Date: [DATE]

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| THE UBUNTUNET ALLIANCE FOR RESEARCH AND EDUCATION NETWORKING  as the Customer  XXX  as the Provider |  |

Framework Agreement

Provision of Packet Layer Networking Equipment and Related Services for the UbuntuNet Alliance

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Part A – GENERAL TERMS AND CONDITIONS

THIS AGREEMENT is made the [ ] day of [ ], 2016, (the "Commencement Date")

BETWEEN:

1. The UbuntuNet Alliance a company registered in Malawi and whose registered office is at UbuntuNet Alliance, Off Mzimba Street, Onions Office Complex, P.O. Box 2550, Lilongwe, Malawi. ("the Alliance"); and
2. XXXXX, a company organized and existing under the laws of XXXX and having its registered office at XXXX Company registration No. XXXX (the "Provider");

in each case a "Party" and collectively the "Parties".

BACKGROUND:

1. The Customer has concluded a contract (DCI-PANAF/2015/362-307) with the European Commission ("EC Contract") to act as the co-ordinating partner for the procurement of a programme to improve research connectivity for the East and South African region (the "AfricaConnect" programme). As part of the EC Contract the European Commission has agreed to provide funding to the Customer for the AfricaConnect programme.
2. The Customer has selected the Provider to provide Equipment to support the AfricaConnect programme as further described in this Agreement. Specific provisions dealing with the Equipment and associated support services are set out in Part C to this Agreement.
3. The Provider recognises the strategic nature of this EU Grant Funded Agreement as being discrete from its other commercial arrangements and accepts the developmental role that it represents for the Eastern and Southern African (ESA) NRENs. Accordingly, the Provider commits to work with UbuntuNet Alliance in a flexible, transparent and inclusive manner that seeks to maximise the opportunity to develop and support ESA NRENs throughout the life of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation
   1. In this Agreement the following expressions shall have the following meanings:
2. "Acceptance" means the point at which any Test Item has successfully passed the Acceptance Tests in accordance with the procedure set out in Annex A2 (Acceptance Procedure) and "Accepted" shall be construed accordingly;
3. "Acceptance Criteria" means the criteria against which a Test Item will be measured to determine whether it has been Accepted;
4. "Acceptance Date" means in respect of each Test Item the date on which that Test Item is Accepted;
5. "Acceptance Tests" means the acceptance tests for any Test Item as set out in the relevant Call Off and "Acceptance Testing" shall be construed accordingly;
6. "Additional Period" shall be as defined in clause 2.2.1;
7. "Affiliate" means, in respect of a body corporate any other entity which directly or indirectly Controls, is Controlled by or is under common Control of that body corporate;
8. "Agreement" means all parts of this agreement together with its Annexes and any Call Offs agreed in accordance with clause 3;
9. "BCDR Plan" means a business continuity disaster recovery plan developed in accordance with clause 9.1 to ensure the continued supply of the Services and Equipment;
10. "Business Continuity Event" means any incident or event that causes (or is likely to cause) an adverse effect on the performance and delivery of the Services and/or Equipment which is material in nature and cannot be managed within the context of normal operating procedures;
11. "Business Day" means Monday to Friday (inclusive) except bank or public holidays in the country where the Services and Equipment are provided;
12. "Call Off" means an order for Services and/or Equipment placed by the Customer in accordance with clause 3, in the form of the template set out in Annex A1;
13. "Change" means any change to this Agreement;
14. "Change Control Procedure" means the change control procedure for managing Changes to this Agreement set out in Annex A3 (Change Control Procedure);
15. "Charges" means the charges payable by the Customer to the Provider in consideration of the provision of the Services and Equipment as calculated in accordance with the pricing set out in Annex C4;
16. "Claim" means any claim, demand, action, cause of action, proceeding or complaint of any nature or kind brought by any third party against a Party to this Agreement;
17. "Commencement Date" means the date defined as such at the start of the Agreement;
18. “Committed Delivery Date” means the date set out within Annex A1 (Appendix 2) for each UbuntuNet Alliance site where Provider is to deliver, install, commission and bring into service by the Equipment for each specific UA PoP;

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| "Comparable Services and Equipment" | has the meaning given to it in clause 14.3.1; |

