

MEMORANDUM OF UNDERSTANDING FOR AN ENUM TRIAL IN THE UNITED STATES

PREAMBLE

This is a Memorandum of Understanding ("MoU") by and between the Country Code 1 ENUM Limited Liability Company ("ENUMLLC") and entities who wish to participate ("Participants") in a trial of Provider ENUM in the United States under the e164enum.us domain (the "U.S. Provider Trial").

This MoU reflects the common agreement of ENUMLLC and the Participants (collectively, the "Parties") and the terms according to which they will cooperate in the conduct of the U.S. Provider Trial.

RECITALS

Whereas, ENUM, as set forth in Internet Engineering Task Force (IETF) RFC 3761, specifies an open standards track protocol for the Internet community on how the DNS can be used for identifying available services connected in relation to a domain name and a corresponding E.164 number; and

Whereas, discussions are taking place internationally in preparation for the launch of Provider ENUM services in the future; and

Whereas, the aim of the U.S. Provider Trial is to test the architectural, technical, operational and user aspects related to provision of Provider ENUM capabilities; and

Whereas, it is anticipated, but not warranted or guaranteed, that the U.S. Provider Trial could provide valuable experience, data and information concerning the implementation of the ENUM protocol; and

Whereas, ENUMLLC intends, with the assistance of the Participants as outlined herein, to use the results from the U.S. Provider Trial to assist ENUMLLC in studying and planning for commercial implementation of Provider ENUM capabilities;

AGREEMENT

Now, therefore, in consideration for their mutual participation in the U.S. Provider Trial, the Parties hereby voluntarily agree to cooperate as follows in the implementation of the U.S. Provider Trial:

A. General Principals Governing U.S. Provider Trial. The Parties agree that U.S. Provider Trial will be governed by the following general principals:

1. ENUMLLC will manage and direct the U.S. Provider Trial in accordance with all applicable law(s), statute(s), regulation(s), and other applicable authority(ies).

2. Participation in the U.S. Provider Trial is open to all telecommunication service providers (TSPs) who have U.S. based NANAP numbering resources, E.164 numbers allocated to them by the NANPA or the Pooling Administrator as of the date of

signature of this MoU and are interested in gaining experience with the implementation and use of Provider ENUM capabilities to interconnect with other TSPs on an IP-to-IP basis and are willing to execute this MoU prior to commencement of the U.S. Provider Trial.

3. The U.S. Provider Trial will be implemented by using, to the greatest extent practicable, open and standardized protocols and interfaces in order to facilitate interoperability between the Parties.. The U.S. Provider Trial is intended to test the architectural, technical, and operational features of Provider ENUM capabilities, and to do so in a manner that will not harm current technical and functional operations of the PSTN or the Internet.

4. The U.S. Provider ENUM trial is completely separate from the U.S. User ENUM trial also being conducted by the LLC, and will be conducted accordingly.

5. The U.S. Provider Trial is intended to facilitate planning by ENUMLLC and other interested parties for the technical and commercial implementation of the ENUM protocol.

6. The U.S. Provider Trial is intended to further commercial implementation of the ENUM protocol in a manner that promotes market competition and consumer choice. The Parties recognize that such competition may lower costs, promote innovation, and enhance user choice and satisfaction.

7. The U.S. Provider Trial is intended to further commercial implementation of the ENUM protocol in a manner that minimizes barriers to entering any current or future market(s) for the commercial provision of ENUM-enabled services, with the goal of encouraging entry by new entities and increasing competition and growth, to the benefit of all industry players and consumers.

8. Participants must not expect any financial benefits or compensation for their participation in and support of the U.S. Provider Trial. Notwithstanding the foregoing, Participants are not precluded from using the knowledge and experience gained during the U.S. Provider Trial to foster commercial benefit for themselves, subject to the restrictions set out in this MoU.

9. The U.S. Provider Trial is intended to test procedures and models related to the ENUM protocol. It is anticipated that some of the procedures and models tested during the U.S. Provider Trial will not be successful.

