

Master Services Agreement for Connectivity Services

Between UbuntuNet Alliance

and

[Supplier Name]

Ref: MSA-XX-XXX

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Part A

GENERAL TERMS AND CONDITIONS

This Master Services Agreement is made and entered into on the date first signed ("Commencement Date") below by and between

- (1) UbuntuNet Alliance, a non-profit association registered in Malawi, registration number: R.G.20754/IM/5.2005 and registered office at: Off Presidential Way, Golden Peacock House, P.O. Box 2550, Lilongwe, Malawi (the "Customer");

and

- (2) [NAME], a company organized and existing under the laws of [COUNTRY] and having its registered office at [ADDRESS], Company registration No. [NUMBER] (the "Supplier").

BACKGROUND

- (A) The Supplier acknowledges and understands that the Customer has concluded a contract with the European Union under a development grant agreement pursuant to the AfricaConnect4 funding programme supporting research, education and innovation projects to implement and manage research and education networks. As part of the development grant agreement the European Union has agreed to provide funding to the Customer in respect of its role within such programme.
- (B) The Supplier shall not be relieved of its obligations under the Master Services Agreement for Connectivity Services as the result of; a general change in law or specific change in law where the effect of that specific change in law on the Services is reasonably foreseeable at the Admission Request Date.
- (C) The Customer wishes to appoint the Supplier to provide, and the Supplier agrees to provide, the Services as detailed in any Statement of Work.
- (D) When incorporated into a Statement of Work, the terms of this MSA will govern the provision of Services by the Supplier as set out below.
- (E) The Supplier 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 African National Research and Education Networks (NRENs). Accordingly, the Supplier commits to work with UbuntuNet Alliance in a flexible, transparent and inclusive manner that seeks to maximise the opportunity to develop and support Connectivity Services for the African NRENs throughout the life of this Agreement

IT IS AGREED as follows:

1. Definitions, Structure and Interpretation

1.1 "Group" means, in relation to a Party, the Party, its subsidiary undertakings, its parent undertakings and any subsidiary undertakings or parent undertakings of such parent undertakings, " subsidiary undertakings " and " parent undertakings "

1.2 In this MSA the following expressions shall have the following meanings:

"Acceptance"	means the point at which any test item has successfully passed the Acceptance Tests in accordance with the procedure set out Annex C.1.6 (Acceptance Procedure) and Annex C.2.2 (Acceptance test and criteria for Purchased Capacity Services) of the relevant Statement of Work (SoW) and "Accepted" shall be construed accordingly;
"Acceptance Criteria"	means the criteria against which a test item will be measured to determine whether it has been Accepted;
"Acceptance Date"	means in respect of each test item the date on which that test item is Accepted;
"Acceptance Tests"	means the acceptance tests for any test item as set out in the relevant SoW and "Acceptance Testing" shall be construed accordingly;
"Affiliate"	means, in relation to a body corporate, any entity, any other entity that directly or indirectly controls, is controlled by or is under common control with such entity. For purposes of this definition, the term "control" (including with correlative meaning, the terms "controlled by" and "under common control") means with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise;
"ATSD"	means Acceptance Test Start Date
"BCDR Plan"	means a business continuity disaster recovery plan developed in accordance with clause 7.1 of this MSA, to ensure the continued supply of the Services;
"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 which is material in nature and cannot be managed within the context of normal operating procedures;
"Business Day"	means Monday to Friday (inclusive) except bank or public holidays in the country where the Services are provided;
"CDD"	means Committed Delivery Date specified in a SoW;
"Change"	means any change to this MSA or a SoW;
"Change Control Procedure"	means the change control procedure for managing Changes to this MSA or a SoW, as set out in Annex A.1 (Change Control Procedure);
"Charges"	means the charges payable by the Customer to the Supplier, in consideration of the provision of the Services, as described in a SoW;
"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 a SoW;
"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;
"Critical Service Failure"	means that the level of service for a particular Service Level falls below the Service Level Threshold;
"Customer Partners"	means any entity that partners with the Customer in connection with a SoW, as specified in a SoW;
"Data Protection Legislation"	means applicable data protection legislation – in particular, but not limited to the European General Data Protection Regulation (Regulation (EU) 2016/679, "GDPR");
"Default"	means any breach of the obligations of the Customer or the Supplier (including fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the Customer or the Supplier or their respective Personnel in connection with or in relation to the subject matter of this MSA and/or any SoW and in respect of which such Party is liable to the other;
"Dispute"	means any dispute which arises between the Parties out of or in connection with this MSA and/or any SoW or the performance, validity or enforceability of it, excluding any Technical Dispute;
"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 26.1.1 of this MSA;
"Dispute Resolution Procedure"	means the procedure outlined under clause 26 (Dispute Resolution) of this MSA;
"Disputed Amount"	has the meaning given to it in clause 11.6.1;
"Documentation"	means all documentation reasonably necessary for the Customer to effectively operate and use the Services;
"Equipment"	means the equipment which the Customer may require the Supplier to supply or provide as part of a SoW, as described in a SoW;
"Escalation Procedure"	means the escalation procedure set out in SLA and thereafter Dispute Resolution process defined in clauses 26.1.3 to 26.1.4 of this MSA shall apply;
"Expert"	means a neutral, independent, impartial person appointed to resolve any Technical Disputes between the Parties;
"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, undersea fibre cuts, or disaster but excluding any industrial dispute relating to the Supplier, its Personnel or any other failure in the Supplier or its sub-contractor's supply chain;
"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 connected products and services;
"Initial Term"	means the term defined in the applicable SoW;
"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;

"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;
"Laws"	means: (i) any applicable statute or proclamation or any delegated or subordinate legislation; (ii) any applicable judgement of a relevant court of law which is a binding precedent in Malawi; and iii) any requirements of any Regulator, in each case in force at any time during the Term where the Services are required to be delivered;
"MSA"	means all parts of this agreement together with its Annexes and any SoW agreed in accordance with clause 1.4 of this MSA;
"Normal Working Hours"	means 8.00 am to 5.00 pm on any Business Day;
"OSD"	means Operational Service Date or the Service Commencement Date;
"Outline Project Plan"	means the outline plan for the delivery of the Services under a SoW as set out in the SoW;
"Party"	means either the Customer or the Supplier, and "Parties" shall mean both of them;
"Personnel"	means, in relation to a Party, that Party's employees, agents, consultants and sub-contractors who are involved in the performance of this MSA and/or any SoW;
"Pre-Existing IPR"	has the meaning given in clause 15.1;
"Project Plan"	means the more detailed plan for the delivery of the Services under a SoW developed and agreed in accordance with clause 3.2 of this MSA;
"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;
"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 all or any part of the Supplier'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;
"Remedial Plan"	means the plan to be developed as part of the Remedial Plan Process;
"Remedial Plan Process"	means the remedial plan process set out in clause 6 (Remedial Plan Process) of this MSA;
"Requirements"	specified in a SoW;
"Sales Taxes"	means VAT and any other similar taxes, duties or levies imposed on the Supplier by law;
"Services"	means the services which the Customer requires the Supplier to supply under a SoW, as described in the SoW (and template SoWs are set out in this MSA for each of the following services: Leased capacity, Spectrum, and Dark Fibre);
"Service Credits"	means credits against the Charges to which the Customer is entitled in respect of failures by the Supplier to meet Service Levels, as specified in Annex C.1.5 (Service Levels and Service Credits);

