

AFRINIC

Proposed changes to REGISTRATION SERVICE AGREEMENT

31 October~~29 September~~ 2017

The policy proposal AFPUB-2016-V4-003-DRAFT03 “IPv4 Resources transfer within the AFRINIC Region” was ratified by the AFRINIC Board on 19 April 2017. This new policy permits transfer of IPv4 address resources from an AFRINIC member or legacy space holder, to an AFRINIC member.

AFRINIC’s existing RSA does not permit transfer of address resources. In order to implement the new policy, it is necessary to revise the RSA.

This document presents proposed changes to the RSA. Deletions are marked with ~~strikeout~~ and additions are marked with underline. Colours are used to mark different kind of changes, as follows: magenta for the core changes needed to allow for transfers in accordance with adopted policies; yellow for definitions and related changes needed to allow for transfers; green for minor changes made for consistency or readability; blue for other changes.

The following changes have been made:

- The title has been changed from “SERVICE AGREEMENT” to “REGISTRATION SERVICE AGREEMENT”, to match terminology used in AFRINIC’s Constitution (Bylaws). The term “Registration Services Agreement” is also in common use elsewhere, but the singular “Service” is used in the Constitution and in this document.
- The introductory paragraphs in article 1 have been edited to remove references to the contract between ICANN and the US Department of Commerce. That contract expired on 1 October 2016.
- Definitions that previously appeared in 1(b) have been moved to a new 1(c). Definitions have been edited for clarity, and a few new definitions have been added.
- In 1(c)(ii), “Services” has been defined to include transfers. The definition is also simplified by referring to “number resources” instead of repeating some of the text.

- “Number resources” as defined in 1(c)(iii) is now used consistently, where previously there was a mixture of “number resources” and “numbering resources”.
- “Resource application” is defined in 1(c)(iii) and explicitly includes transfers. This allows other parts of the RSA to refer to resource applications, and automatically include both applications for new resources and applications for transfers.
- The new 1(c)(iv) says that a transfer involves both relinquishing the resources by the source and allocation or assignment to the recipient. Because of this, other parts of the RSA that refer to allocations or assignments will automatically cover transfers as well.
- “Constitution” is defined in 1(c)(v). The term “Constitution” is used in a few places in the RSA.
- “Adopted policy” is defined in 1(c)(vi) to refer to any policy that is adopted in terms of AFRINIC’s Constitution or Bylaws, including policies adopted in the future. Previously, several parts of the RSA included descriptions of the policy development process, and the descriptions were not all consistent. Now, other parts of the RSA can refer to adopted policies consistently.
- 4(c)(iv)(3) is a new number for text that was previously at the end of 4(c)(iv)(2).
- In article 5, references to setup fees and membership fees have been changed to refer to “all applicable fees”. This is to allow for possible future changes to the fee schedule. For example, a future fee schedule might introduce transfer fees. Even today, the fee schedule refers to allocation and assignment fees.
- 6(b) and 6(c) have been re-worded to use the defined terms “adopted policies” and “number resources”.
- 6(d)(v) has been changed to allow to allow transfers in accordance with adopted policies, in addition to transfers resulting from mergers and acquisitions (which were already allowed). This new clause is not specific to the recently-adopted transfer policy, but will also allow transfers in accordance with any future policies.
- The new 6(d)(vi) says that a transfer is a kind of allocation or assignment. Because of this, other parts of the RSA that refer to allocations or assignments will automatically cover transfers as well.
- The new 6(d)(vii)(iii) clarifies what happens in case of breach. The requirement to use resources in accordance with policy and in accordance with the purpose stated at the time of the application was already in 4(c)(i) and 4(c)(ii), and failure to comply would

obviously be a breach of the agreement. AFRINIC's right to terminate the membership in case of breach was already in 11(d)(iii) to 11(d)(vi). This new clause clarifies that AFRINIC can ask for breaches to be rectified, or for the affected resources to be returned.

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AFRICAN NETWORK INFORMATION CENTRE

REGISTRATION SERVICE AGREEMENT

This **REGISTRATION SERVICE AGREEMENT** (the “Agreement”) is made by and between the African Network Information Centre Ltd. (“AFRINIC”), a not-for-profit organisation based in Mauritius and

 (“The Applicant”)

1. Preamble

The Regional Internet Registries (RIRs) manage Internet number resources with a view to ensuring the transparent, economic, equitable and efficient access to these Internet resources.

- (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 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; **such policies are adopted in accordance with 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 resources 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.

(c) Under this agreement:

- (i) “Services” may include, without limitation, an allocation/assignment or transfer of number resources, reverse name delegation of network blocks, maintenance of network records and administration of number resources;
- (ii) “Number resources” are IP address space and Autonomous System Numbers (ASNs);
- (iii) “Resource application” includes any application for allocation/assignment or transfer of number resources;
- (iv) “Transfer” of number resources from a source to a recipient includes the source relinquishing its right to use the number resources, and the simultaneous or subsequent allocation or assignment of the number resources to the recipient;
- (v) “Constitution” means the Constitution or Bylaws of AFRINIC Ltd.;
- (vi) “Adopted policy” means a policy for the allocation, assignment, transfer, or other management of number resources, duly adopted in accordance with the Constitution, including any policy adopted during the term of this agreement.