1. "Confidential Information" means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of a Party, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
2. "Cotonou Agreement" means the international treaty signed between the European Union and the African, Caribbean and Pacific Group of States in June 2000 and any subsequent amendments to such treaty;
3. "Critical Service Failure" means that the level of service for a particular Service Level falls below the Service Level Threshold;
4. "Customer Partners" means the entities that are partnering with the Customer in connection with the AfricaConnect Programme and as at the Effective Date include: UbuntuNet Alliance for Research and Education Networking; West Africa and Central African Research and Education Network (WACREN); Eb@le, Reseau National de Telecommunications pour la Recherche, l'Enseignement et l'Innovation de la R.D. Congo; Ethiopian Education and research Network (EthERNet); Kenya Education Network (KENET); Malawi Research and Education Network (MAREN); Mozambique Research and Education Network(MoRENet); Research and Education Network for Uganda (RENU); Rwanda Education Network(RwEdNet); the Somali Research and Education Network (SomaliREN); Sudan Research and Education Network (SudREN); Tertiary Education and research Network of South Africa (TENET); Tanzania Education and Research Network; Zambia Research and Education Network (TERNET); and the Association of African Universities (AAU);
5. "Default" means any breach of the obligations of the Customer or the Provider (including fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the Customer or the Provider or their respective Personnel in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;
6. "Detailed Project Plan" means the detailed plan for the delivery of the Services and Equipment under a Call Off developed and agreed in accordance with clause 5.2;
7. "Dispute" means any dispute which arises between the parties out of or in connection with this Agreement or the performance, validity or enforceability of it, excluding any Technical Dispute.
8. "Dispute Notice" means the notice that one party shall give to other setting out the nature and particulars of a Dispute in accordance with clause 31.1.1;
9. "Dispute Resolution Procedure" means the procedure outlined under clause 31 of Part A of this Agreement;
10. "Documentation" means all documentation reasonably necessary for the Customer to effectively operate and use the Services and Equipment;
11. "End Date" means 4 (four) years, subject always to Clause 32.3 (Assignment and Novation) and the Initial Commitment Period, from the mutually agreed Committed Delivery Date (per site) as set out in Annex A1 (Appendix 2);
12. "Equipment" means the equipment which the Customer may require the Provider to supply or provide as part of a Call Off as described in Annex C1;
13. "Escalation" Procedure" procedure means the escalation procedure set out in clauses 31.1.2 and 31.1.3;
14. "Expert" means a neutral, independent, impartial person appointed to resolve any Technical Disputes between the parties;
15. "Force Majeure Event" means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Provider, its Personnel or any other failure in the Provider or its sub-contractor's supply chain;
16. "Good Industry Practice" means an efficient, effective, prompt, reliable and professional manner and with the standard of skill, care, knowledge and foresight which would reasonably and ordinarily be expected from an experienced person engaged in providing products and services which are the same as, or similar to, the Services and Equipment and connected products and services;
17. "Good Value" means that:
    1. the benchmarked Charges are within the upper quartile of the charges for Comparable Services and Equipment; and
    2. the benchmarked Service Levels are equal to or greater than the mean average service levels for Comparable Services and Equipment;
18. “INTPA " means the Directorate General for International Partnerships, a Directorate-General of the European Commission, responsible for the AfricaConnect programme/project;
19. "Insolvency Event" means, of a Party, entering into administration (whether out of court or otherwise), receivership, liquidation, a formal arrangement with its creditors or any analogous proceedings or procedure, or is otherwise insolvent or ceases or threatens to cease to trade;
20. "Intellectual Property Rights" means all intellectual property rights, including patents, petty patents, utility models, trademarks, design rights, applications for any of the foregoing, copyright, moral rights, database rights and semi-conductor topography rights whether registrable or otherwise, (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term, together with any renewals or extensions;
21. "Laws" means: (i) any applicable statute or proclamation or any delegated or subordinate legislation; ii) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; iii) any applicable judgement of a relevant court of law which is a binding precedent in England; and iv) any requirements of any Regulator, in each case in force at any time during the Term where the Services or Equipment are required to be delivered;
22. "Losses" means all losses, liabilities, damages, costs, and expenses howsoever arising (including reasonable legal fees on a solicitor and own client basis and other professional advisors' fees, and disbursements and costs of investigation, litigation, settlement, judgment, interest, penalties and remedial actions) and "Loss" shall be construed accordingly;
23. "Normal Working Hours" means 8.00 am to 5.00 pm on any Business Day;
24. "Outline Project Plan" means the outline plan for the delivery of the Services and Equipment under a Call Off as set out in the Call Off;
25. "Personnel" means, in relation to a Party, that Party's employees, agents, consultants and sub-contractors who are involved in the performance of this Agreement;
26. "Project Plan" means the Outline Project Plan and, once agreed in accordance with clause 5.2, the Detailed Project Plan;
27. "Referral Notice" means the notice either party can serve on the other notifying the latter of its desire to refer a Technical Dispute to an Expert;
28. "Regulator" means any person or professional body having regulatory, supervisory or governmental authority (whether under a statutory scheme or otherwise) over all or any part of the Services or Equipment or all or any part of the Provider's or the Customer's businesses, assets, data resources, employees or members or any professional body of which the Customer employees or partners, members, or directors are members and which is relevant to the Services or Equipment;
29. "Remedial Plan" means the plan to be developed as part of the Remedial Plan Process;
30. "Remedial Plan Process" means the remedial plan process set out in clause 8‎;
31. "Sales Taxes" means VAT and any other similar sales taxes, duties or levies imposed on the Provider by law;
32. "Services" means the services which the Customer may require the Provider to supply under a Call Off as described in ‎Annex C1;
33. "Service Credits" means credits against the Charges to which the Customer is entitled in respect of failures by the Provider to meet Service Levels in accordance with this Agreement;
34. "Service Levels" means the level of service to be provided by the Provider for the Services as specified in the 'Service Level Target' column of the table in Annex C3;
35. "Service Level Threshold" means the minimum level of service for a particular Service Level as specified in Annex C3;
36. "Specifications" means the specifications for the Services and Equipment as set out in Annex C5;
37. "Test Items" has the meaning given in Annex A2;
38. "Technical Dispute" means any dispute arising out of or in connection with this Agreement which is technical or objective in nature;
39. "Term" means, unless terminated earlier, the period from the Commencement Date to the End Date and any Additional Periods required by the Customer in accordance with clause 2.2; and
40. "UbuntuNet Alliance or the Alliance" means the UbuntuNet Alliance for Research and Education Networking
    1. Except where the context otherwise requires:
       1. clause, Parts and Annex headings are included for convenience only and will not affect the construction or interpretation of this Agreement;
       2. any phrase introduced by the words "including", "includes", "in particular", "for example" or similar shall be construed as illustrative and without limitation to the generality of the related general words;
       3. unless expressly stated otherwise, any reference to a clause or Annex is to the relevant clause or Annex of that Part of this Agreement;
       4. use of the singular includes the plural and vice versa;
       5. any reference to "persons" includes natural persons, firms, partnerships, bodies corporate, corporations, associations, organisations, governments, government bodies, states, foundations and trusts (in each case whether or not incorporated and whether or not having separate legal personality);
       6. all references to the Parties include their permitted successors and assigns;
       7. any reference to a statute or provision of a statute includes references to:
          1. that statute or provision as amended, extended or applied by any other provision;
          2. any re-enactment of that statute or provision (with or without change); and
          3. any regulation, order, code of practice or similar thing having the force of law made under that statute or provision or any provision falling within clauses a) or b); and
       8. references to "indemnifying" any person against or with respect to any circumstance shall include indemnifying and keeping it (and each of its Affiliates) harmless, on an after tax basis, from all Claims from time to time made against it and each of its Affiliates and all Losses suffered, made or incurred by it and each of its Affiliates arising from or in relation to such circumstance.
    2. In the case of and to the extent of any conflict, inconsistency or ambiguity the following order of precedence shall apply:
       1. Part B (DEVCO Provisions);
       2. Part A (General Terms and Conditions);
       3. Part C Equipment and Related Services; and
       4. the Call Offs (and where there is a conflict between two Call Offs, the latest Call Off shall prevail, unless the Parties have expressly agreed otherwise in writing).
41. Commencement Date and Duration
    1. This Agreement (other than in respect of Call Offs) shall commence on the Commencement Date and subject to clause 2.2 shall remain in force until the 4th (fourth) anniversary of the Commencement Date unless terminated earlier in accordance with this Agreement or at law.
    2. The Customer may at its option:
       1. extend the Term beyond the End Date for a further period of at least twelve (12) months ("Additional Period") by written notice given at least 30 (thirty) days prior to the End Date; and
       2. extend the Term beyond the expiry of any Additional Period for a further Additional Period by written notice given at least thirty (30) days prior to or on the expiry date of the former Additional Period,
42. Call Offs
    1. Where the Customer wishes to purchase any Services and/or Equipment from the Provider, it shall send to the Provider the template Call Off set out in Annex A1 specifying:
       1. the Services and Equipment to be supplied by the Provider;
       2. the term of the Call Off;
       3. the Charges for the Services and Equipment which shall be calculated in accordance with the pricing set out in Annex C4; and
       4. whether a BCDR Plan is required.
    2. Following receipt of the template Call Off by the Provider, the Parties shall use all reasonable endeavours to agree (acting in good faith and within 14 days):
       1. the Outline Project Plan for the supply of the Services and Equipment (which shall based on the dates set out in the overall project plan for the AfricaConnect programme agreed between the parties in writing; and
       2. any additional terms applicable to the Call Off.
    3. Following agreement of the terms required in clause 3.3 the Call Off template shall be completed and the authorised representatives of both Parties shall sign the Call Off.
    4. Once signed by both Parties the Call Off shall be incorporated in and form part of this Agreement.
43. Governance
    1. The Provider shall appoint a senior employee with suitable project management skills and experience and approved by the Customer such approval not to be unreasonably withheld or delayed to be the day to day contact for the supply of the Services and Equipment (the "Provider Representative").
    2. The Customer shall appoint an employee as its representative (the "Customer Representative") to liaise with the Provider Representative, and may change its nomination by notice to the Provider.
    3. The Customer Representative and the Provider Representative will serve as the principal interface between the Parties with respect to all issues relating to the delivery of the Services and Equipment and will meet as such intervals as may be reasonably required by the Customer to monitor and review the Provider's performance of the Services and Equipment on an on-going basis. Approvals or consents given by either Party (including under provisions governing change control) will not be effective for the purposes of this Agreement unless given by the Customer Representative or Provider Representative (as applicable).
    4. The Provider Representative must attend meetings with the Customer Representative or such other representatives of the Customer as and when reasonably required by the Customer, including any meeting required under the Dispute Resolution Procedure.
44. Implementation and Acceptance Testing
    1. The Provider shall supply the Services and Equipment in accordance with the Project Plan.
    2. The Provider shall develop a draft Detailed Project Plan based on the Outline Project Plan and deliver it to the Customer within one (1) month of signature of the Call Off. The Detailed Project Plan must:
       1. contain information at the level of detail necessary to manage the project effectively and including the identification of key dates for delivery and testing; and
       2. take account of all dependencies known to, or which should reasonably be known to, the Provider.
       3. Once the draft Detailed Implementation Plan is approved by the Customer in writing (such agreement not to be unreasonably delayed or withheld), the Provider shall:
          1. monitor its performance against the Project Plan; and
          2. report to the Customer on such performance.
       4. The Provider shall ensure that each Test Item is ready for and will pass the Acceptance Tests by the relevant date specified in the Project Plan.
    3. Acceptance testing of the Services and Equipment shall be conducted in accordance with Annex A2 (Acceptance Testing).
    4. If the Provider becomes aware that it will not (or is unlikely to) meet the timescales set out in the Project Plan or pass any Acceptance Tests, it shall as soon as reasonably practicable:
       1. notify the Customer of the fact of the delay and summarise the reasons for it and the likely consequences; and
       2. submit a draft correction plan for approval by the Customer (such approval not to be unreasonably withheld). Once the correction plan has been approved by the Customer, the Provider shall implement the correction plan.
    5. Subject to clause 5.3, if any Test Item does not pass the Acceptance Tests by the relevant date specified in the Project Plan, then without limiting any other remedy of the Customer, the Provider shall pay to the Customer as a reasonable estimate of the Customer's loss due to such delay the amounts specified in Section 2 of Annex C4 for each day that passes until the Acceptance Date or the date this Agreement is terminated, whichever occurs first.
    6. Where a delay is attributable in part to the Provider's Default and in part to the Customer's Default the parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the delay and the amounts specified in clause 5.5 shall be reduced accordingly.
45. Services
    1. The Provider shall supply the Services and Equipment in accordance with:
       1. the terms of this Agreement;
       2. the Specifications;
       3. the standards and security requirements set out in Annex C2;
       4. the Service Levels;
       5. Good Industry Practice;
       6. all Laws, codes of practice and standards from time to time applicable to the supply of the Services and Equipment; and
       7. all lawful and reasonable directions, instructions and requests from the Customer.
    2. In supplying the Services and Equipment and in performing its obligations under this Agreement, the Provider shall:
       1. use all reasonable skill and care;
       2. devote such knowledge, personnel and time as is reasonably necessary for the proper and timely performance of the Services and its obligations under this Agreement;
       3. ensure that all its Personnel are appropriately skilled, trained and experienced to providing the Services.
    3. Nothing in this Agreement shall operate to appoint the Provider as exclusive provider of the Services or Equipment or any other goods or services to the Customer nor require the Customer to purchase any Services or Equipment from the Provider. The Parties agree that the Customer shall only be committed to purchase Services and Equipment by signing a Call Off.
    4. The Provider shall have an on-going obligation throughout the Term to identify new or potential improvements to the Services and Equipment to the Customer. Any improvement identified by the Provider that the Customer wishes to incorporate shall be subject to the Change Control Procedure.
    5. The Provider will procure that its Personnel comply with all obligations of the Provider under this Agreement and the Provider will be liable for any act or omission of any Provider Personnel as if it were its own.
    6. The Provider will advise the Customer immediately in writing on becoming aware:
       1. that it may be unable or is unlikely to be able to perform the Services in accordance with this Agreement (including any failure or potential failure to meet the Service Levels); or
       2. of any issue that may have a material impact on its ability to perform the Services in accordance with this Agreement.
46. Service Credits
    1. If the Provider fails to meet a Service Level in any month, a Service Credit will be payable by the Provider to the Customer.
    2. Service Credits will be calculated monthly in accordance with Annex C3 and shall be shown as a deduction from the amount due from the Customer to the Provider in the next invoice then due to be issued under this Agreement. If no invoice is due to be issued then the Provider shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Provider as a debt within twenty five (25) days of issue. Cash compensation will be made in case such payables do not exist.
    3. Where Service Credits are provided as a remedy for a failure to meet the Service Levels in respect of the relevant Services it shall be the Customer's exclusive financial remedy except where:
       1. the failure is a Critical Service Failure; or
       2. the failure has arisen due to theft, gross negligence, fraud, or wilful default.
47. Remedial Plan Process
    1. If the Provider commits a Default and the Default is capable of remedy then the Provider shall:
       1. allocate such resources as may be necessary to remedy the Default and any consequences of such Default as soon as practicable and ensure that the Default does not reoccur;
       2. investigate, assemble and preserve relevant information with respect to, and report on the causes of, the incidents which led to such Default, including performing a root-cause analysis to identify the cause of the Default;
       3. promptly, and in any event within such timescales as are reasonably required by the Customer, provide the Customer with a draft Remedial Plan.
    2. The Provider shall ensure that each Remedial Plan:
       1. specifies the steps that the Provider proposes to take to remedy that Default (including actions and timings);
       2. specifies the preventative measures (including the allocation of additional resources) which the Provider shall implement to avoid any recurrence of the Default; and
       3. is in sufficient detail for the plan to be properly evaluated by the Customer.
    3. The Provider shall comply with the Remedial Plan following its agreement by the Parties and provide regular updates to the Customer of progress against the Remedial Plan. The Provider shall reimburse to the Customer in full any costs incurred by the Customer in relation to the implementation of the Remedial Plan.
    4. The Customer shall not be required to follow the Remedial Plan Process (and the material Default shall be deemed as irremediable) in respect of a material Default where:
       1. a Remedial Plan has previously been implemented in respect of the relevant material Default but the Provider failed to remedy the Default by those means; or
       2. there is an occurrence of substantially the same material Default within a period of three (3) months following the implementation of any previous Remedial Plan.

In such an instance the provisions of clause 26 shall apply.