"Service Levels"	means the level of service to be provided by the Supplier for the Services, as specified in Annex C.1.5 (Service Levels and Service Credits);
"Service Level Target"	means the level of minimum level of service (for availability, delivery or repair) that will be achieved by the Supplier for the Services as specified in the "Service Level Target" column of the table in Annex C.1.5;
"Service Level Threshold"	means the minimum level of service for a particular Service Level beyond which the service is materially unacceptable to the Customer, as specified in Annex C.1.5 (Service Levels and Service Credits);
"Service Measurement Period"	means a calendar quarter, that is Jan-March, April-June, July-September and October-December, or a calendar month as defined in the Table Summary Target KPIs;
"Specifications"	means the specifications for the Services as specified in a SoW; "Standards and Security" means the standards and security requirements for the Services, as
"Statement of Work" or "SoW"	means the document signed by the Parties and appended to the front of this MSA, requiring the Supplier to provide certain Services and/ to the Customer;
"Technical Dispute"	means any dispute arising out of or in connection with this MSA which is technical or objective in nature; and
"Term"	means the Term set out in the SoW.
"VAT"	means Value Added Tax.

1.3 Except where the context otherwise requires:

- 1.3.1 headings are included for convenience only and will not affect the construction or interpretation of this MSA or a SoW;
- 1.3.2 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;
- 1.3.3 unless expressly stated otherwise, any reference to a clause or annex in this MSA is to the relevant clause or annex of that part of this MSA;
- 1.3.4 use of the singular includes the plural and vice versa;
- 1.3.5 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);
- 1.3.6 all references to the Parties include their permitted successors and assigns;
- 1.3.7 any reference to a statute or provision of a statute includes references to;
- 1.3.8 that statute or provision as amended, extended or applied by any other provision;
 - (a) any re-enactment of that statute or provision (with or without change); and
 - (b) 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
- 1.3.9 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.

1.4 In the case of and to the extent of any conflict, inconsistency or ambiguity the following order of precedence shall apply:

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- 1.4.1 MSA - Part C - the relevant SoW for the Service being provided
- 1.4.2 MSA - Part B.2 – Funding Supplier Provisions;
- 1.4.3 MSA - Part A – General Terms and Conditions;
- 1.4.4 MSA - Part D – Data Processing Agreement (GDPR);
- 1.5 In the event that there is a conflict between the provisions of the MSA the order of precedence shall be:
 - If and to the extent that between the clauses in Part A, C or D or between the clauses of each annex of the MSA there are conflicting provisions to occur, the higher in rank order placed clause in the relevant section takes precedence over the lower in rank order placed clause;
 - If and to the extent that between the clauses in Part A, C or D of the MSA and its annexes there are conflicting provisions to occur, the statements in the clauses in Part A, C or D of the MSA takes precedence over the annex(es) in the relevant section;
 - If and to the extent that between annexes in Part A, C or D of the MSA, there are conflicting provisions to occur the higher in rank order placed annex takes precedence over the lower in rank order placed annex.
- 1.6 The general terms and conditions of delivery for Services from the Supplier, or any other general or particular conditions do not apply to this MSA nor any further commands signed under this MSA.
- 1.7 The offer comprised in the SoW shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the SoW countersigned by the Supplier within seven (7) days of the date of the SoW.
- 2. Governance**
 - 2.1 The Supplier 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 (the "Supplier Representative").
 - 2.2 The Customer shall appoint an employee as its representative (the "Customer Representative") to liaise with the Supplier Representative and may change its nomination by notice to the Supplier.
 - 2.3 The Customer Representative and the Supplier Representative will serve as the principal interface between the Parties with respect to all issues relating to the delivery of the Services and will meet as such intervals as may be reasonably required by the Customer to monitor and review the Supplier's performance of the Services on an ongoing basis. Approvals or consents given by either Party (including under provisions governing change control) will not be effective for the purposes of this MSA and/or any SoW unless given by the Customer Representative or Supplier Representative (as applicable).
 - 2.4 The Supplier 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.
- 3. Implementation and Acceptance Testing**
 - 3.1 The Supplier shall supply the Services in accordance with the Project Plan.
 - 3.2 The Supplier shall develop a draft Project Plan based on the Outline Project Plan and deliver it to the Customer within one (1) month of signature of the SoW. The Project Plan must:
 - 3.2.1 contain information at the level of detail necessary to manage the project effectively, including the key dates for delivery and testing;
 - 3.2.2 take account of all dependencies known to, or which should reasonably be known to, the Supplier; and
 - 3.2.3 clearly indicate the sequence of tasks, their dependencies on one another, which Party is responsible for which task and, in the case of the Supplier, whether a task is performed by the Supplier directly or via a sub-contractor.
 - 3.3 Once the draft Project Plan is approved by the Customer in writing (such agreement not to be unreasonably delayed or withheld), the Supplier shall:

- 3.3.1 monitor its performance against the Project Plan; and
- 3.3.2 report to the Customer on such performance, within three (3) Business Days of the Customer requesting a progress report.
- 3.4 The Supplier shall ensure that each test item is ready for acceptance and will pass the Acceptance Tests by the relevant date specified in the Project Plan.
- 3.5 Acceptance testing of the Services shall be conducted in accordance with Annex C.1.6 (Acceptance Procedure).
- 3.6 If the Supplier 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:
 - 3.6.1 notify the Customer of the fact of the delay and summarise the reasons for it and the likely consequences; and
 - 3.6.2 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 Supplier shall implement the correction plan.
- 3.7 Where a delay is attributable in part to the Supplier'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.
- 3.8 With respect to the agreed relevant date specified in the Project Plan where all specified test items are ready for and will pass the Acceptance Tests, and these are binding strict deadlines / firm dates unless expressly agreed otherwise in accordance with clause 3.6.