B. Objectives of U.S. Provider Trial. The Parties agree that the high level objectives of the U.S. Provider Trial are as follows:

1. To determine technical and operational requirements to provisioning ENUM records at Tier 1 and Tier 2 levels;

2. To assess DNS requirements and implications in the provision of IP-based network interconnections;

3. To determine security and verification requirements for provisioning and operation of ENUM-enabled services;

4. To test from technical and user perspectives applications that employ or rely on the use of ENUM capabilities; and

5. To allow Participants to assess the economic benefits and costs of supporting ENUM services.

6. To develop information that will be relevant to assessing commercial implementation of Provider ENUM capabilities.

C. Responsibilities of Parties. The Parties accept the respective responsibilities outlined below. The Parties agree to fulfill their respective responsibilities in conducting the U.S. Provider Trial.

1. *ENUMLLC* will direct and monitor the U.S. Provider Trial.

2. *ENUMLLC* will arrange for provision of Tier 1 registry services for the duration of the U.S. Provider Trial.

3. *ENUMLLC* will appoint a Trial Director who will assist *ENUMLLC* in overseeing the conduct of the U.S. Provider Trial. *ENUMLLC* will bear the costs of the Trial Director's work.

4. *ENUMLLC* will determine the length of the U.S. Provider Trial. The U.S. Provider Trial shall comprise three phases: Phase 1 - Registry Infrastructure; Phase 2 - Provisioning; Phase 3 - Network Interconnection.

5. *ENUMLLC*, with assistance and input from Participants, will develop a Trial Plan that outlines the procedures to be followed in conducting each phase the U.S. Provider Trial. The Trial Plan will identify the data and documentation to be generated in conjunction with or as a result of the testing procedures (the "Trial Materials"). It is anticipated that the Trial Materials will include all documents, data, technical specifications and models, and other specifications and models, and other contributions or outputs generated during the U.S. Provider Trial. Trial Materials will not include Participants' confidential and/or proprietary business information, personal user data of any kind, or other proprietary information used or generated during the U.S. Provider Trial.

6. *Participants* will comply with the Trial Plan, and will make all Trial Materials available to one another and to *ENUMLLC* for the purpose of drafting and finalizing a report of the U.S. Provider Trial. Participants may also engage in other testing activities, provided that such activities do not in any way disrupt the Trial Plan or alter the results of the Trial Plan. Participants will not be required to account to one another or to *ENUMLLC* for the results of such additional testing activities.

7. *Participants* will comply with the number administration and use procedures developed by *ENUMLLC* for the U.S. Provider Trial

8. Where feasible, the *Parties* will make decisions regarding the U.S. Provider Trial by consensus. When, in the judgment of the *Trial Director*, consensus regarding one or more decisions cannot be reached in a timely fashion, the Trial Director will refer the decision(s) to *ENUMLLC* for final resolution.

9. The *Parties* will act in a transparent, non-arbitrary and reasonable manner in the conduct of the U.S. Provider Trial.

10. Each *Participant* will designate one primary and up to two alternate individual representatives who will sit on a Provider ENUM Trial Participants' Advisory Committee and will serve as the point of contact between the Participant, and ENUMLLC, the Trial Director, and all other Participants in the U.S. Provider Trial. The Provider ENUM Trial Participants' Advisory Committee will meet weekly by conference call. Communications or notice of any kind directed to the Participant's representative will be considered to have been directed to the Participant. In the event that the Participant's representative is unavailable, the Participant will be solely responsible for arranging for an alternate representative to attend Provider ENUM Trial Participants' Advisory Committee meetings and to receive communications from ENUMLLC, the Trial Director, and other Participants, and for advising the Trial Director and other Participants of such arrangements.

11. *Participants* will each bear all of their own costs and expenses of participating in the Trial. Neither compensation nor financial benefits are foreseen for any Participant in the conduct of the U.S. Provider Trial.

12. *Participants* will cooperate with the Trial Director, with ENUMLLC, and with one another in the conduct of the U.S. Provider Trial and in the drafting of a formal written assessment of the U.S. Provider Trial.

13. *Participants* commit to remain actively involved for the full duration of the U.S. Provider Trial and the time required to draft a report of the U.S. Provider Trial, subject to the approval of ENUMLLC, and will use reasonable best efforts to ensure the success of the U.S. Provider Trial. Participants agree that sustained active involvement by each Participant, which includes but is not limited to regular attendance at meetings of Participants and contribution to preparing a formal assessment of the U.S. Provider Trial, are prerequisites to such success.

