



**MEMORANDUM OF UNDERSTANDING  
(MOU)**

**BY AND BETWEEN**

**SMART AFRICA SECRETARIAT**

**AND**

**AFRICAN NETWORK INFORMATION  
CENTRE LTD**

**SEPTEMBER 2020**

This non-binding Memorandum of Understanding ("MOU") is entered into at Kigali, Rwanda effective as of September, 2020, by and between:

Smart Africa Secretariat (hereinafter referred to as "**Secretariat**"), an organization duly established and organized under the laws of Rwanda, with registered office situated at 9<sup>th</sup> floor, Peace Plaza Building, KN4 AV10, Kigali, Rwanda (the "**Secretariat**") and

African Network Information Centre Ltd (hereinafter referred to as "**AFRINIC**") , a not-for-profit entity, with registered office situated at 11th floor, Standard Chartered Tower, Cybercity, Ebene, Mauritius.

Hereinafter Secretariat and AFRINIC may each be referred to as a "party" and, collectively, the "parties" as the context requires.

**WHEREAS**, Secretariat has defined its Smart Africa agenda and flagship projects for the various Member States;

**WHEREAS**, Secretariat actively encourages and supports private initiatives and investments in the technology and communications sectors via the Smart Africa Alliance Platform;

**WHEREAS**, AFRINIC is the Regional Internet Registry (RIR) for Africa and is responsible for the distribution and management of Internet number resources - IP address space (IPv4 and IPv6) and Autonomous System Numbers (ASNs) - in its service region, which includes Africa and the Indian Ocean region. AFRINIC's mission is to provide professional and efficient distribution of Internet number resources to the African Internet community, to support Internet technology usage and development across the continent and to strengthen Internet self-governance in Africa through a bottom-up, multi-stakeholder [Policy Development Process](#).

**WHEREAS**, the Parties wish to collaborate in the area of information, communication and technology areas to foster the Smart Africa Alliance goals of creating a Smart Africa; and

**WHEREAS**, the Parties wish to enter into this Memorandum of Understanding (MOU) to clarify the roles and responsibilities of the Parties with respect to the activities identified.

**NOW, THEREFORE**, the Parties agree as follows:

## **I. PURPOSE**

Secretariat and AFRINIC wish to enter into this Memorandum of Understanding to collaborate on the development of a Master Plan (Blueprint) to promote Internet governance and broadband deployment on the African continent (the "Purpose"). In aid of the Purpose, secretariat has identified an interest in working with AFRINIC in activities focused on supporting the development of broadband deployment within all parts of the continent and promote internet governance to fully take advantage of the benefits offered by the Internet.

## II. ROLES AND RESPONSIBILITIES

In aid of the Purpose, AFRINIC and Smart Africa will engage in activities, such as:

- Promoting Internet governance in Africa;
- Support secretariat in the development of a blueprint on Internet governance for Africa;
- Participating in working groups and contributing the appropriate expertise towards broadband and internet initiatives with the objective of improving broadband penetration in Africa;
- Capacity building of decision-makers in Internet governance and related topics;
- Promoting AFRINIC IP academy courses through the Smart Africa Digital Academy (SADA);
- Any other activities, consistent with the Purpose, that will be jointly carried out by the Parties.

## III. TERM AND TERMINATION

This MOU shall come into force on the date of signature by both Parties and continue in force until the earlier of either:

- a) the completion of Thirty-Six (36) months from the date of its execution by the Parties;
- b) the signing or execution by the Parties of a Memorandum Of Agreement ("MOA");
- c) termination by either party upon thirty (30) days written notice; or
- d) termination by a party immediately in writing due to the breach of this MOU by the other party.

Notwithstanding the above, either Party may terminate this MOU upon thirty (30) days written notice to the other with no further obligations of either Party in the event of a material failure by the other Party to work towards the fulfilment of its obligations under this MOU.

In the event of termination, the Parties shall take reasonable and appropriate steps to ensure that such termination is not prejudicial to any activities in progress within the framework of this MoU.

All such obligations and terms of this MOU that are required to survive the expiration or early termination of this MOU shall survive such event including, but not limited to, those described in Sections IV, V, VI, VII, and IX hereof.

## IV. INTELLECTUAL PROPERTY RIGHTS

Each party or its licensor shall continue to own the intellectual property developed by it prior to or independently of this MOU.

By entering into this MOU, the parties undertake:



- (a) Not to use each other's intellectual property without the prior express written consent of the other,
- (b) To ensure the confidentiality of such intellectual property of the other within its respective organizations, and
- (c) Not to use each other's intellectual property other than for the purpose of this MOU.

