

REGISTRAR AGREEMENT

This Agreement is between

Namibian Network Information Centre (Pty) Ltd
106, Fischreih Street¹
Swakopmund, Namibia
PO Box 8421
Bachbrecht 10007, Namibia

email: dns-admin@na-nic.com.NA

GPG Fingerprint²: A487 D865 72F7 85CE D374 C99C 8D38 CDE2 53A8 58F0

referred to in this Agreement as "NA-NiC"

and

Company Name:
Street Address:
Postal Address:
Town:
ZIP Code:
Country :
Email Address:
GPG Fingerprint:

referred to in this Agreement as "Registrar".

1. **BACKGROUND.** NA-NiC is the manager of the country code Top Level Domain name ("ccTLD") .NA[®] and has appointed Omadhina Internet Services (Pty) Ltd ("Omadhina") as the entity responsible for maintaining the database ("Register") for the .NA[®] ccTLD ("Register Operator") and for propagating the information in the Register on the Internet in such a fashion that Internet users around the world can access Internet domain names in the Register via the Domain Name Service and in particular through applications such as the world wide web and electronic mail.
2. **AGREEMENT.** The purpose of this Agreement is to formalize and record the relationship between NA-NiC and Registrar, jointly referred to as "Parties" and individually as "Party". This Agreement explains the obligations of both Parties to each other and to third parties. Each Party acknowledges that it has read and shall be bound by all terms and conditions of this Agreement.
3. **APPOINTMENT OF REGISTRAR.** NA-NiC hereby grants to Registrar and Registrar accepts a non-exclusive appointment as a registrar of domain name services within the .NA[®] ccTLD, and subject to the terms of this agreement, grants Registrar the right to access the .NA[®] ccTLD Register for the purpose of processing applications to register new and/or to maintain already registered domain names.
4. **NA-NiC'S OBLIGATIONS.**
 - 4.1. NA-NiC shall make reasonable commercial efforts to ensure Registrar has continuous access to the Register on a non-discriminatory basis, by way of
 - 4.1.1. A web site with secure access ("portal")
 - 4.1.2. And/or, at the sole discretion of NA-NiC, an Application Programming Interface ("API"),
At the commencement of this Agreement, the Extensible Provisioning Protocol ("EPP"), defined in RFCs 3730 and 4930, is employed as the API.
 - 4.2. NA-NiC shall make reasonable commercial efforts to ensure that the information in the Register is propagated on the Internet via the Domain Name System.
5. **REGISTRAR'S OBLIGATIONS.**
 - 5.1. Registrar shall accept requests from the public ("Registrants") for the registration, cancellation, deletion, renewal, modification, maintenance or transfer of Domain Names in the Register and make reasonable commercial best efforts to provide all associated services to Registrants, including billing and technical support, in respect of the services offered by it ("Registrar Services") twenty four (24) hours each day and seven (7) days each week; and
 - 5.2. Registrar shall provide robust and scalable operations capable of handling the registration volume reasonably projected by Registrar; and
 - 5.3. Registrar shall have the capacity to engage a sufficient number of qualified employees to handle the Registrar Services volume reasonably projected by Registrar; and
 - 5.4. Registrar shall handle promptly Registrants' requests for changes in registration data; and
 - 5.5. Registrar shall achieve a reliable and readily usable daily data backup and archival of all Registrant and registration data; and
 - 5.6. Registrar shall maintain electronic copies of all transactions, correspondence, and communications with the Register for at least the length of the registration contract; and
 - 5.7. Registrar shall provide procedures for information systems security to prevent malicious or accidental disruption of the Registrar's operations; and
 - 5.8. Registrar shall safeguard all access credentials (such as, *inter alia*, user name(s), identifier(s), password(s) and/or two-factor authentication token(s)) ("credentials") and prevent unauthorized access to and/or loss of credentials; and

¹Delivery address for courier service: NA-NiC, c/o Dr Lisse, SWAMed Building, John Meinert Street, Windhoek, Namibia

²See section 18.2. on page 3.