14. *Participants* will ensure that none of the numbers used in the trial are numbers assigned to end user customers. *Participants* will comply with all trial rules regarding the types of numbers (e.g., service provider participant lab, "official", or employee office numbers) permitted to be used in the trial. *Participants* will abide by all limits on the quantity of numbers that each Participant may populate in the Tier 1.

15. The *Parties* will endeavor to recruit a sufficient number of Participants to ensure the success of the U.S. Provider Trial. *ENUMLLC* may permit additional Participants to join the U.S. Provider Trial after the trial commences if, in the sole discretion of ENUMLLC, adding a new Participant will be reasonably feasible and useful to the U.S. Provider Trial as a whole. No prospective participant will be permitted to join

the U.S. Provider Trial at any time unless that prospective participant first executes this MoU.

16. *Participants* will use reasonable best efforts to ensure the continuity of the U.S. Provider Trial. In the event that any Participant is prevented or prohibited from completing the U.S. Provider Trial for any reason, that Participant will, at the direction of *ENUMLLC*, transfer all Trial Materials in that Participant's possession to *ENUMLLC*, another Participant, or other Participants, designated by *ENUMLLC*.

17. At the completion of the U.S. Provider Trial, *Participants*, under the direction of the *Trial Director*, will produce a formal written assessment for the approval of *ENUMLLC*. Each Participant will contribute to the drafting of the assessment, and each Participant will be required to contribute Trial Materials to the assessment pursuant to the Trial Plan.

18. *ENUMLLC* will finalize the written assessment of the results of the U.S. Provider Trial. Each *Participant* will receive a copy of the assessment. In the sole discretion of *ENUMLLC*, the written assessment may also be distributed to other parties. The final assessment will contain an express waiver of any representations or warranties regarding the accuracy, completeness, or fitness for particular purposes of the contents.

D. Legal Considerations

1. Participation in the U.S. Provider Trial confers neither membership nor rights to membership of any kind in *ENUMLLC*.

2. It is understood that the U.S. Provider Trial is intended to be a process for testing and experimentation, the results of which are unknown and cannot be guaranteed. Consequently, **ENUMLLC MAKES NO REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED OF ANY KIND WHATSOEVER REGARDING THE U.S. PROVIDER TRIAL, INCLUDING BUT NOT LIMITED TO THE ACCURACY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF ANY TRIAL PLANS, TRIAL MATERIALS, OR REPORTS OF THE U.S. PROVIDER TRIAL. PARTICIPANTS AGREE THAT ENUMLLC SHALL NOT BE LIABLE FOR ANY COST, LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES) OR EXPENSE OF ANY KIND CAUSED DIRECTLY OR INDIRECTLY BY PARTICIPANT'S INVOLVEMENT IN THE U.S. PROVIDER TRIAL. PARTICIPANT'S INVOLVEMENT IN THE U.S. PROVIDER TRIAL IS UNDERTAKEN AT THE PARTICIPANT'S SOLE RISK.**

PARTICIPANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER REGARDING ITS PARTICIPATION IN THE U.S. PROVIDER TRIAL, INCLUDING BUT NOT LIMITED TO THE ACCURACY, COMPLETENESS, OR FITNESS FOR ANY PURPOSE OF ANY TRIAL MATERIALS. PARTICIPANT SHALL NOT BE LIABLE TO ENUMLLC OR TO ANY OTHER PARTICIPANT FOR ANY COST, LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES) OR EXPENSE OF ANY KIND CAUSED DIRECTLY OR

INDIRECTLY BY PARTICIPANT'S INVOLVEMENT IN THE U.S. PROVIDER TRIAL.

3. The Trial Plan, Trial Materials and draft and final assessments of the U.S. Provider Trial, will be the sole property of ENUMLLC such that ENUMLLC shall be the author thereof and shall have all copyright rights and other rights or ownership arising from authorship, including, without limitation, all rights to publish, distribute, copy, adapt, modify or alter such materials, including adaptation of such materials into different formats for different contexts (e.g. CD-Rom, portable document format, etc.)