The parties agree that neither of them shall gain by virtue of this MOU any rights of ownership or any other interest, right, or title to copyrights, patents, trade secrets, trade marks, or any other intellectual property rights owned by the other party. Except as otherwise explicitly agreed between the parties, any and all works developed in the course of performing obligations pursuant to this MOU and all new inventions, innovations, or ideas developed by a party in the course of performance of its activities under this MOU will belong to that party who develops the same. To the extent such intellectual property is created, the owning party shall grant a non-exclusive, worldwide, royalty-free license to the other party for the use of the intellectual property solely in connection with the activities under this MOU. If the parties undertake any joint development in the course of providing services under this MOU, any such joint development will be governed by a separate agreement to be negotiated in good faith by the parties prior to the commencement of any joint development efforts.

## **V. CONFIDENTIALITY**

During the term of this MOU, each party may disclose to the other its Confidential Information. Confidential Information shall mean all information marked "Confidential" or under any similar legend indicating the confidentiality of the information or information which by its nature is confidential, except such information as is (a) previously known to the receiving party at the time of disclosure; or (b) independently developed by the receiving party without reference to Confidential Information of the disclosing party; (c) disclosed to the receiving party by a third party without an obligation of confidentiality; (d) already in or subsequently comes into the public domain (other than as a result of a breach of this MOU); or (e) required to be disclosed by the receiving party by law, regulation, court order or other legal process.

The receiving party shall hold such Confidential Information in strict confidence for the disclosing party and shall not use it except in furtherance of the relationship set forth in this MOU, or except as it may be authorized by the disclosing party in writing. The receiving party shall further be responsible for the compliance of the foregoing by its employees or agents.

## **VI. REPRESENTATIONS AND WARRANTIES**

Each party represents and warrants that such party has all necessary corporate power and authority, respectively, to enter into this MOU and to perform its obligations hereunder.

Each party warrants to the other party that all materials, data, information and other assistance provided by it shall not, to the best of its knowledge, infringe third party intellectual property rights and agrees to hold the other party fully indemnified and harmless and at all times keep the other party indemnified against any loss, damages, costs and expenses including



attorney's fees, which may be incurred as a result of any action or claim that may be made or initiated against it as result of any action on the part of the first party.

## **VII. PUBLICITY**

Other than as provided herein, neither party may use the name, logo, or any other trademark or service marks of the other party in any advertising, signage, marketing materials, brochures, or any other materials in any medium without the other party's prior written consent. Any such permitted use shall be only pursuant to the guidelines or instructions provided by the other party.

## **VIII. GENERAL**

The parties understand that nothing herein shall be construed as a binding contract between the parties until such time as duly authorized representatives of the parties hereto execute a formal written agreement ("Definitive Agreement") with respect to the subject matter of this MOU setting out therein the mutually agreed detailed terms and conditions applicable to the various activities to be undertaken respectively under each of the Definitive Agreement(s) including details of the engagement, any additional roles/responsibilities and specific work that needs to be performed by each of the parties. The parties further understand that (i) the activities intended by this MOU may not be successfully completed; and/or (ii) the results achieved may not be as anticipated. Except for breach of confidentiality obligations and intellectual property right infringement indemnification obligations, neither party shall be liable for any indirect, punitive, special, incidental or consequential damages arising out of or in connection with this MOU, whether for breach of this MOU or in torts, including loss of business, data, revenue, profits, or for any third party claims against the other whatsoever. Further, Secretariat and AFRINIC acknowledge and agree that this MOU is a non-exclusive engagement and except as specifically agreed in a Definitive Agreement with respect to an activity, nothing contained herein shall be construed as preventing or restricting either party from pursuing any opportunity with other entities without involving the other party or to enter into similar alliance arrangements with other entities.

This MOU shall not be construed to be an agency or a partnership or joint venture or an employment relationship whether for tax or for any other purpose. Neither party shall be entitled to bind the other party with any third party by its actions, unless it has specifically obtained the prior written consent of such other party to do so.

Each party is an independent contractor, and no provision of this MOU grants either party any express or implied right of authority to assume or create any obligations or responsibility on behalf of or in the name of the other party, or bind the other party in any manner or thing whatsoever. This MOU is not a commitment of financial resources. Any commitment by a party to pay fees or other amounts to the other party must be approved in writing, by the paying party in advance. Except as may be agreed by the parties in an applicable Definitive Agreement(s), each party will be responsible for all expenses incurred by such party in connection with negotiation of this MOU and any promotion, marketing or other activities under this MOU. Each party shall be liable to pay any tax attributable to it.

Each party warrants to the other party that in performing their duties required under this MOU, they will comply with applicable laws and shall take no action which constitutes a violation of applicable law and which would subject the other party to penalties under applicable law.

Neither party shall assign or transfer this MOU without the prior written consent of the other party.

