a. A subsequent Notice as described in clause 4.1(b); or
- b. A written notice immediately revoking some or all of the NIR Member's rights under this agreement and/or under the APNIC Address Management Policies (including, without limitation, delegated resources); and/or immediately terminating this agreement.

4.4 Appeal to Executive Council

If the NIR Member believes that APNIC has failed to adequately consider all relevant circumstances or has acted unreasonably in sending a revocation notice under clause 4.3(b), then the NIR Member may appeal APNIC's decision to the Executive Council within 30 days. If the Executive Council decides that the NIR Member's appeal is justified then APNIC will withdraw the revocation notice.

4.5 Acknowledgement by Member

The NIR Member acknowledges that:

- a. If the NIR Member receives a notice under clauses 2.3(b) or 4.3(b) then the NIR Member must immediately cease using the delegated resources specified in the notice; and
- b. If the NIR Member fails to comply with clause 4.5(a), then APNIC may apply to a Court seeking an injunction or similar remedy, restraining the NIR Member from using the relevant delegated resources.

5. General

5.1 APNIC Address Management Policies

The NIR Member agrees that:

- a. The APNIC Address Management Policies may be amended from time to time in accordance with APNIC's policy development process;
- b. Any such amendments are binding upon the NIR Member;
- c. APNIC Address Management Policies as they exist from time to time form an integral part of and apply fully to this agreement; and
- d. If this agreement is either terminated or not renewed, the NIR Member shall continue to be bound by the provisions of this agreement and other APNIC Address Management Policies to the extent that the provisions relate to the use of resources or disputes arising from this agreement or any other APNIC Address Management Policies.

5.2 Assignment and Sub-contracting

- a. The NIR Member must not, without the prior written consent of APNIC, sell, transfer or pledge any right under this agreement, or permit another body to assume or perform any obligation under this agreement.
- b. The NIR Member's obligations to APNIC under this agreement remains, and is not reduced, by the NIR Member doing any of the things described in clauses 5.2(a), even if APNIC gives its consent to the NIR Member under clause 5.2(a).

5.3 Dispute Resolution

- a. The parties agree to attempt to resolve any dispute arising out of or relating to this agreement by using the process described in the Dispute Resolution Document, before commencing any legal proceedings.
- b. This clause does not prevent a party from applying to a Court for interim injunctive relief.

5.4 Governing law

- a. This agreement is governed by the laws of Queensland, Australia.
- b. Subject to clause 5.3, the NIR Member and APNIC irrevocably submit to the exclusive jurisdiction of the Courts of Queensland, Australia.

5.5 To the extent not excluded by law

The rights, duties, and remedies granted or imposed under the provisions of this agreement operate to the extent not excluded by law.

5.6 Order of precedence

To the extent of any inconsistency, the terms and conditions contained within this agreement will prevail over any other agreement executed between the parties.

Execution Page

Executed as an agreement

Signed for

[##]

by its authorized representative

in the presence of:

(Signature of authorized representative)

(Signature of Witness)

Full name of authorized representative
(please print)

Full name of Witness
(please print)

Official company title of authorized representative

Signed for

APNIC PTY LTD

by its authorized representative

in the presence of:

(Signature of authorized representative)

(Signature of Witness)

Full name of authorized representative
(please print)

Full name of Witness
(please print)

Official company title of authorized representative