2. Membership application

Applicants shall:

- (a) comply with the application process as defined and time by time updated on AFRINIC’s website (www.afrinic.net);

- (b) provide accurate and complete information when applying for services. Incomplete application will not be accepted and 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 AFRINIC website and reflected in the membership form;
- (g) provide and ensure accurate contact information are stored in AFRINIC databases (Whois and MyAFRINIC).

3. Evaluation and acceptance

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

- (a) AFRINIC's sole and exclusive discretion but **in line with adopted policies.**
- (b) Compliance with AFRINIC's Internal business process 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 utilisation of the **number resources** already assigned to it.
 - (iii) Failure by the applicant, to comply with a request made at 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 **number 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 Agreementwhenever 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) As a condition precedent to AFRINIC's provision of the Services, The Applicant shall pay **all applicable fees** in accordance with the schedule of fees (the "Fee schedule") as currently published on the website.

- (b) All fees paid by The Applicant to AFRINIC are non-refundable.
- (c) The Applicant shall pay AFRINIC **all applicable fees** as set forth in the Fee schedule, prior to AFRINIC providing The Applicant with its requested allocation/ assignment of **number 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 on regular billing period as set in the Fee schedule. If, for any reason, The Applicant does not pay **any applicable fee**, AFRINIC shall have the right to: (1) revoke the **number resources** previously allocated and/or previously assigned, or (2) terminate this Agreement.
 - (i) 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.
 - (ii) AFRINIC commits to publish fee schedule changes at least 30 days before its application.
 - (iii) 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 adopted policies**.
- (c) Acknowledges that it will at all times **use the services and number resources allocated or assigned to it in strict compliance with all adopted policies**.
- (d) Acknowledges:
 - (i) that this agreement shall at all times be subjected to **adopted policies**;
 - (ii) that this agreement shall at all times be subjected to such global policies, adopted and to be adopted by all RIRs, which have first been approved by the AFRINIC Internet Community through its policy development process;

- (iii) that it is bestowed with an exclusive right of use of those **number 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) the number resources, the subject matter of the present agreement, are not property (real, personal or intellectual);
- (v) **that the transfer of number resources is strictly prohibited, except in the event of the Applicant becoming the subject of merger and/or acquisition proceedings, or where such transfer is effected in compliance with adopted policies;**
- (vi) that any request for transfer of number resources for the reason prescribed in sub clause (v) above must be accompanied by all relevant certified legal documents;
- (vii) **that in the event that it commits a breach in the use of number resources allocated or assigned to it, it shall:**
- (vii) **that a transfer of number resources from a source to a recipient constitutes an allocation or an assignment to the recipient;**
- (viii) **that in the event that it commits a breach in the use of number resources allocated or assigned to it, it shall:**
- (1) **remedy the breach, following directions from AFRINIC, and/or**
- (2) **return the affected number resources to AFRINIC.**

For the removal of doubt, failure to take remedial action within a reasonable time will entitle AFRINIC to terminate this agreement.

7. Representations and warranties

The parties, each, represent and warrant that: it has full power and authority to enter into the present agreement and perform all the obligations listed down herein.

- (a) It shall perform its obligations in compliance with all legal provisions (regulations, directives, legislation) existing in the jurisdiction wherein it operates as well under the laws of the Republic of Mauritius which shall govern this agreement.
- (b) 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 asset;
 - (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 **number 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) harmless 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 recognised that AFRINIC shall provide the services applied for under the present agreement in terms of the "best effort" criterion 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 operation;
- (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.

To all intents and purposes, AFRINIC's and The Applicant's liability will be the greater of the amount paid by The Applicant to AFRINIC during the six months immediately preceding the event giving rise to such liability 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 in 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 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.

Termination by AFRINIC

- (iii) 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 particularised in the said notice.

- (iv) 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.
- (v) 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.
- (vi) 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.

(e) **Effect of termination**

If this agreement is terminated or expires:

- (i) AFRINIC will immediately revoke the **number 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 member shall lapse immediately.

12. Contact information

(a) CEO / Managing Director Contact

Name: _____

Email: _____

(b) Admin Contact

Name or nic-hdl: _____

Email: _____

Telephone Number (Direct Line/Mobile): _____

(c) Technical Contact

Name or nic-hdl: _____

Email: _____

Telephone Number (Direct Line/Mobile): _____

(d) Billing Contact

Name or nic-hdl: _____

Street: _____

City: _____

Country: _____

Email: _____

Telephone Number (Direct Line/Mobile): _____

13. Right of appeal

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

- (a) 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.
- (b) The assigning registry shall within 15 days of the receipt of the notice of appeal forward to AFRINIC all relevant documentation.
- (c) The AFRINIC Board shall within 15 days of the receipt of the documentation from the assigning registry examine the appeal and submit its decision which shall be final.

Agreed by Applicant:

Name of Company/Individual Applicant: _____

Name of Signing Official and Title: _____

Email and Phone Number of The Applicant: _____

Postal Address of The Applicant: _____

Suite and Street: _____

City and State: _____

Zip/postal Code: _____

Country: _____

Date: _____

Signature and Company stamp: _____