



AFRICAN NETWORK INFORMATION CENTER SERVICE AGREEMENT

This SERVICE AGREEMENT (the "Agreement") is made by and between the **African Network Information Center Ltd. ("AfrinIC")**, a not-for-profit organization based in Mauritius,

and

("The Applicant").

1 Preamble

ICANN, the Internet Corporation for Assigned Names and Numbers, has been contracted by the Department of Commerce of the United States to fulfill the function of the IANA (Internet Assigned Numbers Authority). The IANA function is defined to ensure a coordinated and transparent management of Internet Number parameters so as to ensure a seamless operation of the Internet and to continuously strive for the enhancement of its resilience, capacity and performance.

In furtherance of the aforesaid mandate, ICANN has accredited five Regional Internet Registries (RIRs) for a comprehensive management of Internet resources with a view to ensuring the transparent, economic, equitable and efficient access to these Internet resources. IANA allocates number resources to each of the five RIRs for further sub-allocation/assignment to members in their respective service region¹.

¹ See <http://www.iana.org>, <http://www.nro.net> and <http://www.icann.org> for further information.

(a) **AfriNIC**, the African Network Information Centre, is the Regional Internet registry for Africa and the Indian Ocean region and is:

- (i) The entity accredited by ICANN under the ICP-2 policy 2 (Resolution 05.25 of May 2005) to assign/allocate Internet number resources within the region
- (ii) Requested to facilitate and maintain a meaningful bottom up policy development process that allows the community at large to define policies and rules which would govern and regulate the allocation and assignment of number resources to its members as defined in its Constitution,
- (iii) Bestowed with a non-profit making mandate,
- (iv) A non-commercial entity
- (v) Empowered to ensure equitable, economic and efficient assignment/allocation of number resources to its members according to adopted number resource management policies.
- (vi) Empowered to fulfill a stewardship role for those number resources allocated to it, for the use of the African Internet community as constituted by its members collectively
- (vii) Responsible for the registration, administration and conservation of the number resources.
- (viii) Governed by a Board elected by the members at large in terms of the process laid down in its Constitution and its election process.

(b) **AfriNIC**, in the light of the foregoing, reserves itself the right to amend this agreement partially or otherwise where it is so mandated by its Board after giving notice to its members.

Such amendment(s) where effected, will take effect after the lapse of 30 days following its/their posting on its website and to the members mailing list.

In the event of an express refusal to be bound by the amendment(s), delivery of “services” will be stopped forthwith.

Under this agreement,

- (i) “services” may include, without limitation, an allocation/assignment of IP address space, assignment of autonomous system numbers (ASNs), reverse name delegation on network blocks, maintenance of network records and administration of IP address space.
- (ii) “numbering resources” are defined as the allocation/assignment of IP address space and assignment of ASNs.

2 MEMBERSHIP APPLICATION

Applicants shall:

- (a) Comply with the application process as defined and from time to time updated on AfriNIC’s website (www.afrinic.net).
- (b) Provide accurate and complete information when applying for services. Incomplete applications will not be accepted and the applicant will be notified.
- (c) Clearly indicate the service(s) for which the application is being made
- (d) Where the original information submitted has been the subject of any change, same has to be notified promptly, accurately and fully to AfriNIC by an authoritative and valid contact.
- (e) Promptly, accurately and completely reply to any enquiry made by AfriNIC during the application or within the currency of the agreement.
- (f) Provide the relevant information regarding the membership type as indicated online on the AfriNIC web site and reflected in the membership form.
- (g) Provide and ensure accurate contact information is stored in AfriNIC Databases (WHOIS and MyAfriNIC).

3 EVALUATION & ACCEPTANCE

Applicants acknowledge that the evaluation process of all applications is subject to:

- (a) AfriNIC’s sole and exclusive discretion but in line with valid resource management policies approved by members at large

and the Internet community in general through the region's valid Policy Development Process.