4. Services

- 4.1 The Supplier shall supply the Services in accordance with:
 - 4.1.1 the terms of this MSA;
 - 4.1.2 the Specifications;
 - 4.1.3 the Standards and Security Requirements as set out in the SoW;
 - 4.1.4 the Service Levels;
 - 4.1.5 Good Industry Practice;
 - 4.1.6 all Laws, codes of practice and standards from time to time applicable to supply the Services ; and
 - 4.1.7 all lawful and reasonable directions, instructions and requests from the Customer.
- 4.2 In supplying the Services and in performing its obligations under each SoW and this MSA, Supplier shall:
 - 4.2.1 use all reasonable skill and care;
 - 4.2.2 devote such knowledge, personnel and time as is reasonably necessary for the proper and timely performance of the Services, timely delivery of Equipment and its obligations under this MSA and/or any SoW;
 - 4.2.3 ensure that all its Personnel are appropriately skilled, trained and experienced to providing the Services;
 - 4.2.4 conduct all communication with the Customer, and provide all documents to the Customer, in English.
- 4.3 Nothing in this MSA and/or any SoW shall operate to appoint the Supplier as exclusive provider of the Services or any other goods or services to the Customer nor require the Customer to purchase any Services from the Supplier. The Parties agree that the Customer shall only be committed to purchase Services by signing a SoW and this MSA.
- 4.4 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services to the Customer. Any improvement identified by the Supplier that the Customer wishes to incorporate shall be subject to the Change Control Procedure.

- 4.5 The Supplier shall be responsible for the costs of implementing any Changes resulting from any change in any Laws after the Commencement Date where the effect of that change in Law is foreseeable before the Commencement Date (with the exception of any changes to Laws which affect the business of the Customer).
- 4.6 The Supplier will ensure that its Personnel comply with all obligations of the Supplier under this MSA and/or any SoW and the Supplier will be liable for any act or omission of any Supplier Personnel as if it were its own.
- 4.7 The Supplier will advise the Customer immediately in writing on becoming aware:
 - 4.7.1 that it may be unable or is unlikely to be able to perform the Services in accordance with this MSA and/or any SoW (including any failure or potential failure to meet the Service Levels); or
 - 4.7.2 of any issue that may have a material impact on its ability to perform the Services in accordance with this MSA and/or any SoW.
- 4.8 The Customer shall be responsible for:
 - 4.8.1 providing reasonable cooperation to the Supplier regarding the installation of any equipment, software or network components as may be reasonably required for the Supplier to interface to the Customer's facilities and any related modification to the Customer's facilities or operations;
 - 4.8.2 obtaining from any third party any authorizations, access to premises and other cooperation reasonably required in advance by the Supplier for the provision of the Service(s);
 - 4.8.3 reporting in writing any fault or break in Service (s) to the Supplier as soon as reasonably possible once made aware of the fault;

5. Service Credits

- 5.1 If the Supplier fails to meet a Service Level in any month, a Service Credit will be payable by the Supplier to the Customer. Force Majeure Events do not give rise to Service Credits.
- 5.2 Service Credits will be calculated in accordance with Annex C.1.5 and any such credits shall be issued as a credit note to the Customer which will be used as credit against payment of the next invoice when due.
- 5.3 If no invoice is due to be issued then the Supplier shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Supplier as a debt within thirty (30) days of issue. In the event of a Termination event, cash compensation will be made in case such payables do not exist.
- 5.4 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 remedy save where;
 - 5.4.1 there is a Critical Service Failure; or
 - 5.4.2 the Customer terminates this Agreement or any SoW under it in accordance with Clause 19 (Termination for Default).

6. Remedial Plan Process

- 6.1 If the Supplier commits a Default and the Default is capable of remedy then the Supplier shall:
 - 6.1.1 allocate such reasonable 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;
 - 6.1.2 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;
 - 6.1.3 promptly, and in any event within such timescales as are reasonably required by the Customer, provide the Customer with a draft Remedial Plan.
- 6.2 The Supplier shall ensure that each Remedial Plan:
 - 6.2.1 specifies the steps that the Supplier proposes to take to remedy that Default (including actions and timings);
 - 6.2.2 specifies the preventative measures (including the allocation of additional resources) which the Supplier shall implement to avoid any recurrence of the Default; and
 - 6.2.3 is in sufficient detail for the plan to be properly evaluated by the Customer.
- 6.3 The Supplier 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 Supplier shall reimburse to the Customer in full any direct costs incurred by the Customer in relation to the implementation of the Remedial Plan. The Supplier's liability in respect of such costs shall in no event exceed an amount equal to twelve months' monthly recurring charge payable by the Customer pursuant to the relevant SoW.
- 6.4 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:
 - 6.4.1 a Remedial Plan has previously been implemented in respect of the relevant material Default, but the Supplier failed to remedy the Default by those means; or
 - 6.4.2 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.
 - 6.4.3 In such an instance the provisions of clause 21 (Consequences of Termination) shall apply.

7. Business Continuity and Disaster Recovery

- 7.1 The following provisions of clause 7 (Business Continuity and Disaster Recovery) shall apply only where the SoW requires the Supplier to develop a business continuity and disaster recovery plan (BCDR Plan) in respect of the Services supplied under that SoW.

- 7.2 Unless expressly agreed otherwise in writing, the Supplier must submit to the Customer within forty-five (45) days of signature of a SoW an appropriate and effective BCDR Plan to ensure the continued supply of the Services in the event of a Business Continuity Event.
- These forty-five (45) days are regarded as a strict deadline for having the BCDR Plan submitted to the Customer, unless expressly agreed otherwise in writing.
- 7.3 The BCDR Plan submitted to the Customer pursuant to clause 7.1 shall be subject to the Customer's approval (such approval not to be unreasonably withheld or delayed). The Supplier shall promptly make any changes to the BCDR Plan that are reasonably required by the Customer. Where the Supplier disagrees with the Customer's request, both Parties shall cooperate in good faith to resolve the disagreement.
- 7.4 The Supplier 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, how such threats and risks may be mitigated and how the supply of the Services may be maintained in the event of any such identified threats or risks materialising. The Supplier 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).
- 7.5 The Supplier shall, on request by the Customer and as agreed between Parties from time to time:
- 7.5.1 test the BCDR Plan in the presence of the Customer or any third party nominated by the Customer; and
- 7.5.2 promptly make any changes to the BCDR Plan that are reasonably required by the Customer.
- 7.6 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.
- 7.7 The Supplier shall implement the BCDR Plan in the event of a Business Continuity Event.
- 7.8 A Business Continuity and Disaster Recovery Plan sets out the arrangements to ensure that the business processes remain supported and to ensure continuity of the business operations, in keeping with the measures specified in ISO-22301. In general, the BCDR plan must incorporate the following aspects (but not limited to):
- general principles of the BCDR Plan;
 - the arrangements to ensure that the business processes remain supported and to ensure continuity of the business operations;
 - a Disaster Recovery Plan that is designed to ensure that upon the occurrence of a disaster the Supplier ensures continuity of the business operations of the Customer supported by the Services following any disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
 - the Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that will address the following:
 - loss of key/named individuals;
 - loss of a Subcontractor;
 - loss of the Suppliers helpdesk;
 - loss of Suppliers utilities;
 - loss of access to the Suppliers Premises;
 - emergency notification and escalation process;
 - contact lists;
 - staff training and awareness;
 - post implementation review process;
 - BCDR Plan testing;
 - Review and changing the BCDR Plan;
 - any applicable Service Levels with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Service Levels during any period of invocation of the Disaster Recovery Plan.