1. Business Continuity and Disaster Recovery
   1. The following provisions of clause 9 shall apply where the Call Off requires the Provider to develop a BCDR Plan in respect of the Services and Equipment supplied under that Call Off.
   2. The Provider shall submit to the Customer within 30 days of signature of a Call Off an appropriate and effective business continuity and disaster recovery plan ("BCDR Plan") to ensure the continued supply of the Services and Equipment in the event of a Business Continuity Event.
   3. The BCDR Plan submitted to the Customer pursuant to clause 9.1 shall be subject to the Customer's approval (such approval not to be unreasonably withheld or delayed). The Provider shall promptly make any changes to the BCDR Plan that are reasonably required by the Customer. Where the Provider disagrees with the Customer's request, both Parties shall cooperate in good faith to resolve the disagreement.
   4. The Provider shall establish, maintain and regularly review its processes and procedures with respect to the identification of any threats or risks to the supply of the Services and Equipment, how such threats and risks may be mitigated and how the supply of the Services and Equipment may be maintained in the event of any such identified threats or risks materialising. The Provider shall use the information obtained during such a review to propose amendments to the BCDR Plan as appropriate. Any such amendments proposed shall be subject to the Customer's approval (such approval not to be unreasonably withheld or delayed).
   5. The Provider shall, on request by the Customer from time to time:
      1. test the BCDR Plan in the presence of the Customer or any third party nominated by the Customer; and
      2. promptly make any changes to the BCDR Plan that are reasonably required by the Customer.
   6. Once approved, the BCDR Plan may not be amended except pursuant to an update under this clause, or in accordance with the Change Control Procedure.
   7. The Provider shall implement the BCDR Plan in the event of a Business Continuity Event.
2. Due Diligence
   1. The Provider acknowledges and confirms that it has had an opportunity to carry out a thorough due diligence exercise in relation to the Customer's service requirements and has asked the Customer all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services and Equipment in accordance with the terms of this Agreement.
3. Provider Equipment
   1. The Provider will be responsible for providing all equipment required for the provision of the Services ("Provider Equipment"). The Provider will ensure that the Provider Equipment is in all ways suitable for the provision of the Services.
4. Customer Responsibilities
   1. The Customer shall use reasonable endeavours to:
      1. provide to the Provider such information as the Provider may reasonably require for the performance of the Service(s) and supply of the Equipment; and
      2. permit access to Customer premises strictly as necessary to enable the Provider to provide the Services and Equipment.
5. Charges and Payment
   1. In consideration of the provision of the Services and Equipment by the Provider under a Call Off, the Customer will pay to the Provider the Charges set out in that Call Off.
   2. The Charges for items of Equipment (and related services) in any Call Off shall not exceed the Charges set out within Annex C4 of the Framework Agreement.
   3. The Charges will be invoiced by the Provider monthly in arrears (unless agreed otherwise in the Call Off). Any undisputed Charges will fall due and be paid within thirty (30) days of receipt of a valid invoice, correctly rendered together with all substantiating documentation as is reasonably required by the Customer.
   4. All Charges are and shall be invoiced in Euros and exclusive of VAT and any other similar sales taxes, duties or levies imposed on the Provider by law ("Sales Taxes"), which shall be for the account of the Provider unless identified in advance and expressly agreed by the Customer in the relevant Call Off.
   5. The Provider warrants that (including in accordance with the Cotonou Agreement) it shall structure its pricing arrangements so that no Sales Taxes shall be imposed on the Services, and Equipment.
   6. If for any reason Sales Taxes are to be imposed on the Services and/or Equipment, the Provider agrees to indemnify the Customer against such Sales Taxes or any interest or penalties levied or asserted against the Customer as a result of the Customer not paying such Sales Taxes.
   7. All payments made by the Customer under this Agreement shall be made by wire transfer, certified cheque or bank draft and be free and clear of all bank charges.
   8. The obligation to pay the Charges will constitute the Customer's entire payment liability to the Provider for the supply of the Services and Equipment.
   9. If the Customer is not able to verify or (acting reasonably) disputes any invoiced amount:
      1. the Customer may withhold payment of the amount in question (the "Disputed Amount");
      2. the Customer and the Provider shall work together to endeavour to agree whether or not any Disputed Amount should have been invoiced. If the matter is not resolved within thirty (30) days, either Party to the dispute in question may refer the matter to the Dispute Resolution Procedure;
      3. any amounts that are agreed or, under the Dispute Resolution Procedure, determined to have been underpaid by the Customer shall be re-invoiced to the Customer, in accordance with this clause 13. The due date for payment for the purposes of applying this clause 13.9.3 shall be calculated by reference to the re-submitted invoice and not the original invoice; and
      4. any amounts that are agreed or, under the Dispute Resolution Procedure, determined to have been overpaid by the Customer shall be credited to the Customer.
   10. If any undisputed sum payable under this Agreement is not paid by the due date the Party to whom the same is due reserves the right to charge interest from the date due for payment to the actual date of payment (both before and after judgment) at the rate of two percent (2%) above the base rate of Bank of England from time to time in force. Such interest will accrue on a daily basis.
   11. Notwithstanding clause 13, the Provider warrants that the terms (including pricing) of this Agreement are comparable to, or better than, the terms (including pricing) offered by the Provider to any of its commercial customers of equal or lesser size for comparable goods or services. If the Provider offers more favourable terms (including pricing) to such commercial customers during the Term (or accepts such terms), the Provider shall make such terms available to the Customer within thirty (30) days from the signature of any such agreement.
   12. The Customer may set off any sum of money if the Provider fails to rectify the situation within 30 days and the Customer will notify the Provider in writing of its intention which is:
       1. recoverable from the Provider by the Customer; and/or
       2. payable by the Provider to the Customer (including in respect of any breach of this Agreement),

against any sum then due, or which at any later time may become due, to the Provider under or in relation to this Agreement.

1. Benchmarking
   1. The Customer shall be entitled to benchmark the Service Levels and Charges for the Services and Equipment in order to determine whether they are Good Value. Any such “Benchmarking” may be conducted annually (provided no such benchmarking shall occur in the first two years of the Term) and may be applied to individual service elements or items of Equipment and not just the Services and Equipment as a whole.
   2. In respect of each benchmarking initiated by the Customer, the Customer shall appoint an independent, established and industry recognised organisation that has demonstrated benchmarking expertise, methodology and data sources (the “Benchmarker”).
   3. Each Benchmarking shall be carried out by the Benchmarker in accordance with this clause 14 and the following general principles and criteria:
      1. to make the comparison meaningful, there will be a representative, statistical sampling of a sufficient number of receivers of services comparable to the Services and Equipment, having regard to factors such as the nature and size of the Provider and the Customer, the Service Levels and volumes, any particular or unique circumstances in which the Services and Equipment are received/supplied and any other relevant factors (“Comparable Services and Equipment”);
      2. the Benchmarker’s data used to make the Benchmark will be based on services performed for third parties no more than twelve (12) months prior to the dates on which the Services and Equipment were performed, unless a longer period is agreed by the Parties in writing; and
      3. the Benchmarker will use appropriate adjustment factors required to take into consideration any differences between the Comparable Services and Equipment and the Services and Equipment, such as the differences in geography, nature or type of the Comparable Services and Equipment and the Services and Equipment.
   4. In respect of each benchmarking, the Benchmarker shall be required to:
      1. provide copies of the reports of the Benchmarker’s findings to the Customer and the Provider; and
      2. undertake to comply with the reasonable confidentiality requirements of the Customer and the Provider.
   5. The Provider shall provide full co-operation and documents to the Benchmarker in order for the Benchmarker to carry out the benchmarking, including access to relevant records and its Personnel.
   6. The Customer and the Provider shall bear their own costs in respect of their respective co-operation with the Benchmarker. The costs of the Benchmarker shall be borne by the Customer unless the Benchmarker concludes that the Service Levels or Charges are not Good Value.
   7. Subject to clause 14.8, if a benchmarking finds that the Services Levels and/or Charges are not Good Value, the Parties shall amend this Agreement (including any Call Off) within 25 days so that they become Good Value.
   8. If either the Customer or the Provider disputes the findings of the benchmarking they shall be entitled to inform the Benchmarker about the areas of disagreement within twenty (20) days of the Benchmarking report being made available. The Benchmarker shall have a period of twenty (20) days to respond to any such notice and, if necessary, amend the findings of the Benchmarking or decline to do so with the reasons for this set out in a written report. If either the Customer or the Provider does not agree with the revised benchmarking or the Benchmarker’s report, then the Escalation Procedure shall apply, provided that if such dispute is not resolved in accordance with the Escalation Procedure, the Customer shall be entitled (at its discretion) to terminate this Agreement or the relevant Call Off by giving the relevant the Provider not less than thirty (30) days’ prior written notice.
2. Euro Change
   1. During the life of the AfricaConnect2 programme, if the Euro ceases to be used as a currency then:
      1. the Parties shall, acting reasonably and in good faith, agree an alternative currency (the "New Currency"). The Parties shall ensure that the choice of such New Currency does not create a financial advantage or disadvantage to either Party. In the event that the Parties are unable to agree on the New Currency, the New Currency shall be the currency adopted by Germany, being the location of the European Central Bank
      2. all charges specified in this Agreement to be in Euros shall be converted into the New Currency on the date the Euro officially ceases to exist ("Euro Expiry Date") and the Parties shall make all necessary Changes to this Agreement to reflect this;
      3. any invoices which are due but have not been paid as at the Euro Expiry Date shall be converted into and paid in the New Currency (and the Provider shall reissue such invoices to the Customer);
      4. any conversion from the Euro to the New Currency shall be at the official rate of exchange recognised by the central bank of the country of the New Currency; and
      5. this Agreement shall be subject to such reasonable changes in interpretation as may be appropriate to minimise the economic effect on the Parties to this Agreement of the change to the New Currency.
3. Change Control
   1. Any request for a Change shall be dealt with in accordance with the Change Control Procedure set out in Annex A3.
4. Reports, Monitoring and Audit Rights
   1. The Provider shall:
      1. during the Term and for a period of 7 years afterwards maintain in a suitably secure manner copies of all data, records and reports necessary in order to verify the Charges, its compliance with this Agreement and its performance against the Service Levels;
      2. during the Term monitor its performance against the Service Levels;
      3. during the Term provide the Customer with a report which details its performance against the Service Levels and any Service Credits due at the end of each month;
      4. during the Term provide such additional reports to the Customer as it may reasonably request in order to verify the Provider's compliance with this Agreement.
   2. The Customer may monitor the performance of the Services by the Provider. The Provider shall co-operate, and shall procure that its Personnel co-operate, with the Customer in carrying out the monitoring at no additional charge to the Customer.
   3. The Customer shall have the right, as reasonably required, to perform (either itself or through an appointed representative), full and detailed audits and inspections of the Provider in order to verify the charges, the Provider's compliance with this Agreement and its performance against the Service Levels.
   4. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 17 unless an audit identifies a material Default by the Provider, in which case the Provider shall reimburse the Customer for all the Customer's reasonable costs and expenses incurred in the course of performing or facilitating the applicable audit.
   5. The Customer shall give the Provider reasonable notice of its intention to audit which shall be conducted during Normal Working Hours (save in the case of any event reasonably deemed by the Customer to constitute an emergency, including in respect of any event of fraud, or indicative of a likelihood of fraud, by the Provider, any event which is likely to compromise or adversely affect the health and safety of any persons or any event which would have a material adverse effect on the Customer).
   6. The provisions of clauses 17.2 to 17.6 shall survive for a period of seven years after the Term whether the Agreement expires or is terminated for any reason.
5. Warranties and Undertakings
   1. The Provider represents, warrants and undertakes to the Customer that:
      1. it has, and shall continue to have full capacity and authority and all necessary governmental, administrative, regulatory and third party authorisations, licences, permits and consents and rights necessary to enter into this Agreement and supply the Services and Equipment;
      2. it owns or is the licensee of all necessary Intellectual Property Rights to the extent necessary to enter into and perform this Agreement and has the right to license these to the Customer as required under this Agreement;
      3. the supply of the Services and Equipment (including any software installed by the Provider on the Equipment) and their use by the Customer will not infringe the Intellectual Property Rights of any third party;
      4. it is a company duly incorporated, validly existing and in good standing under the laws of the territory of its incorporation and that the Agreement is executed by duly authorised representatives of the Provider;
      5. as at the date of the Agreement, the Provider is not subject to any Insolvency Event;
      6. the Provider shall not introduce anything into any Customer system any computer program code, computer virus, computer worm, trojan horse, authorisation key, licence control utility or software lock, which is intended by any person to, is likely to, or may impair the operation of any such interface or equipment or cause loss of, or corruption or damage to, any program or data held on such systems or damage the reputation of the Customer;
      7. there is no material outstanding litigation, arbitration or other disputed matter to which the Provider is a Party which may have a material adverse effect upon the fulfilment of the Provider's liabilities, responsibilities and obligations pursuant to this Agreement; and
      8. all statements and representations made in connection with tendering for, and entering into, this Agreement were true and accurate when made, remain to the best of its knowledge, information and belief, true and accurate at the date of the Agreement, and that it has advised the Customer of any fact, matter or circumstance of which it has become aware which would render any such statement or representation to be false or misleading.
6. Indemnities
   1. The Provider will indemnify the Customer against any Losses incurred by the Customer in respect of:
      1. any fines or other penalty imposed on the Customer under applicable Laws arising as a result of a breach by the Provider of its obligations under the Agreement;
      2. any actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Equipment or the receipt of the benefit of the Services;
      3. the Provider's, or any of its Personnel's breach of the Bribery Act 2010; and
      4. any fraud or malpractice by the Provider, or any of its Personnel.
   2. If the use of the Equipment (including any software installed by the Provider on the Equipment) or receipt of the benefit of the Services infringes or, in the opinion of qualified legal counsel, is likely to infringe the Intellectual Property Rights of any third party, the Provider shall:
      1. replace or modify all or part of the Services or Equipment so as to render it non-infringing, provided that it remains functionally equivalent, and reimburse to the Customer all additional costs and expenses the Customer incurs in adapting its systems to be compatible with such replaced or modified Services or Equipment, or
      2. procure for the Customer a licence from the relevant third party to continue receiving the Services and using the Equipment.
   3. If the Provider is unable to meet its obligations under clause 19.2, this Agreement and the licences granted under clause 20 may be terminated by either Party with immediate effect, without prejudice to the Customer's right to seek further remedies, including damages, for any Loss arising out of such termination.
   4. If a payment due from the Provider under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from the Provider such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the payment is the same as it would have been were the payment not subject to tax.
7. Intellectual Property Rights
   1. The Intellectual Property Rights in any documents, materials or works created by the Provider or any of its Personnel in the performance of this Agreement (including any reports provided to the Customer under this Agreement) ("Bespoke Materials") shall be owned by the Customer and shall, at the Commencement Date or (if later) on creation of the rights, vest in the Customer. The Provider assigns and agrees to assign (to the extent such Intellectual Property Rights are not capable of prospective assignment) all such Intellectual Property Rights with full title guarantee to the Customer.
   2. The Provider shall procure the irrevocable waiver of all moral rights in the Bespoke Materials to the extent permitted by law.
   3. Notwithstanding any other provision of this Agreement, the contents of all Bespoke Materials shall be the Confidential Information of the Customer.
   4. The Provider grants to the Customer a non-exclusive, perpetual royalty-free licence (which shall be freely capable of sub-licence) to use the Documentation. The Provider shall, to the extent such consent is required, procure the consent of any third parties to such grant at its own cost.
8. Limitation of Liability
   1. This clause 21 sets out the entire liability of the Parties (including any liability for the acts and omissions of their respective Personnel) in respect of all claims arising under or in connection with this Agreement, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, howsoever arising.
   2. Nothing in this Agreement shall limit or exclude the liability of either Party for:
      1. death or personal injury resulting from negligence;
      2. fraud or fraudulent misrepresentation;
      3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
      4. for any repudiation or deliberate breach of this Agreement or any intentionally harmful or negligent act or omission of the Provider;
      5. any Losses recoverable by the Customer under any indemnity given by the Provider in this Agreement;
      6. the wrongful termination or abandonment of the Agreement by the Provider; or
      7. any other matter in respect of which liability cannot by any applicable Law be excluded.
   3. Subject to clause 21.1, neither the Customer nor the Provider shall have any liability to each other for:
      1. loss of goodwill or injury to reputation;
      2. loss of business opportunity; and/or
      3. indirect, consequential or special loss or damages,