4. The U.S. Provider Trial will be conducted in accordance with applicable data privacy and protection laws.

5. It is the clear and unequivocal policy of ENUMLLC and the Participants, that the U.S. Provider Trial will comply in all respects with the relevant competition and antitrust rules.

6. ENUMLLC and the Participants will not take part in any practice that would have the object or effect of restricting competition in the communications or DNS industries, nor will they provide a forum to promote anti-competitive conduct. Participants will not become involved in the competitive business decisions of one another by cooperating in the U.S. Provider Trial.

7. U.S. Provider Trial activities shall not involve discussions or agreements (including oral or informal agreements, decisions, and recommendations, whether binding or not) relating to restrictive practices, including:

- Participants shall not agree between themselves pricing and other terms and conditions of sale, including common prices and pricing policy, resale prices, price changes, discounts, rebates, price elements, profit margins, recommended or target prices, and credit terms. Nor shall they indirectly restrict price competition by rigged bidding.
- Participants shall not agree to share markets between themselves, in particular by the division of territories or customers.
- Participants shall not exchange individualized up-to-date commercial information, particularly with regard to prices, discounts, costs, investments, output or sales, capacities, customers or market shares.

8. Any Participant may terminate its participation in this MoU and the U.S. Provider Trial upon thirty (30) days' written notice to ENUMLLC.

9. At the close of the U.S. Provider Trial, each Participant may retain Trial Materials in its possession, subject to the restrictions of this Paragraph. In the event that a Participant elects to terminate its participation before the close of the U.S. Provider Trial, that Participant may also retain Trial Materials in its possession, subject to the restrictions of this Paragraph.

- Participant agrees to maintain the confidentiality of the Trial Materials until such time, if any, that ENUMLLC is prepared to release the Trial Materials publicly,
- Participant agrees that until such time, if any, that ENUMLLC releases the Trial Materials publicly, Participant may not, without prior written approval from ENUMLLC, distribute the Trial Materials to individuals or entities other than Participant,
- Participant agrees that until such time, if any, that ENUMLLC releases the Trial Materials publicly, Participant may not, without prior written approval from ENUMLLC, use the Trial Materials for any purpose other than Participant's internal use, and
- Notwithstanding the foregoing, Participant agrees to comply with any instructions from ENUMLLC regarding data destruction that ENUMLLC deems necessary to ensure compliance with data privacy and protection laws. Participant further agrees to certify the completion of any such destruction to ENUMLLC.

10. This MoU may be amended, modified, or extended by the ENUM LLC upon 30-days written notice, or sooner upon the written agreement of all Parties.

11. Disputes arising under or resulting from this MoU shall be governed by Delaware law, without regard to conflict of laws principles. The parties irrevocably consent to exclusive jurisdiction of the state and federal courts in the State of Delaware. Process shall be deemed sufficient if served on either party by courier service or recognized mail delivery service (e.g. U.S. Mail), postage prepaid, certified or registered, return receipt requested. The parties hereby waive any objection as to the sufficiency of the method of service, if service is made as set forth herein.

12. Notwithstanding anything to the contrary contained herein, ENUMLLC reserves the right to terminate or suspend the participation of any TSP if ENUMLLC, at its sole discretion, determines a) that the TSP is failing or has failed to comply with any term of this MoU, and/or b) that such termination or suspension is in the best interests of the U.S. Provider Trial as a whole. A terminated party must return all Trial Materials to ENUMLLC.

SEEN AND AGREED:

COUNTRY CODE 1 ENUM LLC

By (signature): _____

Name (print): _____

Title: _____

Date: _____

PARTICIPANT NAME: _____

By (signature): _____

Name (print): _____

Title: _____

Date: _____

Address: _____

PRIMARY PARTICIPANT REPRESENTATIVE

Name: _____

Title: _____

Telephone: _____

Fax: _____

Electronic mail: _____

ALTERNATE REPRESENTATIVE #1

Name: _____

Title: _____

Telephone: _____

Fax: _____

Electronic mail: _____

ALTERNATE REPRESENTATIVE #2

Name: _____

Title: _____

Telephone: _____

Fax: _____

Electronic mail: _____