7.9 Approval of the BCDR Plan by UbuntuNet Alliance will not be unreasonably withheld.

8. Due Diligence

8.1 The Supplier 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 in accordance with the terms of this MSA.

9. Supplier Equipment

9.1 Save as provided within an applicable SoW, the Supplier will be responsible for providing all equipment required for the provision of the Services ("Supplier Equipment"). The Supplier will ensure that the Supplier Equipment is in all ways suitable for the provision of the Services.

10. Customer Responsibilities

10.1 The Customer shall use reasonable endeavours to:

10.1.1 provide to the Supplier such information as the Supplier may reasonably require for the performance of the Service(s) and supply of the Equipment; and

10.1.2 permit access to Customer premises strictly as necessary to enable the Supplier to provide the Services.

11. Charges and Payment

11.1 In consideration of the provision of the Services by the Supplier under a SoW, the Customer will pay to the Supplier the Charges set out in that SoW.

11.2 IRU and non-recurring Charges shall only be invoiced upon Acceptance of the Service (such Acceptance in accordance with this Agreement). The recurring Charges will be invoiced by the Supplier quarterly in advance (unless agreed otherwise in the SoW) on the first (1st) day of each (preferably) new calendar year quarter. First and last invoice may be prorated. 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.

11.3 The Parties acknowledge that whether the Supplier or the Customer is responsible for VAT compliance depends on the jurisdiction of both the Supplier and Customer and their respective VAT statuses. Unless otherwise agreed between the Parties, the Supplier is responsible for ensuring that it is treating the performance of the Services compliantly.

11.4 All payments made by the Customer shall be made by bank transfer to the bank account indicated in the SOW or another bank account as notified in writing by the Supplier. Payments will be free and clear of all bank charges imposed by the Customer bank. Invoices shall be issued in United States Dollars, unless expressly agreed otherwise in writing. For the avoidance of doubt, the Customer is not responsible for any charges imposed by the Supplier's bank or any intermediary bank required by the Supplier

11.5 The obligation to pay the Charges will constitute the Customer's entire payment liability to the Supplier for the supply of the Services.

11.6 If the Customer is not able to verify or (acting reasonably) disputes any invoiced amount:

11.6.1 the Customer may withhold payment of the amount in question (the "Disputed Amount");

11.6.2 the Customer and the Supplier 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;

- 11.6.3 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 11 (Charges and Payment).
- 11.6.4 The due date for payment for the purposes of applying this clause 11.6.3 shall be calculated by reference to the re-submitted invoice and not the original invoice; and
- 11.6.5 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.
- 11.7 Unless otherwise stated in a SoW, all amounts payable by the Customer shall exclude amounts in respect of value added tax which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (where applicable), subject to receipt of a valid VAT invoice.
- 11.8 If any undisputed sum payable under any SoW 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 annual rate of two percent (2%) above the base rate of Reserve Bank of Malawi from time to time in force. Such interest will accrue on a daily basis.
- 11.9 The Customer may set off any sum of money which is:
- 11.9.1 recoverable from the Supplier by the Customer; and/or
- 11.9.2 payable by the Supplier to the Customer (including in respect of any breach of this MSA and/or any SoW),
- against any sum then due, or which at any later time may become due, to the Supplier under or in relation to this MSA and/or any SoW.
- 11.10 Where the Supplier uses a subcontractor for the performance of any part of the Services or the supply of Equipment then the Supplier shall include within its terms and conditions of contract with that subcontractor payment terms of not more than thirty (30) days from the date on which any relevant invoice is regarded as valid and undisputed.
- 11.11 The Supplier shall also ensure that any subcontractor used for the performance of any part of the Services or the supply of Equipment shall correspondingly include within its terms and conditions of contract payment terms of not more than thirty (30) days from the date on which any relevant invoice is regarded as valid and undisputed
- 11.12 Any request for a Change shall be dealt with in accordance with the Change Control Procedure as set out in Annex A.1 (Change Control Procedure).

12. Reports, Monitoring and Audit Rights

- 12.1 The Supplier shall during the Term:
- 12.1.1 and for a period of seven (7) years afterwards maintain in a suitably secure manner full and accurate records and accounts of the operation of this MSA and SoWs entered into, including copies of all data, records and reports necessary in order to verify the Charges, its compliance with this MSA and the SoW and its performance against the Service Levels;
- 12.1.2 monitor its performance against the Service Levels;
- 12.1.3 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; and
- 12.1.4 provide such additional reports to the Customer as it may reasonably request in order to verify the Supplier's compliance with this MSA and the SoW.
- 12.2 The Supplier shall keep the records and accounts referred to in clause 12.1 in accordance with Good Industry Practice and Law.
- 12.3 The Customer may monitor the performance of the Services by the Supplier. The Supplier 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.

- 12.4 Subject to clause 2 in Part B (Funding Supplier Provisions), the Supplier shall, not more frequently than once in any twelve (12) month period (unless the Supplier breaches this MSA and/or SOW and/or is directed by a Regulator or required pursuant to applicable Law), afford any access to the records and accounts referred to in clause 12.1 at the Supplier's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with the Customer, in order that the Customer may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this MSA and/or SoW, including for the following purposes to:
- 12.4.1 verify the accuracy of the Charges and any other amounts payable by under an MSA and/or SoW (including proposed or actual variations to them) and for the avoidance of doubt, any such audit to verify the accuracy of the Charges shall not be based on "open book accounting", save for any elements of the Charges that are described as at cost plus a margin;
 - 12.4.2 verify the Supplier's compliance with this MSA and the SoW and its performance against the Service Levels;
 - 12.4.3 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - 12.4.4 identify or investigate actual or suspected breaches of the Anti-Bribery Requirements, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - 12.4.5 identify or investigate any circumstances which may materially impact upon the financial stability of the Supplier, the Guarantor and/or any Sub-Contractors or materially impact their ability to perform the Services;
 - 12.4.6 obtain such information as is necessary to fulfil Customer's obligations to supply information to any Regulator;
 - 12.4.7 review any books of account and the internal contract management accounts kept by the Supplier in connection with this MSA;
 - 12.4.8 carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts; and/or
 - 12.4.9 review the integrity, confidentiality and security of the Customer's personal data.
- 12.5 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the MSAs and/or any SoWs.
- 12.6 The Customer shall give the Supplier reasonable notice, not less than fourteen (14) Days before, 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 Supplier, 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).
- 12.7 Subject to the Customer's obligations of confidentiality, the Supplier shall on demand provide the Customer with all reasonable co-operation and assistance in relation to each audit, including by providing:
- 12.7.1 all information within the scope of the audit requested by the Customer;
 - 12.7.2 reasonable access to any sites controlled by Supplier and to equipment used in the provision of the Services; and
 - 12.7.3 access to the Supplier Personnel;
 - 12.7.4 If an audit reveals that a material Default has been committed by the Supplier, then the Customer shall be entitled to terminate this MSA and any SoW for material Default.
- 12.8 The Parties agree that they shall bear their own reasonable respective costs and expenses incurred in respect of compliance with their obligations under this clause 12 (Reports, Monitoring and Audit Rights), unless an audit identifies a material Default by the Supplier, in which case the Supplier shall reimburse the Customer for all the Customer's reasonable costs and expenses incurred in the course of performing or facilitating the applicable audit. The provisions of clauses 12.2 to 12.7 shall survive for a period of seven (7) years after the Term whether the SoW expires or is terminated for any reason.