regardless of the form of action, whether in contract, strict liability or tort (including negligence), and regardless of whether the either Party knew or had reason to know of the possibility of the loss, injury, or damage in question.

* 1. The provisions of clause 21.3 shall not limit the Customer's right to recover from the Provider:
     1. additional and/or administrative costs and expenses incurred by the Customer arising from a Default by the Provider including the costs of implementing any work-around in connection with such Default and the additional costs including overtime, related expenses and overheads (including travel, accommodation and wages);
     2. for wasted expenditure or charges rendered unnecessary and incurred by the Customer arising from the Default of the Provider;
     3. the costs of any third party engaged by the Customer to make good any Default of the Provider;
     4. additional costs to maintain the Services or continue supply of the Equipment arising from a Default by the Provider; and
     5. for any loss or corruption of data, including costs of rectification, arising out of a Default by the Provider.
  2. Subject to clause 21.1, the aggregate liability of the Customer to the Provider in respect of all Losses suffered by the Provider arising out of or in connection with any and all Defaults by the Customer and any and all torts or breaches of statutory duty committed by the Customer (or, as the case may be any officer, employee, sub-contractor or agent of the Customer) in connection with the performance or purported performance of the Customer's obligations shall be limited to and will in no circumstances whatsoever exceed 100% of total Charges paid or invoiced and due to be payable under this Agreement during the 12 months prior to the event giving rise to the relevant claim under this Agreement. Where the Default occurs in the first 12 months of this Agreement, such amount shall be 100% of the Charges which have been paid or are payable under this Agreement in the first 12 months of the Term.
  3. Subject to clause 21.1, the aggregate liability of the Provider to the Customer in respect of all Losses suffered by the Customer arising out of or in connection with any and all Defaults by the Provider and any and all torts or breaches of statutory duty committed by the Provider (or, as the case may be any officer, employee, sub-contractor or agent of the Provider) in connection with the performance or purported performance of the Provider's obligations shall be limited to and will in no circumstances whatsoever exceed 125% of total Charges paid or invoiced and due to be payable under this Agreement during the 12 months prior to the event giving rise to the relevant claim under this Agreement. Where the Default occurs in the first 12 months of this Agreement, such amount shall be 125% of the Charges which have been paid or are payable in the first 12 months of the Term.

1. Insurance
   1. During the Term and for a period of 6 years thereafter, the Provider shall maintain in force with a reputable insurance company, professional indemnity insurance, public liability insurance and such other insurances as is required to cover the heads of liability as may arise under or in connection with this Agreement. On the Customer's reasonable request the provider shall produce both the insurance certificate giving details of the cover and the receipt for the current year's premium in respect of each insurance.
2. Anti-Bribery Compliance
   1. The Provider undertakes to the Customer that it:
      1. will fully comply with, and will procure that all Personnel fully comply with:
         1. all applicable Laws and codes relating to anti-bribery and anti-corruption; and
         2. any anti-bribery or ethics policies provided to it by the Customer as the Customer may update from time to time;

(the "Anti-Bribery Requirements");

* + 1. will not do, or omit to do, any act that will cause the Customer to be in breach of the Anti-Bribery Requirements;
    2. has in place, and shall maintain in place throughout the Term, policies and procedures to ensure compliance with the Anti-Bribery Requirements and will enforce them where appropriate. At the Customer's request, the Provider will disclose such policies and procedures to the Customer; and
    3. will make it clear to those providing services to the Provider, including its Personnel, that the Provider does not accept or condone the payment of bribes on the Provider's behalf.

1. Termination for Default
   1. The Customer may terminate this Agreement or any Call Off without liability in whole or in part by written notice to the Provider if:
      1. the Provider commits a material breach of this Agreement which is not capable of being remedied;
      2. the Provider commits a material breach of the Agreement which is capable of being remedied and, following notice from the Customer requiring the Provider to cure the breach and the Provider does not cure such breach within thirty (30) days of receipt of such notice;
      3. the Provider is either subject to an enforcement action by any Regulator or ceases to be authorised under any applicable Law, in either case preventing the Provider from lawfully performing its obligations under this Agreement;
      4. the Customer is subject to a fine or penalty by any Regulator which arises as a result of an act or omission of the Provider (or any of its subcontractors or service personnel); or
      5. if there is a change of Control of the Provider, which has occurred without the prior written approval of the Customer.
   2. The Customer may terminate the Agreement or any Call Off in whole or in part by giving the Provider thirty (30) days written notice, if:
      1. the Provider commits a material breach of the Agreement, remedies such breach and then commits any material breach again within twelve (12) months of curing the original material breach;
      2. the Provider fails to meet the same Service Level for three (3) consecutive months;
      3. there are two Critical Service Failures in any twelve (12) month period; or
      4. the aggregate of all cumulative liabilities arising out of or in connection with the Agreement exceeds the aggregate cap of liability under clause 21.
   3. Subject to clause 24, the Provider may terminate this Agreement in whole upon written notice to the Customer if:
      1. the Customer fails to make undisputed payments due to the Provider under this Agreement which, in aggregate, exceed three (3) months' aggregate Charges under this Agreement; and
      2. the Provider has given notice in writing of default relating to such non-payment addressed for the attention of the Chief Finance Officer of the Customer and further notices at thirty (30) and sixty (60) days following the initial notice; and
      3. the Customer does not remedy such default within ninety (90) days of receipt of the initial notice of default from the Provider.

The Provider's only rights to terminate the Agreement for cause shall be in accordance with this clause 24.3 and clause 24.4.

* 1. Either Party shall be entitled to immediately terminate this Agreement or any Call Off in whole or in part by written notification to the other if the other Party becomes subject to an Insolvency Event or ceases to carry on its business.