- 5.9. Registrar shall offer to obtain commercial general liability insurance in effect during the accreditation period in an amount sufficient, given the registration volume reasonably projected by applicant, to provide domain-name holders reasonable compensation for losses caused by Registrar's wrongful covered acts; and
- 5.10. Registrar shall have adequate working capital available for the operation of the registrar business, given the registration volume reasonably projected by applicant; and
- 5.11. Registrar shall ensure that Registrar's obligations to its customers, to NA-NiC and to the Register Operator will be fulfilled in the event that Registrar goes out of business, including ensuring that Registrants will continue to have use of the domain names and that operation of the Internet will not be adversely affected; and
- 5.12. Registrar shall bind Registrants to, and enforce the policies of NA-NiC ("NA-NiC Policies") as published on NA-NiC's web site and modified from time to time, by way of entering into an agreement with Registrants in a manner consistent with Namibian law in force at the time, which shall contain at least the following, or language to that effect, and shall survive the termination of such agreement:
- [Registrant] acknowledges that [Registrar] is a domain name registrar bound by an agreement between [Registrar] and Namibian Network Information Services (Pty) Ltd. [Registrant] agrees that [Registrar] may modify this agreement in order to comply with applicable law and the terms and conditions set forth by NA-NiC and/or the Register Operator chosen by NA-NiC, as well as any rules or policies that may be published from time to time by NA-NiC, the Register Operator and/or [Registrar]. [Registrant] shall abide by NA-NiC Policies. Those parts of NA-NiC Policies, which are not part of the text of this Agreement, are incorporated into this agreement by this reference. [Registrar] shall ensure that the information submitted by or on behalf of [Registrant] to the Register in connection with registration of the domain name(s) or otherwise ("Registrant Information") will, during the Term, comply with NA-NiC Policies and is and will remain true, current, complete, accurate, and reliable. [Registrant] shall maintain, update, and keep the Registrant Information true, current, complete, accurate, and reliable by notifying [Registrar] immediately of a change to any such information in accordance with appropriate NA-NiC Policies. Failure to abide by NA-NiC policies may result in termination of this agreement, suspension or removal of the domain names(s) without refund of fees and/or without notice. [Registrant] agrees and acknowledges that SPF Lisse Family Private Foundation ("SPF") shall own all database, compilation, collective and similar rights, title and interests worldwide in any domain name database(s), and all information and derivative works generated from the domain name database(s) and that such domain name database may include, without limitation, the original creation date of domain name registration(s), the expiration date of domain name registration(s), the name, postal address, e-mail address, voice telephone number, and where available fax number of all contacts for domain name registration(s), any remarks concerning registered domain name(s) that appear or should appear in the WHOIS or similar information repositories, and any other information generated or obtained in connection with providing domain name registration services. SPF shall not have any ownership interest in [Registrant]'s specific Registration Information outside of SPF's rights in one or more domain name database (s);*
- and
- 5.13. Registrar shall abide by NA-NiC Policies; and
- 5.14. Registrar shall market, promote and advertise the availability of domain names within the .NA[®] ccTLD and encourage the public at large to register the same through Registrar's Registrar Services; and
- 5.15. Registrar shall not register domain names for their own account, except for ordinary business use or marketing purposes; and
- 5.16. Registrar shall establish procedures that permit Registrar's customers to freely change registrars without interruption in use of the assigned domain name; and
- 5.17. Registrar acknowledges that there is no limit on the numbers of registrars which NA-NiC may appoint or accredit; and
- 5.18. In order to be granted access to the Register, through the API, Registrar shall demonstrate to the satisfaction of the Register Operator business capabilities (including human resources, management, communication, and information systems) that, in the Register Operator's judgment, are reasonably suited to provide the Registrar secure, authenticated access to the Register through the API,
or, at the sole discretion of NA-NiC, provide proof of:
- 5.18.1. Accreditation as Registrar with the Internet Corporation for Assigned Names and Numbers ("ICANN"); or
- 5.18.2. Accreditation as EPP capable Registrar with CoCCA; or
- 5.18.3. Accreditation as EPP capable Registrar with certain other Registries (as determined by NA-NiC in its sole discretion from time to time);
- and
- 5.19. Registrar shall enter into an agreement with Register Operator setting out commercial terms, technical and operational rules and shall comply with the terms and rules therein; and
- 5.20. Registrar shall comply with the Council of Country Code Administrators' ("CoCCA") Registrar Code of Conduct, which may be published and modified from time to time; and
- 5.21. If Registrar is accredited in terms of Clause 5.18.2. of this Agreement, Registrar shall meet the requirements specified by CoCCA from time to time in relation to the minimum criteria which must be met and satisfied by an entity or person in order for that entity or person to be accredited as registrar by CoCCA ("Accreditation Criteria"); and
- 5.22. Registrar shall promptly notify NA-NiC if Registrar becomes aware at any time:
- 5.22.1. That Registrar has failed to comply with any clause of this Agreement; or
- 5.22.2. That Registrar does not meet any of the Accreditation Criteria, if accredited in terms of Clause 5.18.2. of this Agreement; or
- 5.22.3. That Registrar has failed to comply with the CoCCA Registrar Code of Conduct; and
- 5.22.4. Of any circumstance, fact or thing that affects Registrar's ability to continue to meet the Accreditation Criteria or CoCCA Registrar Code of Conduct or to comply with any clause of this Agreement;
- and
- 5.23. Subject to clause 5.24. Registrar shall ensure that there is no change of Effective Control of the Registrar without the written approval of NA-NiC; and
- 5.24. "Effective Control" shall mean,
- 5.24.1. in respect of a company incorporated pursuant to the provisions of the Company Act (as amended):
- 5.24.1.1. control of a majority of the board of directors of the Registrar; or
- 5.24.1.2. control of more than 50% of the voting rights attaching to shares in the Registrar; or
- 5.24.1.3. control of the disposal of more than 50% of the issued share capital of the Registrar;
- 5.24.2. in respect of a close corporation registered pursuant to the provisions of the Close Corporations Act (as amended):