13. Warranties and Undertakings

13.1 The Supplier represents, warrants and undertakes to the Customer that:

- 13.1.1 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 MSA and the SoW and supply the Services ;
- 13.1.2 it owns or is the licensee of all necessary Intellectual Property Rights to the extent necessary to enter into and perform this MSA and the SoW and has the right to license these to the Customer as required under this MSA and the SoW;
- 13.1.3 the supply of the Services (including any software installed by the Supplier on the Equipment) and their use by the Customer will not infringe the Intellectual Property Rights of any third party;
- 13.1.4 it is a company duly incorporated, validly existing and in good standing under the laws of the territory of its incorporation and that the SoW is executed by duly authorised representatives of the Supplier;
- 13.1.5 as at the date of the SoW, the Supplier is not subject to any Insolvency Event;
- 13.1.6 the Supplier 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 cause loss of, or corruption or damage to, any program or data held on such systems or damage the reputation of the Customer;
- 13.1.7 there is no material outstanding litigation, arbitration or other disputed matter to which the Supplier is a Party which may have a material adverse effect upon the fulfilment of the Supplier's liabilities, responsibilities and obligations under the SoW; and
- 13.1.8 all statements and representations made in connection with entering into, the SoW were true and accurate when made, remain to the best of its knowledge, information and belief, true and accurate at the date of the SoW, 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.

13.2 Each of the representations and warranties set out in clause 13.1 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this MSA.

13.3 If at any time the Supplier becomes aware that a representation or warranty given by it under clause 13.1 has been breached, is untrue or is misleading, it shall immediately notify the Customer of the relevant occurrence in sufficient detail to enable the Customer to make an accurate assessment of the situation.

13.4 For the avoidance of doubt, the fact that any provision within this MSA is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this MSA.

14. Indemnities

14.1 The Supplier will indemnify the Customer against any direct losses incurred by the Customer in respect of:

- 14.1.1 any fines or other penalty imposed on the Customer under applicable Laws arising as a result of a breach by the Supplier of its obligations under the MSA and/or the SoW;
- 14.1.2 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;
- 14.1.3 the Supplier's, or any of its Personnel's breach of the Bribery Act 2010; and
- 14.1.4 any fraud or malpractice by the Supplier, or any of its Personnel.

14.2 If the 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 Supplier shall:

- 14.2.1 replace or modify all or part of the Services 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
- 14.2.2 procure for the Customer a licence from the relevant third party to continue receiving the Services.
- 14.3 Subject to clause 16.6, if the Supplier is unable to meet its obligations under clause 14.2, this MSA and the SoW and the licences granted under clause 15 (Intellectual Property Rights) 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.

15. Intellectual Property Rights

- 15.1 Nothing in this MSA or the SoW shall transfer Intellectual Property Rights in any documents, materials or works owned by one Party to the other Party prior to the Commencement Date ("Pre-Existing IPR"). The Supplier hereby grants, as long as the MSA is in force, to the Customer a non-exclusive, perpetual, royalty-free, worldwide licence to use its Pre-Existing IPR to the extent required to use the Equipment and receive the Services.
- 15.2 The Supplier grants, as long as the MSA is in force, to the Customer a non-exclusive, perpetual royalty-free, worldwide licence (which shall be freely capable of sub-licence) to use the Documentation. The Supplier shall, to the extent such consent is required, procure the consent of any third parties to such grant at its own cost.

16. Limitation of Liability

- 16.1 Clause 16 (Limitation of Liability) 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 MSA and the SoW, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, howsoever arising.
- 16.2 Nothing in this MSA and the SoW shall limit or exclude the liability of either Party for:
 - 16.2.1 death or personal injury resulting from negligence;
 - 16.2.2 fraud or fraudulent misrepresentation;
 - 16.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 16.2.4 any repudiation or deliberate breach of this MSA and/or the SoW or any intentionally harmful or negligent act or omission of the Supplier;
 - 16.2.5 any direct losses recoverable by the Customer under any indemnity given by the Supplier in this MSA and/or the SoW;
 - 16.2.6 the wrongful termination or abandonment of the SoW by the Supplier; or
 - 16.2.7 breach of any of the provision of Part D (Data Processing Agreement) of the MSA;
 - 16.2.8 any other matter in respect of which liability cannot by any applicable Law be excluded.
- 16.3 Subject to clause 16.2, neither the Customer nor the Supplier shall have any liability to each other for:
 - 16.3.1 loss of goodwill or injury to reputation;
 - 16.3.2 loss of business opportunity; and/or
 - 16.3.3 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 either Party knew or had reason to know of the possibility of the loss, injury, or damage in question.
- 16.4 The provisions of clause 16.3 shall not limit the Customer's right to recover from the Supplier:
 - 16.4.1 additional and/or administrative costs and expenses incurred by the Customer arising from a Default by the Supplier, 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);

16.4.2 for wasted expenditure or charges rendered unnecessary and incurred by the Customer arising from the Default of the Supplier.

16.5 Supplier shall not be liable for:

16.5.1 the content that is transmitted by Customer or third parties including, without limitation, Customer's customers over or through the Supplier's network or systems;

16.5.2 any defect, error, interruption, delay, or attenuation of Services caused by or resulting from any equipment controlled by Customer or its customers.

16.6 Subject to clause 16.1 and 16.2, the aggregate liability of the Customer to the Supplier in respect of all losses suffered by the Supplier 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 one hundred percent (100%) of the total Charges paid or invoiced and due to be payable under this MSA during the term of this MSA, such amount shall be 100% of the Charges which have been paid or are payable under the SoW for the prior 12 months of the SoW.

16.7 Subject to clause 16.1 and 16.2, the aggregate liability of the Supplier 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 Supplier and any and all torts or breaches of statutory duty committed by the Supplier (or, as the case may be any officer, employee, sub-contractor or agent of the Supplier) in connection with the performance or purported performance of the Supplier's obligations shall be limited to and will in no circumstances whatsoever exceed 125% of the total Charges paid or invoiced and due to be payable under the SoW for the full term of the SoW as set out therein (including, for the avoidance of doubt, any one-off charges, any monthly charges paid or payable, and any other charges as may be specified in that SoW).