1. Consequences of Termination
   1. In the event of expiry of this Agreement, unless the Customer notifies the Provider otherwise in writing, the Provider shall complete any Call Offs entered into prior to the date on which this Agreement expires, in accordance with the terms of such Call Offs.
   2. On termination or expiry of this Agreement or any Call Off:
      1. (in respect of termination or expiry of this Agreement) all Call Offs shall immediately terminate (unless notified otherwise by the Customer in writing);
      2. each Party shall promptly return to the other Party all documents and materials (and any copies) containing the other Party's Confidential Information (which in respect of termination or expiry of a Call Off shall apply only in relation to Confidential Information disclosed under that Call Off); and
      3. each Party shall promptly on request, certify in writing to the other Party that it has complied with the requirements of this clause 26.2.
      4. the Provider shall promptly refund any Charges paid in advance which relates to the period after expiry or termination on a pro rata basis;
      5. The Customer will settle promptly any outstanding Charges where the Provider can show proof of delivery of services and equipment
      6. the Provider shall provide all reasonable assistance to the Customer and/or the replacement Provider to the extent reasonably required to facilitate the smooth migration to the Customer or any replacement Provider of the Services.
   3. Termination or expiry of this Agreement shall not limit any of the Parties' rights and remedies which have accrued as at termination. Other than as set out in this Agreement, neither Party shall have any further obligation to the other under this Agreement after its termination.
   4. Notwithstanding the expiry or termination of this Agreement for any reason, it shall continue in force to the extent necessary to give effect to those of its provisions which expressly or by implication have effect after expiry or termination, including:
      1. clauses 17, 19, 22, 28 and 35; and
      2. those Call Offs referred to in clause 26.1 or notified to the Provider in accordance with clause 26.2.1.
2. Force Majeure
   1. Subject to the provisions of this clause 27, to the extent that either Party is prevented or delayed from performing its obligations under this Agreement by reason of a Force Majeure Event then that Party's obligation to perform its obligations under this Agreement will (during the continuation of the Force Majeure Event) be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances of the Force Majeure Event.
   2. To the extent that any Force Majeure Event results in any suspension of Services and/or supply of Equipment (which includes such Services being delivered to a level where it is of no significant benefit to the Customer) then the Customer will have no liability to pay Charges in respect of such Services and Equipment for the period of the suspension or non-provision.
   3. In the event that a delay or failure arising from a Force Majeure Event extends beyond a period of 90 (ninety) days without resolution, then the Customer shall be entitled to terminate this Agreement or the relevant Call Off by thirty (30) days' written notice to the Provider. On the expiry of this notice period, this Agreement will terminate and such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.
   4. The Party claiming to be affected by a Force Majeure Event will not be entitled to invoke the provisions of clause 27.1 unless it fully performs the following obligations:
      1. on becoming aware of any Force Majeure Event which gives rise, or which is likely to give rise, to any failure in the performance of its obligations under this Agreement, it promptly notifies the other Party, giving details of the nature and extent of the Force Majeure Event, the obligations on its part which are affected and its reasonable estimate of the period for which such failure will continue; and
      2. it takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Force Majeure Event; and
      3. without limit to clause 27.4.2, in the case of the Provider only, it is complying fully with its obligations under the BCDR Plan unless such obligations cannot be performed due to a Force Majeure Event.
   5. Without limit to the Customer's right to terminate this Agreement in accordance with clause 25.1, where the performance of an obligation under this Agreement which is required to be performed on or before a specific date or within a specific period of time is affected by a Force Majeure Event any Party so affected will be entitled to such extension of time for the performance of that obligation as is reasonable in all the circumstances and the Parties will use their reasonable endeavours to agree any consequential changes to any timetable for the performance of any other obligation which is affected by the delay.
3. Confidentiality and Publicity
   1. Subject to clause 28.2, each party shall treat all Confidential Information as strictly confidential and shall not disclose Confidential Information to any person except as necessary for the performance of this Agreement, in which case the disclosing party shall ensure that any recipient is bound by obligations of confidence no less stringent than those in this Agreement. Each party will be liable for its officers', employees', representatives' or subcontractors' disclosure or misuse of the other party's Confidential Information.
   2. A party may disclose Confidential Information:
      1. if expressly permitted under this Agreement;
      2. if and to the extent required by law or order of the courts, or by any securities exchange or regulatory or governmental body to which such party is subject or submits, wherever situated (whether or not the requirement for information has the force of law) provided that unless prohibited by law from doing so the party subject to such request gives the other party written notice prior to disclosing any of the Confidential Information and the disclosure is made only to the extent required and for the purpose of complying with the requirement and all reasonable measures to ensure, the continued confidentiality of any Confidential Information so disclosed are taken;
      3. on a necessary basis and on conditions of confidentiality to the professional advisers, auditors and bankers of such party;
      4. if such Confidential Information was published, known publicly or otherwise in the public domain or has come into the public domain other than by a breach of any obligation of confidentiality; or
      5. with the prior written approval of the other party (such approval not to be unreasonably withheld or delayed).
   3. The Provider shall not issue any press release and/or make public announcements or statements (including on its website) in relation to the existence or subject matter of this Agreement without the prior written consent of the Customer.
4. Data Protection, Data Security and Data Integrity
   1. To the extent that in providing the Services the Provider processes any personal data on behalf of the Customer, the Parties acknowledge and agree that for the purposes of the Data Protection Act 1998, the Customer or a Customer Partner is the data controller and the Provider is the data processor of any such personal data ("Personal Data"). For the purposes of this clause 29, "personal data", "data controller", "data subject", "data processor" and "processing" all have their respective meanings set out in the Data Protection Act 1998).
   2. the Customer appoints the Provider to process the Personal Data on behalf of the Customer or a Customer Partner (which may include the Customer acting on instructions from the Customer Partner) as is necessary to provide the Services.
   3. Pursuant to an agreement (or agreements) between the Customer and one or more Customer Partners, the Customer may have been appointed by one or more Customer Partners to process Personal Data of which a Customer Partner is the data controller.
   4. In processing the Personal Data the Provider will:
      1. process the Personal Data only to the extent, and in such a manner, as is necessary for the performance of the Services and will not process the Personal Data for any other purpose;
      2. process the Personal Data in accordance with the terms of this Agreement and the Customer's instructions from time to time (which may be specific instructions or instructions of a general nature as set out in this Agreement or otherwise notified by the Customer to the Provider during the Term), and, in so doing, shall act solely on the instructions of the Customer (which instructions the Customer may be empowered to give on behalf of a Customer Partner). In particular, the Provider shall not itself exercise control, nor shall it transfer, or purport to transfer, control of such Personal Data to a third party, except as it may be specifically instructed to do so by the Customer;
      3. keep the Personal Data logically separate to data processed on behalf of any other third party;
      4. keep detailed records of any processing of Personal Data it carries out on behalf of the Customer;
      5. take appropriate and sufficient technical and organisational security measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, damage, alteration, unauthorised disclosure or access and against all other unlawful forms of processing, in particular where the processing involves the transmission of Personal Data over a network. Such measures will as a minimum include the measures set out in the Customer's data integrity and data security policies notified by the Customer to the Provider from time to time;
      6. provide a written description of the technical and organisational security measures employed by the Provider in processing the Personal Data prior to the commencement of such processing and in the event of any change in such security measures during the Term;
      7. ensure the reliability of any of its employees who access the Personal Data and ensure that they have undergone appropriate training in the care, protection and handling of Personal Data;
      8. not knowingly perform its obligations under this Agreement in relation to the Personal Data in such a way as to cause the Customer or a Customer Partner to breach any of their obligations under the Data Protection Act 1998;
      9. promptly carry out any additional instructions of the Customer and/or implement any additional measures required by the Customer which are intended to enable a Customer Partner to comply with its obligations under the local laws that apply to it;
      10. not transfer any Personal Data outside the UK without the prior written consent of the Customer, which may be subject to implementing appropriate measures to satisfy the Customer that adequate levels of protection of the Personal Data have been adduced;
      11. notify the Customer immediately if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data;
      12. inform the Customer promptly, and in any event within seven (7) days, of any inquiry, communication, request or complaint received from (i) any Governmental, regulatory or supervisory authority, including but not limited to privacy authorities or (ii) any data subject, relating to the Services and/or any Personal Data, and will furnish all reasonable assistance to the Customer to enable the Customer to respond to such inquiries, communications, requests or complaints and to meet applicable statutory or regulatory deadlines;
      13. in the event that the Provider is required by law, court order, warrant, subpoena, or other legal judicial process to disclose any Personal Data to any person other than the Customer or the relevant Customer Partner, shall furnish all reasonable assistance to enable the Customer to respond or object to, or challenge, any such demands, requests, inquiries or complaints and to meet applicable statutory or regulatory deadlines;
      14. permit the Customer, the relevant Customer Partner and/or privacy authorities (where such authorities have the legal right to carry out an audit of the Customer and/or the Provider's activities), such access to its premises, computer and other information systems, records, documents and agreements as may be reasonably required to enable the same to satisfy themselves that the Provider is complying with its obligations under this Agreement, provided always that any such review does not involve the review of any third party data and that such reviewing entity enters into such confidentiality obligations with the Provider as may be reasonably necessary to respect the confidentiality of the Provider's business interests and third party data and information of which the reviewing entity may become aware in the course of undertaking the review;
      15. Additional Terms indemnify and keep indemnified the Customer in respect of all and any claims, proceedings or actions brought against the Customer or a Customer Partner arising out of any breach by the Provider of this clause 29.
5. Notices
   1. Any notice to be given under or in connection with this Agreement must be in the English language, in writing and delivered to the other Party by any of the methods set out in the left hand column below, and will be deemed to be received on the corresponding day set out in the right hand column:

Method of service Deemed day of receipt

By hand or courier the day of delivery

By pre-paid first class post the second day after posting

By recorded delivery post the next day after posting

The Parties' respective representatives for the receipt of notices are, until changed by notice given in accordance with this clause, as follows:

PROVIDER Address:

Attention:

The Customer:

Address:

Attention:

1. Dispute Resolution
   1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("Dispute") then, except as expressly provided in this Agreement and except in the case of Technical Disputes, the Parties shall comply with the following provisions:
      1. either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice");
      2. the Provider Representative and the Customer Representative (acting in good faith) shall meet to attempt to resolve the Dispute;
      3. if the Dispute remains unresolved twenty (20) days following of the Dispute arising, the Senior Vice President or equivalent officer of each Party (acting in good faith) shall meet to attempt to resolve the Dispute;
      4. if the Dispute remains unresolved within fourteen (14) days (or such longer period as the Parties may agree in writing) following referral of the Dispute to the Senior Vice President or equivalent officer of each Party, the Parties shall attempt to resolve the Dispute through mediation with the assistance of a mediator ("Mediator"). The appointment of a Mediator shall be agreed in writing between the Parties within five (5) days from the date of the referral of the Dispute to mediation. Where the Parties are unable to agree on the appointment of the Mediator or the proposed Mediator is unable or unwilling to act, the Parties agree that the Centre for Economic Dispute Resolution ("CEDR") in London shall appoint the Mediator. The Parties agree that the mediation shall be conducted in accordance with the CEDR Model Mediation Procedure. Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by the Parties;
      5. if the Dispute is not resolved within thirty (30) days of the Dispute arising, the Dispute shall be finally settled in accordance with the Arbitration Rules of the International Chamber of Commerce, by a single arbitrator either appointed jointly or, if the Parties cannot agree on the identity of the arbitrator, appointed by the chairperson of the International Chamber of Commerce. The place of arbitration shall be London. All negotiations and arbitration will be conducted in the English language; and
      6. all negotiations connected with the Dispute shall be conducted in complete confidence, and the Parties undertake not to divulge details if such negotiations except to their professional advisors who shall also be subject to such confidentiality and shall be without prejudice to the rights of the Parties in any future proceedings. The Parties shall require the International Chamber of Commerce not to disclose the fact of or the details of the arbitration to any third party.
   2. Prior to the commencement of arbitration, neither Party may commence any court proceedings in relation to any Dispute unless such proceedings:
      1. are for interim relief (including injunctive relief);
      2. would be prejudiced by any delay; or
      3. are intended to preserve a superior position with regard to the creditors of the other Party.
   3. If any dispute arises out of or in connection with this Agreement which is technical or objective in nature (including whether any Deliverable or Equipment meets the requisite Specification and whether Service Levels have been met) ("Technical Dispute") either Party may serve notice on the other ("Referral Notice") that it wishes to refer the dispute to an expert (the "Expert") as follows:
      1. The Parties will agree the identity of a single neutral, independent, impartial expert to determine the Technical Dispute. In the absence of agreement within 14 days of the Referral Notice, the matter will be referred to an expert based in the United Kingdom and appointed by the International Chamber of Commerce.
      2. Within 28 days after the giving of a Referral Notice, both Parties will exchange simultaneously statements of case of no more than 10,000 words, in total, and each Party will simultaneously send a copy of its statement of case to the Expert.
      3. Each Party may, within 14 days of the date of exchange of statement of case pursuant to clause 31.3.2 above, serve a reply to the other side's statement of case of not more than 10,000 words. A copy of any such reply will be simultaneously sent to the Expert.
      4. The Expert will make his decision on the matter on the basis of written statements and supporting documentation, and following an oral hearing at which the Parties may be represented by counsel of their choice. The Expert may ask additional questions of either Party. Any answers will be provided to the other Party as well as to the Expert. The Expert shall issue his decision in writing within 30 days of the date of service of the last reply pursuant to clause 31.3.3 above or, in the absence of receipt of any replies, within 60 days of the date of exchange pursuant to clause 31.3.3 above or the date of the last oral hearing, whichever is the later.
      5. The Expert's decision will be final and binding on the Parties, save for any manifest errors or fraud contained on the face of his decision, which may be annulled by a court.
      6. Each party shall act reasonably and co-operate to give effect to the provisions of this clause 31.3 and otherwise do nothing to hinder or prevent the Expert from reaching his determination.
      7. The Expert's charges will be borne equally by the Parties, but each Party shall be responsible for its own legal and professional costs, transport and attendance at any hearing and any other costs.
   4. Unless agreed otherwise, the Parties shall continue to comply with their respective obligations under the Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure
2. Assignment and Novation
   1. The Provider shall not subcontract its obligations under this Agreement, nor shall it assign, novate or otherwise transfer any of it rights and obligations under this Agreement whether in whole or in part without the prior written consent of the Customer.
   2. Where the Customer has given its prior written consent to a subcontract, such subcontractor will not be entitled to further subcontract the performance of the Services without the Customer's prior written consent. If the Customer consents to such further delegation the terms of this clause 32 shall, as applicable, apply to the subcontractor as if it were the Provider.
3. Amendments
   1. No amendments to this Agreement (including any Call Offs) shall be valid unless it is in writing and signed by or on behalf of each of the Parties in accordance with the Change Control Procedure.
4. No Third Party Beneficiaries
   1. Nothing in this Agreement shall be deemed to grant any rights or benefits to any person other than the Parties, or entitle any third party to enforce any provision of this Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).
5. General
   1. If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall not be affected. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
   2. Each Party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to this Agreement and the transactions contemplated by it.
   3. Except as otherwise expressly provided in this Agreement, all remedies available to the Provider or to the Customer for any Default (of any nature or severity) under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
   4. The failure to exercise or delay in exercising a right or remedy provided to a Party under this Agreement shall not constitute a waiver of that right or remedy, and no waiver by a Party of any breach of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision. Each right or remedy of a Party under this Agreement is without prejudice to any other right or remedy of that Party under this Agreement or at Law.
   5. Nothing in this Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the Parties or as authorising either Party to act as agent for the other. Neither Party will have authority to make representations for, act in the name or on behalf of or otherwise to bind the other Party in any way.
   6. Except as expressly provided in this Agreement, no terms and conditions, standard or otherwise, contained on any invoice, order form, licence or other document of the Provider shall apply to the subject matter of this Agreement unless expressly stated in this Agreement or incorporated as a variation via the Change Control Procedure.
   7. This Agreement and the documents referred to in it constitute the whole agreement and understanding of the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement. Each Party agrees that they did not rely on any representation, warranty, collateral contract, or other assurance or statement made by the other Party before the signature of this Agreement (except those set out in this Agreement) and hereby waives any remedy which might otherwise be available to them in respect of any untrue statement (whether made innocently or negligently but not fraudulently) before the signature of this Agreement.
   8. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.
   9. Each Party shall bear its own legal costs associated with the preparation, negotiation and execution of this Agreement and any documents referred to in it.
6. Governing Law and Jurisdiction
   1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Malawi.
   2. Subject to clause 31.1, the Parties irrevocably agree that the courts of Malawi shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SIGNED by the authorised representatives of the Parties.