- (b) Compliance with AfriNIC's internal business processes and policies.

The membership process should be completed within 60 days of the receipt of an application deemed complete by AfriNIC.

Notification of acceptance of an application will be effected in writing and the date of the start of the supply of service would therein be indicated.

Where after the lapse of 60 days after the submission of an application, no communication has been received by the applicant; it is deemed that the application has been abandoned.

4 CONDITIONS OF SERVICE

- (a) Where a member, receiving service under an existing agreement applies for a change or a variation of the type of such service which AfriNIC has been supplying to it, evaluation of such a "change request" will be effected in terms of the provisions of clause **(2)** of the present agreement.
- (b) Cooperation:
 - (i) An applicant receiving service under an agreement is at all times bound to provide to AfriNIC such information, assistance and cooperation as may be reasonably required by the latter in the provision of the service.
 - (ii) Such request for information may also be made where AfriNIC is investigating (reviewing) the applicant's utilization of the numbering resources already assigned to it.
 - (iii) Failure by the applicant, to comply with a request made at (i) above may:
 - (1) entail revocation or withholding of the service supplied by AfriNIC.
 - (2) be taken into account by AfriNIC in its evaluation for further and future assignment or allocation of numbering resources.
 - (3) lead to the closure of an LIR and termination of the agreement by AfriNIC.

(c) **Applicant's use of the service**

The Applicant hereby irrevocably:

- (i) Commits itself to using the services solely for the purpose for which it was requested
- (ii) Commits itself to using the services in full and unreserved compliance with AfriNIC's policies and mandate
 - (1) without knowingly infringing the rights and/or interests of other users of such services
 - (2) within the limits of applicable laws and/or regulations of the jurisdiction in which it operates
- (iii) Further acknowledges that AfriNIC may, at its own discretion and for good cause and common interest of the stability of the Internet, investigate or cause to be investigated, the Applicant's use of the services by the appropriate and competent authority(ies)
- (iv) Hereby binds itself to
 - (1) Notify AfriNIC whenever its circumstances so change that it is no longer in need of the internet number resources supplied or being supplied to it under a Registration Service Agreement
 - (2) Surrender to AfriNIC within 15 days of the service of the notice at (iv)(1) above the Internet number resources supplied or being supplied to it under a Registration Service Agreement.
 - (3) Update any data submitted to AfriNIC in the context of:
 - a. an application for a Registration Service Agreement or
 - b. the renewal of any Registration Service Agreement

Whenever such data have been the subject of amendment, change or have become outdated.

- (d) AfriNIC will comply with all applicable data protection and privacy laws of the Republic of Mauritius in its handling of data and information submitted to it by the Applicant in furtherance of an application for services and use thereof.

5 Fees and Payment

- (a) **Fee Schedule:** As a condition precedent to AfriNIC's provision of the Services, The Applicant shall pay the appropriate membership fees in accordance with the schedule of fees (the "Fee Schedule") as currently published on the Web Site.
- (b) Refunds. All fees paid by The Applicant to AfriNIC are non-refundable.
- (c) **Setup & Membership Fees:** The Applicant shall pay AfriNIC the applicable Setup and Membership fees as set forth in the Fee Schedule, prior to AfriNIC providing The Applicant with its requested allocation/assignment of numbering resources. The Applicant shall also pay the applicable renewal Membership fees, if any, as set forth in the Fee Schedule, within thirty (30) days after AfriNIC has invoiced the Applicant in the regular billing period as set in the Fee Schedule. If, for any reason, The Applicant does not pay any applicable renewal Membership fee, AfriNIC shall have the right to: (i) revoke the numbering resources previously allocated and/or previously assigned or (ii) terminate this Agreement.
- (d) AfriNIC will have the right from time to time to change the amount of the fees or institute new fees relating to the services but such changes will only take effect upon the renewal of the Services by the Applicant.
- (e) AfriNIC commits to publish fee schedule changes at least 30 days before its application.
- (f) AfriNIC shall apply a late penalty charge of a maximum of 15% of the applicable renewal membership fee in the event that such fee remains unpaid thirty (30) days after the invoice date.