17. Insurance

17.1 During the Term and for a period of six (6) years thereafter, the Supplier shall maintain in force with a reputable insurance company, Public & Products liability insurance and such other insurances as is required to cover the heads of liability as may arise under or in connection with this MSA and the SoW and any Customer Equipment housed in Supplier facilities, as further set out in the relevant SoW. On the Customer's reasonable request, the Supplier shall produce the insurance certificate(s) giving details of the cover and the receipt for the current year's premium in respect of each insurance. Upon the agreement in writing between the Parties, the Customer may procure such insurance on behalf of the Supplier.

18. Anti-Bribery Compliance

18.1 The Supplier undertakes to the Customer that it:

18.1.1 will fully comply with, and will procure that all Personnel fully comply with:

(a) all applicable Laws and codes relating to anti-bribery and anti-corruption; and

(b) any anti bribery and anti-corruption measures that a reasonable Supplier would take in accordance with Good Industry Practice the "Anti-Bribery Requirements");

18.1.2 will not do, or omit to do, any act that will cause the Customer to be in breach of the Anti-Bribery Requirements;

18.1.3 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 Supplier will disclose such policies and procedures to the Customer; and

18.1.4 will not accept or condone the payment of bribes or any financial advantage on the Supplier's behalf as an inducement or a reward for improper performance of a relevant function or activity;

18.1.5 will make it clear to those providing services to the Supplier, including its Personnel, that the Supplier does not accept or condone the payment of bribes on the Supplier's behalf.

19. Termination for Default

- 19.1 The Customer may terminate a SoW without liability, in whole or in part, by written notice to the Supplier if:
- 19.1.1 the Supplier commits a material breach in relation to the SoW which is not capable of being remedied;
 - 19.1.2 the Supplier commits a material breach of the SoW, which is capable of being remedied and, following notice from the Customer requiring the Supplier to cure the breach and the Supplier does not cure such breach within thirty (30) days of receipt of such notice;
- 19.2 The Customer may terminate the MSA and SoW without liability, in whole or in part, by written notice to the Supplier if:
- 19.2.1 the Supplier is either subject to an enforcement action by any Regulator or ceases to be authorised under any applicable Law, in either case preventing the Supplier from lawfully performing its obligations under this MSA or the SoW;
 - 19.2.2 the Customer is subject to a fine or penalty by any Regulator which arises as a result of an act or omission of the Supplier (or any of its subcontractors or service personnel); or
 - 19.2.3 if there is a change of Control of the Supplier, which has occurred without the prior written approval of the Customer, which will not be unreasonably withheld.
- 19.3 The Customer may terminate a SoW without liability, in whole or in part, by giving the Supplier thirty (30) days written notice, if:
- 19.3.1 the Supplier commits a material breach of the SoW, remedies such breach and then commits any similar material breach again within twelve (12) months of curing the original material breach;
 - 19.3.2 the Supplier fails to meet the same Service Level Threshold for three (3) consecutive Service Measurement Periods or any six (6) Service measurement Periods in a rolling twelve (12) Service Measurement period on a given service, then the Customer may terminate the affected service circuit;
 - 19.3.3 the aggregate of all cumulative liabilities arising out of or in connection with the Agreement exceeds the aggregate cap of liability under clause 16.7 is reached.
- 19.4 Subject to clause 19, the Supplier may terminate a SoW , in whole or in part, upon written notice to the Customer if:
- 19.4.1 the Customer fails to make undisputed payments due to the Supplier under the SoW which, in aggregate, exceed three (3) months' aggregate Charges; and
 - 19.4.2 the Supplier 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
 - 19.4.3 the Customer does not remedy such default within ninety (90) days of receipt of the initial notice of default from the Supplier.
- 19.5 Either Party shall be entitled to immediately terminate this MSA and any SoW 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.

20. Termination

- 20.1 Save as provided within an applicable SoW, any or all Services of the agreement may, at the option of the Customer, by giving the Supplier not less than thirty (30) days' written notice, be terminated at any time after the expiry of the Initial Term (or extensions to the Initial Term, agreed in writing in accordance with Annex A.1 (change control procedure) of the Service as specified in the relevant SoW) from the Commencement Date. For the avoidance of doubt, after the Initial Term, Customer shall only be liable for charges for services received up to the effective date of termination and not for a full twelve (12) month period.

- 20.2 In the case of termination of a Service but not the whole MSA, the remainder of the MSA, and all other Services, shall continue in force until terminated in accordance with the MSA.
- 20.3 The Customer has the right to terminate the agreement with respect to a relevant Service Item or the whole MSA if the Service Item specified in the relevant SoW has not been accepted within ninety (90) days of the CDD or if guaranteed service levels for a Service Item are not achieved for three (3) consecutive months.
- 20.4 The Customer has the right to terminate the agreement with respect to a relevant Service or the whole MSA, by giving the Supplier not less than thirty (30) days' written notice, if it receives a CCN in accordance with Annex A.1 (change control procedure), due to an unforeseen change in Law as set out in clause 4.5 where this CCN introduces extra costs that are unreasonable.

21. Consequences of Termination

- 21.1 On termination or expiry of this MSA and SoW:
 - 21.1.1 each Party shall promptly return to the other Party all documents and materials (and any copies) containing the other Party's Confidential Information and
 - 21.1.2 each Party shall promptly on request, certify in writing to the other Party that it has complied with the requirements of this clause 21.1; and
 - 21.1.3 the Supplier shall promptly refund any Charges paid in advance which relates to the period after expiry or termination on a pro rata basis; in respect to circuit services, the upfront circuit provisioning charges shall be amortised over the first 3 year period of the applicable SoW for the purposes of calculating refunds. The liability for upfront circuit provisioning charge refunds shall be prorated for the first 3 years from year 4 onwards the circuit charges shall not be considered an advance payment; and
 - 21.1.4 the Supplier shall provide all reasonable assistance to the Customer and/or the replacement supplier to the extent reasonably required to facilitate the smooth migration to the Customer or any replacement supplier of the Services.
- 21.2 Termination or expiry of this MSA and SoW shall not limit any of the Parties' rights and remedies which have accrued as at termination. Other than as set out in this MSA and SoW, neither Party shall have any further obligation to the other under this MSA and SoW after its termination.
- 21.3 Notwithstanding the expiry or termination of this MSA and SoW 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 clauses 12 (Reports, Monitoring and Audit Rights), 14 (Indemnities), 16 (Limitation of Liability), 17 (Insurance), 23 (Confidentiality and Publicity), 26 (Dispute Resolution), 30 (General) and **31** (Governing Law and Jurisdiction).