SIGNED for and on behalf of THE UBUNTUNET ALLIANCE FOR RESEARCH AND EDUCATION NETWORKING

Signature …………………………………………..………..

Name .…………………………………………………………………..

Position .................................................................................

SIGNED for and on behalf of XXXX

Signature …………………………………………..………..

Name .…………………………………………………………………..

Position ..................................................................................

Annex A1 - Template Call Off

Call Off Number: [●]

THIS AGREEMENT is made the [●] day of [●] 201[●] (the "Call Off Commencement Date")

By and between:

1. The UbuntuNet Alliance a company registered in Malawi and whose registered office is at UbuntuNet Alliance, Off Mzimba Street, Onions Office Complex, P.O. Box 2550, Lilongwe, Malawi. (the " Customer"); and

2. XXX, a company organized and existing under the laws of XXX and having its registered office at XXXX, Company registration No. XXX (the "Provider");

in each case a "Party" and collectively the "Parties".

BACKGROUND:

1. The Provider and the Customer entered into a Framework Agreement as of [insert Commencement Date of Framework Agreement] (the "Framework Agreement") governing the provision by the Provider of certain services and equipment to the Customer.
2. The Customer has concluded a contract with the European Commission in 2019 ("EC Contract") to act as the co-ordinating partner for the procurement of a programme to improve research connectivity for the East and South African region (the "AfricaConnect2" programme). As part of the EC Contract the European Commission has agreed to provide funding to the Customer for the AfricaConnect programme.
3. The Customer has selected the Provider to provide Equipment to support the AfricaConnect programme as further described in the Framework Agreement and this Call Off. Specific provisions dealing with the Equipment and associated support services are set out in Part C to the Framework Agreement.
4. The Provider recognises the strategic nature of this EU Grant Funded Agreement as being discrete from its other commercial arrangements and accepts the developmental role that it represents for the Eastern and Southern African (ESA) NRENs. Accordingly, the Provider commits to work with the UbuntuNet Alliance in a flexible, transparent and inclusive manner that seeks to maximise the opportunity to develop and support ESA NRENs throughout the life of the Agreement and this Call Off.

NOW IT IS HEREBY AGREED as follows:

* + 1. Definitions, Structure and Interpretation
       1. In this Call Off the definitions set out in Section ‎13 shall apply.
       2. This Call Off comprises these Sections and the Appendices listed in the table below.

|  |  |
| --- | --- |
| Appendix | Title |
| 1 | Services and Equipment |
| 2 | Project Plan |
| 3 | Charges |
| 4 | Additional Terms |

* + - 1. If there is any inconsistency between any of the Sections and the Appendices, the order of priority for the purpose of construction shall be as follows:
         1. Sections of this Call Off; and
         2. Appendices.
      2. Capitalised words and expressions used in this Call Off shall have the meanings ascribed to them in this Call Off and, unless expressly indicated otherwise in this Call Off, the meanings ascribed to such words and expressions in this Call Off shall supersede the meanings given to those words or expressions where such words and expressions are also defined in the Framework Agreement.
      3. Capitalised words and expressions which are not defined in this Call Off shall have the meanings ascribed to them in the Framework Agreement.
      4. All references to deletion, amendment or variation of provisions in the Framework Agreement which are set out in this Call Off are references to such deletion, amendment or variation for the purposes of this Call Off only.
    1. Term

This Call Off shall commence on the Call Off Commencement Date and subject to earlier termination shall continue until [DATE].

* + 1. Relationship of this Call Off to the Framework Agreement

The parties acknowledge that under clause 3.1 of the Framework Agreement this Call Off, when signed by both Parties, will contractually commit the Provider to supplying the Services and/or Equipment described in this Call Off in accordance with the terms of the Framework Agreement.

* + 1. Description and scope of the Services Equipment

The Services and Equipment to be provided by the Provider under this Call Off are listed in Appendix 1.

* + 1. Project Plan

The Project Plan for this Call Off is attached as Appendix 2.

* + 1. Charges

The Charges for the Services and Equipment are specified in Appendix 3.

* + 1. Additional Terms

The additional terms agreed by the Parties to apply to this Call Off are specified in Appendix 4.

* + 1. BCDR

The Provider shall produce a BCDR Plan in accordance with clause 9.

* + 1. Entire Agreement

In relation to its subject-matter, this Call Off (together with the Framework Agreement) is the entire agreement between the parties and governs their relationship to the exclusion (to the extent permitted by law) of any other terms and conditions, including those upon which any quotation or tender response has been given to the Customer.

Appendix 1: Services and Equipment

Appendix 2: Project Plan

Appendix 3: Charges

Appendix 4: Additional Terms

|  |  |
| --- | --- |
| For and behalf of Ubuntunet Alliance | For and on behalf of [PROVIDER] |
| Signature: | Signature: |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |

Annex A1 – Appendix 1 – Services and Equipment

Annex A1 – Appendix 2 – Project Plan

Annex A2 - Acceptance Procedure

* + 1. Testing Methodology
       1. The Provider will give the Customer at least seven (7) days' notice of the date on which it intends to carry out Acceptance Tests on any Test Item.
       2. The Acceptance Tests shall be run during Normal Working Hours. The Provider shall carry out the agreed Acceptance Tests unless the Customer notifies the Provider that it will carry out the Acceptance Tests. The Party carrying out the Acceptance Tests shall permit the other Party to observe all or any part of the testing.
       3. If the proposed date for any Acceptance Tests is not suitable for the Customer the Parties shall try to re-arrange the test date, provided that the Acceptance Test dates will not be changed in any way that may adversely affect the Provider's ability to meet the Project Plan for the relevant Test Item.
       4. After completion of the Acceptance Tests:
          1. The Provider shall provide the Customer with a copy of the test results in the Provider's standard format. Where the Customer is not present at the Acceptance Testing the results shall be delivered to the Customer forthwith by e-mail or fax.
          2. If a Test Item meets all of the Acceptance Criteria for that Test Item it shall be deemed to have passed the Acceptance Tests and be Accepted.
          3. If any Test Item fails to meet any of the Acceptance Criteria it shall be deemed to have failed the Acceptance Tests. In such event, the Customer shall, within seven (7) days from the completion of the Acceptance Tests or any part thereof and receipt of the results of such Acceptance Tests or part thereof, provide a written notice to this effect, giving details of such failure(s). The Provider shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time, not to exceed fourteen (14) days.
       5. If any Test Item fails to pass any repeated Acceptance Tests within two weeks from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to the Provider, choose at its sole discretion:
          1. to request a repeat test, and if the Test Item or part of it fails such further test, then the Customer may request another repeat test under this paragraph 1.5.1 or proceed under paragraphs 1.5.2 or 1.5.3;
          2. to conditionally accept the Test Item or part of it in its absolute discretion. The conditions of acceptance shall be as the Customer may reasonably determine and notify to the Provider provided that such conditions may not without the prior written agreement of the Provider increase the obligations or restrict any right or remedy of the Provider under this Agreement. Unless otherwise agreed in writing between the Customer and the Provider conditional acceptance shall constitute Acceptance of the Test Item or part of it provided that all the relevant conditions have been met within the period specified by the Customer. If all the relevant conditions have not been met within the period specified by the the Customer, the Customer shall be entitled to proceed under paragraph 1.5.3; or
          3. if the Provider is unable to correct the defects within a period of one month from the commencement of Acceptance Tests under paragraph 1.5, to reject the Test Item as not conforming to the Agreement, in which event the Customer may terminate this Agreement.
    2. Form of Acceptance Certificate

The following form of Acceptance Certificate shall be used:

"This Acceptance Certificate is delivered on the date set forth below by UbuntuNet Alliance (the "Customer") to [PROVIDER NAME] (the "Provider") pursuant to the Framework Agreement dated [DATE] between the Customer and the Provider (the "Agreement"). Terms used in this Acceptance Certificate shall have the meaning given for such terms in the Agreement.

The Customer hereby confirms to the Provider that [insert name/description of relevant Test Item] [subject to the conditions listed below being met by [insert date]] [meets all relevant acceptance criteria] [and] [has been Accepted].

Signed by………………………………………. [( )]

For and on behalf of UbuntuNet Alliance

Date"

* + 1. Reserved Rights
       1. Unless indicated otherwise in this Agreement, Acceptance of any Test Item shall be without limit to any other rights or remedies of the Customer in relation to any other Test Items.

Annex A3 - Change Control Procedure

* + 1. General
       1. Requests for Changes to this Agreement (including the Project Plan and (if required) BCDR Plan), may be initiated by the Customer or the Provider.
       2. Until such time as a Change Control Note ("CCN") has been signed by the Parties, the Provider shall continue to perform its obligations in accordance with this Agreement and any relevant Call Off.
       3. Any work undertaken in connection with any proposed Change by the Provider, or its Personnel, unless agreed otherwise by the Parties, shall be undertaken at no additional cost to the Customer.
       4. A CCN signed by the Parties shall constitute an amendment to this Agreement.
    2. Procedure
       1. Where a written request for a Change is received from the Customer, the Provider shall, unless otherwise agreed in writing, submit two copies of a completed CCN signed by the Provider to the Customer within seven (7) days following the appropriate technical evaluation.
       2. A request for a Change originated by the Provider shall be submitted direct to the Customer in the form of two copies of a CCN signed by the Provider.
       3. Each CCN shall be in the form set out below and contain all details reasonably necessary for the Customer to evaluate the Change.
       4. For each CCN submitted, the Customer shall within fourteen (14) days evaluate the CCN and as appropriate:
          1. request further information;
          2. arrange for two copies of the CCN to be signed by or on behalf of the Customer and return one of the copies to the Provider; or
          3. notify the Provider of the rejection of the CCN.
       5. Should a Party require a longer period of time to prepare, evaluate or agree any CCN then they shall make a request for such extension to the other Party with an indication of the extension time required. The other Party shall not unreasonably refuse this request.
       6. Where any Change results in any change or upgrade to the Services or Equipment, such Services or Equipment shall be subject to Acceptance Testing in accordance with the procedure in Annex A2.