- 5.24.2.1. addition of one or more members to the Registrar;
- 5.24.3. in all other cases
- 5.24.3.1. control as determined by NA-NiC.
6. **OWNERSHIP OF INFORMATION AND DATA.** Registrar agrees and acknowledges that NA-NiC shall own all database, compilation, collective and similar rights, title and interests worldwide in any domain name database(s), and all information and derivative works generated from the domain name database(s) and that such domain name database may include, without limitation,
- 6.1. the original creation date of domain name registration(s),
 - 6.2. the expiration date of domain name registration(s),
 - 6.3. the name, postal address, e-mail address, voice telephone number, and where available fax number of all contacts for domain name registration(s),
 - 6.4. any remarks concerning registered domain name(s) that appear or should appear in the WHOIS or similar information repositories, and
 - 6.5. any other information generated or obtained in connection with providing domain name registration services.
- NA-NiC shall not have any ownership interest in a single Registrant's specific Registration Information outside of NA-NiC's rights in one or more domain name database(s).
7. **FEES.** The fees payable in advance by the Registrar to NA-NiC and/or the Register Operator may be varied from time to time and are not refundable.
- In the event of delinquent payment of fees NA-NiC may
- 7.1. refuse to and/or instruct Register Operator not to accept any further applications for domain name registration, modifications or renewals from the Registrar;
 - 7.2. give notice of termination of this agreement to the Registrar; and
 - 7.3. pursue any other remedy available to it under this agreement or at law.
 - 7.4. terminate this agreement immediately
8. **TERMINATION.** Either Party may terminate this agreement by giving the other Party 90 days notice without having to furnish reasons for such termination.
- NA-NiC may also terminate this agreement forthwith by written notice upon the following events occurring:
- 8.1. if an administrator, liquidator, receiver or official manager shall be appointed to Registrar or if it shall enter into any arrangement with its creditors; or
 - 8.2. if Registrar assigns or purports to assign its interests under this agreement without the consent in writing of NA-NiC;
 - 8.3. if a payment made by or on behalf of Registrar results in a chargeback for whatever reason; or
 - 8.4. if Registrar materially breaches the provisions of this Agreement.
9. **LIMITATION OF LIABILITY.** The Registrar agrees that NA-NiC shall be under no liability to the Registrar in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to this agreement or in respect of a failure or omission on the part of NA-NiC to comply with its obligations under this agreement.
10. **DISCLAIMER OF WARRANTIES.** Any condition or warranty which would otherwise be implied in this Agreement is hereby excluded to the extent permitted by law.
11. **SEVERABILITY.** Both Parties agree that the terms of this Agreement are severable. If any term or provision is declared invalid or unenforceable, that term or provision will be construed consistent with applicable law as nearly as possible to reflect the original intentions of the Parties, and the remaining terms and provisions will remain in full force and effect.
12. **INDEMNITY.** The Registrar shall at all times indemnify and hold harmless NA-NiC and its officers, employees and agents from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified where such loss or liability was caused by:
- 12.1. a breach by the Registrar of its obligations under this agreement; or
 - 12.2. any willful, unlawful or negligent act or omission of the Registrar.
13. **TRANSFER OR ASSIGNMENT.** The Registrar agrees that it may not transfer, assign or sub-contract this Agreement or any of its obligations under this Agreement without the prior written consent of NA-NiC.