22. Force Majeure

- 22.1 Subject to the provisions of this clause 21.3 (Force Majeure), to the extent that either Party is prevented or delayed from performing its obligations under this MSA or any applicable SoW by reason of a Force Majeure Event then that Party's obligation to perform its obligations under this MSA and applicable SoW 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.
- 22.2 In the case of any sub-sea related faults, to the extent that any Force Majeure Event (> 24 hours) results in any suspension of Services (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 for the period of the suspension or non-provision. In such an event, the Customer may set off these Charges pro rata in accordance with clause 11.9.
- 22.3 In the event that a delay or failure arising from a Force Majeure Event extends beyond a period of (60) sixty 'days without resolution, then the Customer shall be entitled to terminate applicable SoW by giving thirty (30) days' written notice to the Supplier. On the expiry of this notice period, this applicable SoW will terminate and such termination shall be without prejudice to the rights of the Parties in respect of any breach of this MSA or

SoW occurring prior to such termination and for the avoidance of doubt, the terms of clause 21 (Consequences of Termination) shall apply.

- 22.4 The Party claiming to be affected by a Force Majeure Event will not be entitled to invoke the provisions of clause 22.1 unless it fully performs the following obligations:
- 22.4.1 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 MSA and/or SoW, 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;
 - 22.4.2 it takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such Force Majeure Event; and
 - 22.4.3 without limit to clause 21 (Consequences of Termination), in the case of the Supplier only, it is complying fully with its obligations under the BCDR Plan (where applicable), unless such obligations cannot be performed due to a Force Majeure Event.
- 22.5 Without limit to the Customer's right to terminate this MSA and/or SoW in accordance with clause 21.2, where the performance of an obligation under this MSA and SoW 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.
- 22.6 Terrestrial fibre cuts as a result of business, human or works related activities, shall not be regarded as a force majeure event.

23. Confidentiality and Publicity

- 23.1 Subject to clause 23.1, 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 MSA and SoW, in which case the disclosing Party shall ensure that any recipient is bound by obligations of confidence no less stringent than those in this MSA. Each Party will be liable for its officers', employees', representatives' or subcontractors' disclosure or misuse of the other Party's Confidential Information.

23.2 A Party may disclose Confidential Information:

23.2.1 if expressly permitted under this MSA and SoW;

23.2.2 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;

23.2.3 on a necessary basis and on conditions of confidentiality to the professional advisers, auditors and bankers of such Party;

23.2.4 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

23.2.5 with the prior written approval of the other Party (such approval not to be unreasonably withheld or delayed).

23.3 The Supplier 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 MSA and SoW without the prior written consent of the Customer.

24. Data Protection

24.1 As a result of the Services to be provided pursuant to this MSA and any Order Form, the Supplier may process personal data from the Customer in the capacity of processor and/or controller, as such terms are defined in Part D (Data Processing Agreement), The parties shall comply with Part D (Data Processing Agreement).

25. Notices

25.1 Any notice to be given under or in connection with this MSA and/or any SoW 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	seven days after posting
By recorded delivery post	the next day after delivery
By E-mail	The same day after receipt (date of transmission)

The Parties' respective representatives for the receipt of notices are, until changed by notice given in accordance with this clause, as set out in the SoW.

26. Dispute Resolution

26.1 If a dispute arises out of or in connection with this MSA and/or any SoW, or the performance, validity or enforceability of it ("Dispute") then, except as expressly provided in this MSA and the SoW and except in the case of Technical Disputes, the Parties shall comply with the following provisions:

26.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice");

- 26.1.2 the Supplier Representative and the Customer Representative (acting in good faith and with appropriate support from relevant technical subject matter experts within their respective organisations) shall meet to attempt to resolve the Dispute;
- 26.1.3 if the Dispute remains unresolved within twenty (20) days of the Dispute Notice, the Senior Vice President or equivalent officer of each Party (acting in good faith) shall meet to attempt to resolve the Dispute;
- 26.1.4 If the Dispute is not resolved within thirty (30) days after the Dispute Notice, or within any longer period agreed in writing by the Parties, the Dispute shall be finally resolved by arbitration in accordance with the Arbitration Act (Cap. 6:03) of the Laws of Malawi. The arbitration shall be conducted by a single arbitrator jointly appointed by the Parties. If the Parties cannot agree on the arbitrator, either Party may apply to the High Court of Malawi for the appointment in accordance with the Arbitration Act. The seat of arbitration shall be Lilongwe, Malawi, and the proceedings shall be conducted in English and
- 26.1.5 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 High Court of Malawi not to disclose the fact of or the details of the arbitration to any third party.
- 26.2 Prior to the commencement of arbitration, neither Party may commence any court proceedings in relation to any Dispute unless such proceedings:
 - 26.2.1 are for interim relief (including injunctive relief);
 - 26.2.2 would be prejudiced by any delay; or
 - 26.2.3 are intended to preserve a superior position with regard to the creditors of the other Party.
- 26.3 If any dispute arises out of or in connection with this MSA and the SoW which is technical or objective in nature (including whether any Service 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:
 - 26.3.1 The Parties will agree the identity of a single neutral, independent, impartial expert to determine the Technical Dispute. In the absence of agreement within fourteen (14) days of the Referral Notice, the matter will be referred to an expert based in Malawi and appointed by the High Court of Malawi.
 - 26.3.2 Within twenty-eight (28) days after the giving of a Referral Notice, both Parties will exchange simultaneously statements of case of no more than ten thousand (10,000) words, in total, and each Party will simultaneously send a copy of its statement of case to the Expert.
 - 26.3.3 Each Party may, within fourteen (14) days of the date of exchange of statement of case pursuant to clause 26.3.2 above, serve a reply to the other side's statement of case of not more than ten thousand (10,000) words. A copy of any such reply will be simultaneously sent to the Expert.
 - 26.3.4 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 thirty (30) days of the date of service of the last reply pursuant to clause 26.3.2 above or, in the absence of receipt of any replies, within sixty (60) days of the date of exchange pursuant to clause 26.3.3 above or the date of the last oral hearing, whichever is the later.
 - 26.3.5 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.
 - 26.3.6 Each Party shall act reasonably and co-operate to give effect to the provisions of this clause 26.3 and otherwise do nothing to hinder or prevent the Expert from reaching his determination.
 - 26.3.7 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.

26.4 Unless agreed otherwise, the Parties shall continue to comply with their respective obligations under the MSA and SoW regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

27. Assignment and Novation

27.1 Neither Party shall subcontract its obligations under this MSA and SoW, nor shall it assign, novate or otherwise transfer any of its rights and obligations under this MSA and SoW whether in whole or in part without the prior written consent of the other Party, which will not be unreasonably withheld.

27.2 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 clause 27 (Assignment and Novation) shall, as applicable, apply to the subcontractor as if it were the Supplier.