Appendix 1 to Annex A3

CHANGE CONTROL NOTE (CCN) for Changes to the Agreement

By and between:

1. The UbuntuNet Alliance a company registered in Malawi and whose registered office is at UbuntuNet Alliance, Off Mzimba Street, Onions Office Complex, P.O. Box 2550, Lilongwe, Malawi. ("the Alliance"); and
2. XXXXX, a company organized and existing under the laws of XXXX and having its registered office at XXXX Company registration No. XXXX (the "Provider");

in each case a "Party" and collectively the "Parties".

CCN STATUS:

Accepted  Date: Rejected  Date: On Hold  Date:

|  |  |
| --- | --- |
| (a) Agreement Details | (b) Change Control Notice Details |
| Title and/or Ref. No:  Systems Integration Agreement | Reference No: |
| Date of Agreement: | CCN Date: |
| (c) Raised by: Tel: Location: | |
| (d) Priority: Immediate action required  High level of impact on hardware    Low impact scheduled event  | |
| (e) Reason for the change: | |
| (f) Description of the change: | |
| (g) Timetable for the change & commencement date: | |
| (h) Change to Charges (if applicable): | |
| (j) Impact Statement: | |
| (k) CCN Expiry Date: | |
| (l) Other details as required: | |
| (m) Amended Document attached:  | |

The Parties hereby agree to change the Agreement in the manner and in consideration of the terms set out above. Save as expressly set out in this Change Control Notice the terms and conditions of the Agreement shall remain in full force and effect.

For and on behalf of the Provider For and on behalf of the Customer

Signed:

Printed Name:

Title:

Date:

Part B – FUNDING PROVIDER PROVISIONS

1. Relationship to DG INTPA
   1. The Parties acknowledge that while this Agreement has been approved by INTPA, INTPA is not a Party to this Agreement and shall have no liability to either Party under this Agreement. The Parties each acknowledge that neither has entered into this Agreement in relying on any warranty or representation on the part of INTPA.
   2. The Customer has entered into this Agreement in accordance with its obligations under the EC Contract, and has included the provisions set out in Part B of this Agreement because they are prescribed by the EC Contract.
2. Accounts and Auditing
   1. The Provider shall keep accurate and regular accounts of the implementation of its obligations under this Agreement using an appropriate accounting and double-entry book-keeping system. This system may either be an integrated part of the Provider's regular system or an adjunct to that system. This system shall be run in accordance with the accounting and bookkeeping policies and rules that apply in the country in which the Provider is incorporated.
   2. The Provider shall ensure that accounts and expenditure relating to this Agreement must be easily identifiable and verifiable. This can be done by using separate accounts for the payment and receipt of monies in relation to this Agreement or by ensuring that expenditure relating to this Agreement can be easily identified and traced to and within the Provider's accounting and bookkeeping systems.
   3. The Provider shall ensure that any financial reporting (both interim and final) under this Agreement can be properly and easily reconciled to the Provider's accounting and bookkeeping system and to the underlying accounting and other relevant records. For this purpose, the Provider shall prepare and keep appropriate reconciliations, supporting schedules, analyses and breakdowns for inspection and verification.
   4. The Provider shall permit, for the term of the EC Contract, the European Commission to monitor or evaluate the Provider's performance of its obligations under this Agreement.
   5. The Provider shall permit, for the Term and for a period of seven (7) years thereafter, the European Commission, the European Anti-Fraud Office and the European Court of Auditors and any external auditor authorised by the European Commission to:
      1. carry out verifications of the Charges;
      2. verify the implementation of the Provider's obligations under this Agreement; and
      3. carry out and detailed audits of the Provider

including by taking examining and taking copies of documentation relating to this Agreement or by carrying out on-the-spot checks.

* 1. The Provider shall permit the European Anti-Fraud Office and any external auditor authorised by the European Commission to carry out checks and verifications on the spot for the protection of the financial interests of the European Union against fraud and other irregularities.
  2. The Provider shall during the Term and for a period of seven (7) years thereafter, provide appropriate access, (including to the Provider's sites and locations at which it carries out its obligations under this Agreement, its information systems, all documents and databases concerning the technical and financial management of its obligations under this Agreement), to the European Commission, the European Anti-Fraud Office and the European Court of Auditors and any external auditor authorised by the European Commission, including all staff and agents of such bodies, acting in accordance with paragraphs 2.4, 2.5 and 2.6 above and shall take all steps to facilitate the work of such bodies. The Provider shall procure such compliance and assistance from its subcontractors to enable the exercise of these audit rights.
  3. The Provider acknowledges that the documents referred to in paragraph 2 include:
     1. any reports, financial or otherwise, prepared in accordance with this Agreement;
     2. accounting records (computerised or manual) from the Provider's accounting system such as general ledger, sub ledgers and payroll accounts, fixed assets registers and other relevant accounting information;
     3. proof of procurement procedures such as tendering documents, bids from tenderers and evaluation reports;
     4. proof of commitments such as contracts and order forms;
     5. proof of delivery of services such as approved reports, time sheets, transport tickets (including boarding passes), proof of attending seminars, conferences and training courses (including relevant documentation and material obtained, certificates), etc;
     6. proof of receipt of goods such as delivery slips from Providers;
     7. proof of completion of works, such as acceptance certificates;
     8. proof of purchase such as invoices and receipts.
     9. proof of payment such as bank statements, debit notices, proof of settlement by the Provider;
     10. for fuel and oil expenses, a summary list of the distance covered, the average consumption of the vehicles used, fuel costs and maintenance costs;
     11. staff and payroll records such as contracts, salary statements, time sheets. For local staff recruited on fixed-term contracts, details of remuneration paid, duly substantiated by the person in charge locally, broken down into gross salary, social security charges, insurance and net salary. For expatriate and/or European-based staff analyses and breakdowns of expenditure per month of actual work; assessed on the basis of unit prices per verifiable block of time worked and broken down into gross salary, social security charges, insurance and net salary.
  4. The Provider must ensure that the documents are easily accessible and filed so as to facilitate their examination and the Provider must inform the auditors of their precise location.
  5. The Provider acknowledges that where any audit or evaluation is carried out by the Customer, a copy of the relevant audit or evaluation report will be provided to INTPA.

1. Conflicts of Interest
   1. The Provider undertakes to take all necessary precautions to avoid conflicts of interests and shall inform the Customer and the European Commission without delay of any situation constituting or likely to lead to any such conflict. For the purposes of this clause 3.1, there is a conflict of interests where the impartial and objective exercise of the functions of any person under this Agreement is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another person.
2. Joint Publicity and Visibility
   1. Under the EC Contract, the Customer is obliged to publicise the fact that the European Union has financed or co-financed the AfricaConnect programme.
   2. Where the Customer has provided its consent under clause 26.3 of Part A of the Agreement, the Provider shall ensure that any press releases, public announcements, promotional material, website content or other statement or material made or issued by the Provider in relation to this Agreement or its subject matter shall comply with the provisions of the Communication and Visibility Manual for EU External Actions (available as at the date of this Agreement at http://ec.europa.eu/europeaid/work/visibility/index\_en.htm) a copy of which the Provider confirms that it has obtained.
   3. In particular:
      1. the Provider shall mention the AfricaConnect programme and the European Union's financial contribution in its internal and annual reports, and in any dealings with the public and media relating to the subject matter of this Agreement, and shall display the EU logo wherever appropriate;
      2. any notice or publication by the Provider concerning the subject matter of this Agreement, including those given at a conference or seminar, must specify that the AfricaConnect programme has received EU funding; and
      3. any publication by the Provider relating to the subject matter of this Agreement, in whatever form and by whatever medium, including the internet, must include the following statement: "This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of TELONE Ltd and can under no circumstances be regarded as reflecting the position of the European Union.".
   4. The Provider authorises the Customer and INTPA to publish its name and address, nationality, the purpose of the Agreement, duration and location.
3. Confidential Information
   * 1. For the purposes of clause 26 of Part A, if required by INTPA, the Customer may disclose any Confidential Information of the Provider to INTPA.
4. Assignment
   1. Both Parties acknowledge that, notwithstanding the provisions of clause 29 of Part A of this Agreement, no benefit or rights under this Agreement may be assigned without the prior written consent of INTPA.
5. Payment
   1. The Provider acknowledges that the Services are being funded by a grant from INTPA.
   2. Notwithstanding clause 12.9 of Part A of this Agreement, in the event that the Customer has not received funding from INTPA, any failure on the part of the Customer to make any payment under this Agreement by its due date shall not entitle the Provider to terminate this Agreement and the Customer shall not be liable to pay any interest on such payment, provided that:
      1. the Customer shall transfer the sums due to the Provider within fourteen (14) days after receipt of sufficient funds from INTPA; and
      2. the Customer notifies the Provider of the delay in writing as soon as it becomes aware of such delay and in any event, no later than the due date for payment pursuant to the relevant invoice.
6. Termination
   1. In addition to the Customer’s rights to terminate this Agreement under clause 23 of Part A of this Agreement, the Customer shall be entitled to terminate this Agreement with immediate effect upon written notice in the event that the European Commission terminates the EC Contract.
   2. The Provider acknowledges that in the event of the European Commission terminating the EC Contract with the Customer as a result of:
      1. any evidence of fraud, corruption, involvement in a criminal activity or any other illegal activity detrimental to the European Union's financial interests by the Provider; or
      2. false or incomplete statements made by the Provider when prior to and during the Term of this Agreement;
      3. the European Commission may request full or partial repayment of sums already paid to the Customer. Where the European Commission requests repayment of any sums from the Customer and the Customer has already paid the Provider such amount, the Provider shall immediately pay such equivalent sums to the Customer.

Part C – EQUIPMENT AND RELATED SERVICES

1. Definitions
   1. In this Part C, the following expressions shall have the following meanings:
      1. "Delivery Date" means the time and date for delivery of the Equipment as specified in the Call Off or Project Plan; and
      2. "Delivery Location" means the location for delivery of Equipment specified in the Call Off or Project Plan.
   2. Capitalised words and expressions which are not defined in this Part C shall have the meanings ascribed to them in Part A.
2. Supply of Equipment
   1. The Provider shall deliver any Equipment ordered by the Customer under a Call Off to the Delivery Location by the Delivery Date and shall unload such Equipment in accordance with the Customer's reasonable instructions.
   2. Delivery of any Equipment shall be complete on the installation of the Equipment at the Delivery Location or, where such Equipment is not required by the Customer to be installed, the completion of unloading at the Delivery Location ("Delivery").
      1. The Provider shall ensure, at its own expense, that all Equipment ordered by the Customer is properly packaged, labelled and secured in accordance with all applicable Laws and is delivered to the Delivery Location undamaged.
   3. All packaging shall be non-returnable and may be destroyed by the Customer unless agreed otherwise in writing.
   4. All deliveries must be accompanied by a delivery note prepared by the Provider which shall contain, as a minimum, the following information:
      1. the Call Off number;
      2. the Delivery Location;
      3. the Delivery Date;
      4. means of transport;
      5. number of packages;
      6. contents of each package; and
      7. weight and volume of each package.
   5. If any Equipment is not delivered by or on the applicable Delivery Date, then without limiting any other right or remedy which the Customer may have, the Provider shall provide all such additional resources as are necessary to fulfil the delivery as early as practicable and acceptable to the Customer at no additional charge to the Customer.
3. Third Party Warranty/Guarantee
   1. The Provider shall grant to or assign to the Customer the benefit of all warranties and guarantees which are granted to the Provider by its suppliers in relation to the Equipment and the Provider undertakes to notify its suppliers in advance that the Customer will take the benefit of any such warranties and guarantees. In the event that any such warranties and guarantees cannot be assigned to the Customer, the Provider shall procure that its suppliers grant to the Customer all such warranties and guarantees directly.
   2. The Provider agrees to take reasonable steps to assist the Customer in taking action to enforce the warranties and guarantees granted to or assigned to the Customer under paragraph 2.1.
4. Title and Risk
   1. Title to any Equipment shall pass to the Customer, as appropriate, upon the later of Delivery or Acceptance. Risk in any Equipment shall pass to the Customer on Delivery.
   2. Risk in any Equipment that is rejected or returned to the Provider from the Customer for repair or replacement shall pass to the Provider on its collection.
5. Defects
   1. If the Provider is not able to rectify and defect in the Equipment within twenty one (21) days of Delivery then without limit to its other rights and remedies, the Customer shall, be entitled to:
      1. reject the Deliverable and, at its discretion:
         1. obtain substitute equipment in a quantity not exceeding the quantity ordered in the Call Off from an alternative supplier, and recover from the Provider any costs and expenses reasonably incurred by the Customer in obtaining such substitute equipment; and
         2. claim damages for any other costs, expenses or losses resulting from the Provider's failure to deliver the Equipment by the Delivery Date;
      2. require the Provider to repair or replace the Equipment within twenty one (21) days at the Provider's risk and expense.
6. Software installed on the Equipment
   1. The Provider grants to the Customer a licence to use the software provided by the Provider and installed on the Equipment on the Provider's standard licence terms. The Provider shall ensure that, at a minimum, its standard licence terms allows the Customer to use the Equipment in the manner intended by this Agreement and the tender documentation provided by the Customer to the Provider.