6 Acknowledgements

The Applicant

- (a) Acknowledges that it has read, understood and taken cognizance of all its terms and conditions and further binds itself to strictly and unreservedly comply therewith.
- (b) Having taken cognizance of the preamble of the present agreement, fully and unreservedly subscribe thereto with the clear understanding and acceptance of AfriNIC's critical role in the

stability and the continued evolution of the Internet as agreed by its members and the community in terms of policies adopted by them.

- (c) Acknowledges that it will at all times comply with the policies developed and approved by the members of AfriNIC, in Public Policy Meetings, relating to the use of services applied to:
 - (i) IP Address Space Numbering Resources (IPv4 and IPv6)
 - (ii) ASN resources
 - (iii) Reverse DNS management
 - (iv) Other related services as agreed by the community
- (d) Acknowledges that for the purpose of this agreement and in terms of policies set up, implemented and enforced by all RIRs, :
 - (i) the numbering resources, subject matter of the present agreement, are not property (real, personal or intellectual)
 - (ii) no proprietary right is being transferred in virtue of this agreement to it
 - (iii) it is bestowed with an exclusive right of use of those numbering resources within the ambit of the “need” which it has justified in its application and for no other purpose during the currency of the present agreement.
 - (iv) transfer of the number resources is strictly prohibited

7 Representations and Warranties

The parties represent and warrant that

- (a) It has full power and authority to enter into the present agreement and perform all the obligations listed down herein.
 - (i) It shall perform its obligations in compliance with all legal provisions [regulations, directives, legislations] existing in the jurisdiction wherein it operates as well under the laws to which the agreement is subjected.

- (ii) The present agreement constitutes a legal, valid and binding obligation on it and that same shall be enforced in accordance with its terms and conditions.

8 Bankruptcy

- (a) Where any party under the present agreement
 - (i) Initiates legal proceedings under any insolvency or bankruptcy law or
 - (ii) has an insolvency/bankruptcy petition filed against it or
 - (iii) makes a general assignment for the benefit of its creditors
 - (iv) has a receiver appointed by the court for the management of its assets
 - (v) has a trustee take possession of all or substantially all of its assets
 - (vi) ceases or intends to cease its normal business operations,It shall give notice thereof to the other party forthwith.
- (b) Where such notice is received by AfriNIC or where it comes to learn otherwise of any of the events enumerated at **8(a)(i) to 8(a)(vi)** above, it shall take all appropriate actions which it shall be advised to take
 - (i) in order to preserve its rights under this agreement and any relevant policies and
 - (ii) to ensure that the services it provides to its members is neither interrupted nor suffers from any technical impairment.
- (c) In furtherance of its action under **8(b)(ii)** above, AfriNIC may
 - (i) revoke the numbering resources assigned to the other party under the present agreement
 - (ii) terminate the present agreement
 - (iii) take any other actions which it may be advised
- (d) Where the other party does not voluntarily agree to AfriNIC's intervention in those proceedings enumerated at **8(a)(i) to 8(a)(vi)** above, AfriNIC shall apply to the competent Court for leave to intervene therein.

9 Indemnification.

- (a) The Applicant shall indemnify, defend and hold AfriNIC and any of its agents (the indemnified parties) against any damage, loss, cost or expense (including without limitation, attorneys' fees and costs) incurred in connection with any third-party claim, demand or action ("claim") brought or asserted against any of the indemnified parties:
 - (i) alleging facts or circumstances that would constitute a breach of any provision of this Agreement by the Applicant or
 - (ii) arising from, relating to, or connected with the Applicant's use of the Services.
- (b) If the Applicant is obliged to provide indemnification pursuant to this provision, AfriNIC may, in its sole discretion, intervene in the disposition of any claim at the Applicant's sole cost and expense.
- (c) Without limiting the foregoing, the Applicant may not, in so far as the matter relates to a claim under this clause, settle, compromise or in any other manner dispose of any claim without the consent of AfriNIC.