14. **ENTIRETY.** Both Parties agree that this Agreement is the complete and exclusive agreement between the Parties. This Agreement supersedes all prior agreements and understandings, whether established by custom, practice, policy or precedent, and any amendments or modifications require the written form and be signed by both of NA-NiC and the Registrar.
15. **CONFIDENTIALITY.** A Party shall not, without the prior written approval of the other Party, disclose any information of the other Party, in any material form or medium that is disclosed or communicated by or on behalf of a Party to the other Party, or created, ascertained or derived by any of the Parties, whether directly or indirectly, from any such information disclosed or communicated by or on behalf of a Party, including without limitation the terms of this Agreement, and any information arising from or relating to the commercial or financial activities, arrangements or position or any of the dealings, transactions of affairs or the business of either Party, processes, instructions or any other information the other Party considers confidential and makes the Party aware that it considers to be of that nature, including the form and medium in which that information is given, the unauthorized disclosure of which would embarrass, harm or prejudice the other Party ("Confidential Information"), except in circumstances where it is legally compelled to do so. Each Party shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other Party's Confidential Information. Notwithstanding any other provision of this clause, NA-NiC may disclose the terms of this Agreement to its related companies, attorneys, auditors, insurers or accountants. Electronic mail sent to or from the address register@na-nic.com.NA shall be considered Confidential Information.
16. **CONFLICT OF INTEREST.** Should a director of NA-NiC have a competing interest, clause 15. shall apply to that person. Directors of NA-NiC have competing interests in an Accredited Registrar, details will be provided upon request.
17. **GOVERNING LAW.** Both Parties agree that this Agreement shall be governed in all respects by and construed in accordance with the laws of the Republic of Namibia. Both Parties each submit to exclusive subject matter jurisdiction, personal jurisdiction and venue of the the High Court of the Republic of Namibia, Windhoek, Namibia.
18. **ELECTRONIC TRANSACTIONS ACT.** Both Parties agree that
- 18.1. this Agreement may be transmitted and stored in the Portable Document Format ("PDF") as *data message* ("data message") in terms of the Electronic Transactions Act, 2019 ("Act No. 4 of 2019");
 - 18.2. adding a scanned signature to a data message constitutes an *advanced electronic signature* in terms of Act No. 4 of 2019 ("advanced electronic signature"), provided that the data message is accompanied by a GNU Privacy Guard ("GPG") signature file, which was created using the key(s) described by the GPG Fingerprint(s) as set out at the head hereof ("signed data message");
 - 18.3. this Agreement may be executed by both Parties by advanced electronic signature, in which case initialling or witnessing is not required; and

18.4. this Agreement constitutes an *electronic transaction* in terms of Act No. 4 of 2019 (“electronic transaction”), if it is transmitted as data message and signed with an advanced electronic signature.

19. **DOMICILIUM CITANDI ET EXECUTANDI.** Both Parties choose as domicilium citandi et executandi for purposes of this Agreement the addresses as set out at the head hereof.

20. **SURVIVAL.** Clauses 1., 5.12., 6., 9., 12., 15., 16., 17. and 18. shall survive the termination of this Agreement.

21. **NOTICES.** Any notice to be given in terms of this Agreement shall be given by signed data message to the email addresses as set out at the head hereof and shall be deemed to have been received on the day following the date of having sent same.

For NA-NIC

Eberhard Wolfgang Lisse
Managing Director
Windhoek, 2022-04-08

For the Registrar

Name:
Title:
Place:

Date:

Draft, 2022-04-08