**Annex C1 – Services, Equipment and Acceptance**

**Section 1: Services**

Subject always to the Terms and Conditions set out in this Framework Agreement, the support services will be defined within Appendix 1 of each Call Off raised under this Framework Agreement.

**Section 2: Equipment**

This Framework Agreement is for the provision, delivery, installation, support and maintenance of network equipment to provide IP routing equipment (and associated services) to establish and maintain Points of Presence (PoP) in Eastern and South African countries whose NRENs are beneficiaries of the Africa Connect project. The equipment (and associated install, support and maintenance services) required are divided into four areas:

* IP Routing equipment and associated services: the provision, delivery and support of routing equipment to be deployed at the backbone of the proposed network. Some of the routers will be placed in aggregation PoP to serve as connection points for more than one NREN location, while others will act as end points serving only one NREN. The Customer expects that there may be some differences in the capabilities of the two types or routers, but not so much so that a PoP may not be upgraded from an edge PoP (serving one NREN) to an aggregation PoP by changing the components in the edge router.

The PoPs will be interconnected using links of various capacities ranging from STM-1 to STM-4, presented as either SDH or Ethernet on single mode fiber. The proposed solution must therefore be capable of connecting to circuits operating initially at these capacities on SONET/SDH and Ethernet interfaces.

* Ancillary equipment such as cabinets, power distribution units and distribution frames required in the establishment of a PoP.

In cases where the connectivity provider is delayed, the Provider can invoice after onsite Hardware ATP’s are conducted, accepted and signed off. When the connectivity provider confirms links are tested, passed and connected, the Provider will do a remote end to end link test for the Link ATP’s.

Subject always to the Terms and Conditions set out in this Framework Agreement, the specific Equipment to be supplied by the Provider will be defined within Appendix 1 of each Call Off raised under this Framework Agreement.

Set out within Annex C4 are the charges associated with the supply and support of any Equipment purchased under this Framework Agreement. For the avoidance of doubt, this does not represent a confirmed order as all Equipment and associated services must be ordered in accordance with Clause 3 in Part A of this Agreement

**Section 3: Acceptance**

In the event of any inconsistencies between the contents of this section and Annex 2 of the Framework Agreement, Annex 2 will take priority over any terms within the Provider’s Acceptance Test Plan that cause a conflict.

(A) Acceptance Tests

[STATE HERE]

(B) Acceptance Criteria

[STATE HERE]

**Annex C2 - Standards and Security**

**Annex C3 - Service Levels and Service Credits**

| Service Level Description | Service Level Target | Service Level Threshold | Service Credit |
| --- | --- | --- | --- |
| Delivery of equipment | Agreed delivery date | Agreed delivery date + 15 Calendar Days | 0.1% of Equipment costs for affected sites per day, capped at 10% of the price of the Equipment. |
| Repeated failure to deliver as agreed | 2 repeated failures to deliver on agreed time | 3 repeated failures to deliver on agreed time | 1. 0.1% of Equipment costs for affected sites per day, capped at 10% of the price of the Equipment, and;. 2. the Provider must review the delivery method and UA to agree an improved process with the Provider |
| Faulty equipment replacement | 4 business hours after agreed fault | Up to 8 business hours after agreed fault | 1. 0.1% of Equipment costs for affected sites per day, capped at 10% of the price of the Equipment. 2. 1 non redundant spare per system. Should a similar failure occur 21 days will be required for replacement |
| Repeated failure to replace faulty equipment | 2 repeated failures to replace faulty equipment in agreed time | 3 repeated failures to replace equipment in agreed time | 1. 0.1% of Equipment costs for affected sites per day, capped at 10% of the price of the Equipment, and; 2. the Provider must review the delivery method and UA to agree an improved process with the Provider |
| Equipment installation | Agreed time | Agreed Installation Date + 15 Calendar Days | 0.1% of Equipment costs for affected sites per day, capped at 10% of the price of the Equipment. |
| Repeated failure to install as agreed | 2 repeated failures to install on agreed time | 3 repeated failures to install on agreed time | 1. 0.1% of Equipment costs for affected sites per day, capped at 10% of the price of the Equipment, and;. 2. the Provider must review the installation method and UA to agree an improved process with the Provider |

[SLA DETAILS HERE FROM TENDER RESPONSE]

**Annex C4 – Charges and Delay Payments**

Section 1: Charges

1.1 Juniper Customer Discount Percentage: [STATE % RATE]. The Provider agrees to consistently apply the charges and maintain the discount structure throughout the term.

1.2 The Parties agree that the Charges set out in this Section 1 shall be valid for a period of 48 months from the Commencement Date. Following expiry of such period, the Provider shall ensure that the prices offered to the Customer for the Services and Equipment shall be the same or less than:

Standard List Prices x (1 - Customer Discount Percentage/100)

Where:

Standard List Prices = the Provider's standard list prices available to its other customers; and

Customer Discount Percentage is the percentage set out in paragraph 1.1 above.

1.3 The Parties agree that paragraph 1.2 shall not have the effect of amending any Charges which have already been agreed in a Call Off.

1.4 Set out below are the charges associated with the supply and support of any Equipment purchased under this Framework Agreement. For the avoidance of doubt, this does not represent a confirmed order as all Equipment and associated services must be ordered in accordance with Clause 3 in Part A of this Agreement.

[COMPLETE THIS POST AWARD WITH DETAILS FROM TENDER RESPONSE]

Catalogue of Equipment and Associated Services

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| Additional Ancillary Equipment | |  |
| Item | Notes | Unit Cost €'s |
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| Professional Services |  |
| Consultancy / Engineering Grade | Day rate |
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| Training |  |  |
| Training costs |  |  |
| Basic Training Cost per Person | Advanced Training Cost Per Person | Day Rate for additional ad hoc training |
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Annex C5 – Customer and Provider Responsibilities

[COMPLIANCE STATEMENTS FROM TENDER RESPONSES]

**Annex C6 – Framework Ordering Procedures**

1. Direct Award Procedures
   1. The default ordering procedure under this Framework Agreement is a direct award although Customers may award Call-Off contracts under the framework either:
      1. by way of direct award in accordance with this paragraphs 1.2 to 1.8 below, or;
      2. subject always to paragraph 2.1 below, by reopening competition only if necessary.
   2. Taking into account the following;
      1. the information set out in the Provider’s Catalogue (Framework Schedule 5);
      2. the description of the goods and services as set out in Framework Schedule 6, and;
      3. all of the terms of the proposed Call-Off Contract being laid down in the Framework Agreement and not requiring amendment;

and in one (or more) of the following circumstances;

* + 1. the Customer's requirements relate to individual items or smaller quantities of equipment;
    2. the Customer's requirements relate to the supplementation or augmentation of equipment currently existing in the Customer’s network;
    3. the Customer's requirements are for spare parts to support an extant estate of the same manufacturer;
    4. the Customer's requirements necessitate a degree of interoperability or compatibility with extant / installed network management software;

then the Customer shall make a direct award to the Provider in accordance with process described from 1.3 onwards.

* 1. Where the Customer determines in accordance with paragraph 1.2 above that its requirements can be met by more than one Provider, it shall award the Call-Off Contract to the lowest priced Provider for the goods or services in question according to the information set out in the Provider's Catalogue.
  2. Where the Customer determines in accordance with paragraph 1.3 above that its needs and requirements can be met only by goods or services provided by a particular Provider for reasons of interchangeability or interoperability with the Customer's existing equipment or for reasons connected with the protection of intellectual property rights, and where it would not be economically or technically viable to appoint a different Provider without significant inconvenience or cost to the Customer, the Customer may award a Call-Off to that Provider.
  3. The Customer shall send (including electronically) a signed order form substantially in the form of the Order Form Template set out in Framework Schedule 7 (Order Form Template and Call-Off Schedules).
  4. The Parties agree that any document or communication (including any document or communication in the apparent form of a Call-Off Contract) which is not as described in this Paragraph 1 shall not constitute a Call-Off Contract under this Framework Agreement.
  5. On receipt of an order form as described in Paragraph 1.3 from the Customer, the Provider shall accept the Call-Off Contract by promptly signing and returning (including by electronic means) a copy of the order form to the Customer concerned.
  6. On receipt of the countersigned Order Form from the Provider, the Customer shall send (including by electronic means) a written notice of receipt to the Provider within two (2) Working Days and the Call-Off Contract shall be formed with effect from the Call Off Start Date stated in the Order Form.

1. Further Competition Award Procedures
   1. Customers may reopen competition in circumstances where the authority in question considers that a direct award applying the terms set out in this framework would not be adequate to meet its needs having regard to some or all of following criteria, which may be more or less important depending on the circumstances of the case:
      1. the complexity or scale of the requirements;
      2. observed market pricing for equipment within the scope of the framework and contract notice suggests that lower costs could be achieved by reopening competition taking into account the predetermined price index specified in the Framework Agreement;
      3. technical issues e.g. a need to compare the costs and capabilities of different network management solutions;
      4. the need for higher degrees of service or security that are provided for in the framework;
      5. major projects, such as a network refresh.
   2. Subject to paragraph 2.1 above, if a Customer decides to run a further-competition, it may at any time invite any other Customer to participate in further competitions with other providers to provide equipment, software and/or services.
   3. When conducting a further competition the Customer shall:
      1. invite the Providers to submit a tender in writing;
      2. include in the invitation to tender the award criteria specific to that further competition, together with priorities and weightings (in accordance with the ranges set out below;
      3. set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders; and
      4. keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.
   4. When awarding Call Offs pursuant to a further competition, the Customer shall award each Call Off on the basis of the most economically advantageous tender and in accordance with the following award criteria:
      1. Quality Technical Requirements (weighting range: 20%-40% )
      2. Quality Service / Support Requirements (weighting range: 25%-60% )
      3. Price (weighting range: 20%%-55%)
   5. The Customer may include relevant sub-criteria related to and within the scope of the award criteria set out above in provided that the sub-criteria (and any weightings applicable to those sub-criteria) are set out in the invitation to tender for each further-competition and do not result in unequal treatment.
   6. After a further-competition, the Customer and Provider shall follow the procedure in paragraphs 1.5 to 1.8 above.