10 Limitation of liability

It is hereby recognized that AfriNIC shall provide the services applied for under the present agreement in terms of the "best effort" criteria and would consequently bear an obligation of means only. Consequently AfriNIC shall not be liable for:

- (a) any interruption in the supply of services
- (b) any error, inaccuracies or defects occurring in the provision of services
- (c) such services which do not meet the requirement of the Applicant
- (d) such services provided but which do not meet the technical configuration of the Applicant's operations.
- (e) any damage of whatever nature and magnitude caused to the Applicant or any third party

Except where it is conclusively established that AfriNIC did not use the appropriate means for the supply of the services applied for in terms of the particulars supplied by the Applicant.

For all intents and purposes, AfriNIC's and the Applicant's liability will be the greater of

- (f) The amount paid by the Applicant to AfriNIC during the six months immediately preceding the event giving rise to such liability
- (g) Or 100 USD.

11 Term

- (a) *Except for first applications, all agreements shall be*
 - (i) of one calendar year duration starting from January 1st and ending on December 31st.
 - (ii) Renewed subject to clause 11(c)(i) and 11(c)(ii)
- (b) First applications entered into between January and December shall
 - (i) have a duration equivalent to the number of months running up to December of the same year.
 - (ii) be renewed on the January 1st of the following year.
- (c) Where a member receiving service from AfriNIC, intends to renew the agreement it has with the latter, it shall give written notice to AfriNIC to that effect. The notice will be effective only if
 - (i) it is given at least 45 days before the expiry date of the agreement which is still in currency.
 - (ii) It is accompanied by the relevant fees.
- (d) In the event that
 - (i) no notice is received in terms of the conditions laid down at 11(c)(i) and 11(c)(ii) above

and
 - (ii) the agreement has not been earlier terminated expressly in terms of the present agreement,

AfriNIC will cause the said agreement to be automatically renewed for an additional year on the terms and conditions prevailing or which would prevail for that additional year.

(e) Termination by AfriNIC

- (i) AfriNIC shall have the right to terminate this Agreement upon giving the Applicant written notice of its intention and inviting the latter to show cause why such action shall not be taken against it or to take remedial measures to cure any breach particularized in the said notice.
- (ii) The Applicant will have a period of 30 days during which it shall communicate the grounds on which it relies to prevent the termination of this agreement by AfriNIC.
- (iii) Where AfriNIC's notice of termination is based on a breach of the present agreement committed by the Applicant, the latter shall provide evidence of the remedial action(s) taken to cure the breach.
- (iv) where AfriNIC considers in its own discretion that the grounds put forward by the Applicant or the remedial actions taken are satisfactory the termination process will be stopped forthwith.

(f) Effect of termination

If this agreement is terminated or expires

- (i) AfriNIC will immediately revoke the numbering resources and otherwise cease providing the services without incurring any liability whatsoever
- (ii) The Applicant shall pay forthwith any outstanding fees it owes AfriNIC
- (iii) Any membership right and benefits accruing to the Applicant in its capacity as a member shall lapse immediately.

12 Right of Appeal

If an organization/member feels that the registry that assigned its address space has not performed its task in the requisite manner, the organization/member has the right of appeal to the parent registry. The procedure of appeal shall comply with the following steps:

- (b) Written notice of appeal together with grounds of appeal shall be sent to AfriNIC and to the assigning registry within 21 days of the date of the decision being appealed against.
- (c) The assigning registry shall within 15 days of receipt of the notice of appeal forward to AfriNIC all relevant documentation.
- (d) The AfriNIC Board shall within 15 days of receipt of the documentation from the assigning registry examine the appeal and submit its decision which shall be final.