The laws of the Republic of Rwanda shall govern this MOU. Any dispute between the parties arising in connection with the performance of this MOU shall be resolved amicably to the exclusion of the court.

Each party shall be responsible for its own costs in relation to all matters arising out of this MOU.

Any delay, neglect or forbearance by either party in enforcing the terms of this MOU against the other party shall not be or deemed to be a waiver, nor prejudice any rights of such party under this MOU.

This MOU supersedes all prior oral or written communication, discussions and representations communicated between the parties hereto in respect of the subject matter of this MOU. Any modification to this MOU shall only be made by way of a written document duly executed by representatives of both parties hereto.

#### **IX. LIABILITY**

Under no circumstances shall either party be liable to the other party under this MOU for any loss of production, loss of use, loss of business, loss of data, loss of access or revenue or any special indirect, incidental or consequential damage of any nature, whether or not the possibility of such damages could have been reasonably foreseen, except as otherwise stated herein.

#### **X. COMMUNICATIONS BETWEEN THE PARTIES**

Any notice under this MOU must be in writing and delivered by hand, by registered mail, return receipt requested, or by recognized courier to the other party at the registered office or as may be substituted by the notice. If any notice is sent by mail or courier, notice will be effective on the date of receipt.

To Smart Africa Secretariat:

Physical Address: 9<sup>th</sup> Floor, Bloc C, M. Peace Plaza Building, 10 KN 4 Avenue, Kigali  
Email: [info@smartafrica.org](mailto:info@smartafrica.org) (CC: [dq@smartafrica.org](mailto:dq@smartafrica.org))  
Contact Person : Lacina Koné  
Director General of Smart Africa  
Mobile Number : +250788300581/+250738300581

To AFRINIC:

Physical Address: 11<sup>th</sup> Floor, Standard Chartered Tower, Cybercity, Ebèn  
Email: [ceo@afarinic.net](mailto:ceo@afarinic.net)  
Contact Person: Eddy Kayihura,  
Chief Executive Officer  
Mobile Number: +230 403 51 00



## **XI. COUNTERPART**

This MOU may be executed in one or more counterparts, each of which will be deemed to be an original of this MOU and all of which, when taken together, will be deemed to constitute one and the same agreement. A signed copy of this MOU delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of the original signed agreement.

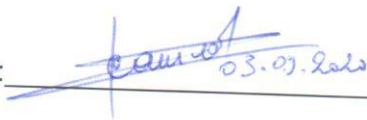
**IN WITNESS WHEREOF**, the parties hereto have executed this MOU on the date, month and year, hereinabove written.

### **WITNESSES:**

#### **For AFRINIC**

Name: Eddy Kayihura  
Designation: Chief Executive Officer

Signature: \_\_\_\_\_

  
03.07.2020

#### **For Smart Africa Secretariat**

Name: Lacina Koné  
Designation: Director General

Signature: \_\_\_\_\_



## Annex 1: Proposed Action Plan

| MoU Areas of Collaboration       | Proposed Actions                                                                                                                                                                                                                  | Specific Outcomes                                                                     | Estimated Budget | Source of Budget     |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|------------------|----------------------|
| Internet Governance              | Develop a concept on Internet Governance for Africa together with Burkina Faso                                                                                                                                                    | Concept Note/White Paper                                                              | TBD              | AFRINIC              |
|                                  | Develop a blueprint on how Africa will migrate from IPv4 to IPv6 and general internet governance                                                                                                                                  | Blueprint                                                                             | TBD              | AFRINIC              |
|                                  | Participate in the data markets and economy project by Smart Africa                                                                                                                                                               | Knowledge Sharing                                                                     | N/A              | Smart Africa         |
| Broadband & Internet Initiatives | Afrinic will participate in a working group and stakeholders discussions on Intra-Africa Connectivity Project; Data Centre & Cloud for Africa Project; SMART Broadband 2025 Strategy Project.                                     | Increases broadband and internet penetration in Africa                                | N/A              | N/A                  |
| Capacity Building Initiatives    | Afrinic will support and facilitate Capacity Building workshop for Decision-Makers on Internet Governance or related topics                                                                                                       | Capacity Building, Skills Development and creation of a new economy for Member States | TBD              | Smart Africa/Afrinic |
|                                  | Smart Africa will promote Afrinic IP Academy courses through the Smart Africa Digital Academy                                                                                                                                     |                                                                                       |                  |                      |
| Mutual Support                   | Encourage Smart Africa and its Member States to participate in the enlargement of the Afrinic community and use these services and advice whenever possible to take advantage of the trainings provided by AFRINIC under this MoU |                                                                                       |                  |                      |
|                                  | Any activity that both parties may deem necessary and agree upon                                                                                                                                                                  | Knowledge Sharing                                                                     | N/A              | N/A                  |

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