27.3 The Supplier hereby agrees that Customer may, at any time on written notice to the Supplier, novate, assign or subcontract any or all of its rights and obligations under this MSA to any entity within Customer's member organisations.

28. Amendments

28.1 No amendments to this MSA or any SoW 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.

29. No Third Party Beneficiaries

29.1 Save always for the provisions set out within Part A(Funding Supplier Provisions) of this MSA, nothing in this MSA and the SoW 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 MSA and the SoW.

30. General

30.1 If any provision of this MSA and/or the SoW (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.

30.2 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 MSA and/or the SoW and the transactions contemplated by it.

30.3 Except as otherwise expressly provided in this MSA and/or the SoW, all remedies available to the Supplier or to the Customer for any Default (of any nature or severity) under this MSA and the SoW 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.

30.4 The failure to exercise or delay in exercising a right or remedy provided to a Party under this MSA and/or the SoW shall not constitute a waiver of that right or remedy, and no waiver by a Party of any breach of this MSA and/or the SoW shall constitute a waiver of any subsequent breach of the same or any other provision. Each right or remedy of a Party under this MSA and SoW is without prejudice to any other right or remedy of that Party under this MSA and SoW or at Law.

30.5 Nothing in this MSA and the SoW 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.

- 30.6 Except as expressly provided in this MSA and the SoW, no terms and conditions, standard or otherwise, contained on any invoice, order form, licence or other document of the Supplier shall apply to the subject matter of this MSA and the SoW unless expressly stated in this MSA and the SoW or incorporated as a variation via the Change Control Procedure.
- 30.7 This MSA, the SoW and the documents referred to in it constitute the entire agreement and understanding of the Parties and, save in relation to fraudulent misrepresentation, supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this, whether written or oral, including those upon which any quotation or tender response has been given to the Customer. Neither Party has been given, nor entered into this MSA and the SoW in reliance on, any warranty, statement, promise or representation other than those expressly set out in this MSA and the SoW.
- 30.8 Each Party shall bear its own legal costs associated with the preparation, negotiation and execution of the SoW and any documents referred to in it.

31. Governing Law and Jurisdiction

- 31.1 Any dispute or claim arising out of or in connection with this MSA and SoW (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Malawi.
- 31.2 Subject to clause 26.1, the Parties irrevocably agree that the courts of Malawi shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this MSA and the SoW (including non-contractual disputes or claims).

For and on behalf of UbuntuNet Alliance

For and on behalf of <<Supplier name>>

Signature:
.....

Signature:

Name:
.....

Name:

Title:
.....

Title:

Place:
.....

Place:

Date:
.....

Date:

Annex A.1 Change Control Procedure

General

Requests for Changes to this Agreement (including the Project Plan and (if required) BCDR Plan), may be initiated by the Customer or the Supplier.

Until such time as a Change Control Note ("CCN") has been signed by the Parties, the Supplier shall continue to perform its obligations in accordance with this Agreement and Call Off.

Any work undertaken in connection with any proposed Change by the Supplier, or its Personnel, unless agreed otherwise by the Parties, shall be undertaken at no additional cost to the Customer.

A CCN signed by the Parties shall constitute an amendment to this Agreement.

Procedure

Where a written request for a Change is received from the Customer as appropriate, the Supplier shall, unless otherwise agreed in writing, submit two (2) copies of a completed CCN signed by the Supplier to the Customer within seven (7) days following the appropriate technical evaluation.

A request for a Change originated by the Supplier shall be submitted direct to the Customer in the form of two (2) copies of a CCN signed by the Supplier.

Each CCN shall be in the form set out below and contain all details reasonably necessary for the Customer to evaluate the Change.

For each CCN submitted, the Customer (as appropriate) shall within fourteen (14) days evaluate the CCN and as appropriate:

- request further information;
- arrange for two (2) copies of the CCN to be signed by or on behalf of the Customer (as appropriate) and return one of the copies to the Supplier; or
- notify the Supplier of the rejection of the CCN.

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.

Where any Change results in any change or upgrade to the Services, such Services shall be subject to Acceptance Testing in accordance with the procedure in **Error! Reference source not found..**

Appendix 1 to Annex A.1

CHANGE CONTROL NOTE (CCN) for Changes to the MSA and SoW

BY AND BETWEEN:

- (1) UbuntuNet Alliance non-profit association registered in Malawi, registration number: R.G.20754/IM/5.2005 and registered office at: Off Presidential Way, Golden Peacock House, P.O. Box 2550, Lilongwe, Malawi (the "Customer");
- and
- (2) <<Supplier Name>>, a corporation organised and existing under the laws of <<Country>> with [tax] registration number <<number>> and having its registered office at <<Supplier's address>> (the "Supplier"),
- 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 of 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 / Justification for the change:	
(f) Description of the change:	

(g) Timetable for the change & proposed commencement date:
(h) If applicable, change to Charges as stated in section 11 (Charges and Payment):
(j) Impact Statement: changes in Laws: Technical: Financial:
(k) CCN Expiry Date:
(l) Other details as required:
(m) Amended Document attached ¹ :

The Parties hereby agree to change the MSA and/or SoW 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 MSA and SoW shall remain in full force and effect.

For and on behalf of the Supplier

For and on behalf of the Customer

Signed:

.....

Printed Name:

.....

Title:

.....

¹ Supplier must submit an overall overview of the charges for delivered services, applicable on the effective in-date of change MSA-XX-XXX

Place:

Date:

Part B.2 FUNDING SUPPLIER PROVISIONS

- 1.** Relationship to European Commission Directorate-General for International Partnerships (DG INTPA)
 - 1.1 The Parties acknowledge that while this Agreement has been approved by DG INTPA, DG 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 DG INTPA.
 - 1.2 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
 - 2.1 The Supplier 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 Supplier'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 Supplier is incorporated.
 - 2.2 The Supplier 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 Supplier's accounting and bookkeeping systems.
 - 2.3 The Supplier shall ensure that any financial reporting (both interim and final) under this Agreement can be properly and easily reconciled to the Supplier's accounting and bookkeeping system and to the underlying accounting and other relevant records. For this purpose the Supplier shall prepare and keep appropriate reconciliations, supporting schedules, analyses and breakdowns for inspection and verification.
 - 2.4 The Supplier shall permit, for the term of the EC Contract, the European Commission to monitor or evaluate the Supplier's performance of its obligations under this Agreement.
 - 2.5 The Supplier 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:
 - 2.5.1 carry out verifications of the Charges;
 - 2.5.2 verify the implementation of the Supplier's obligations under this Agreement; and
 - 2.5.3 carry out and detailed audits of the Supplierincluding by taking examining and taking copies of documentation relating to this Agreement or by carrying out on-the-spot checks.
 - 2.6 The Supplier 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.
 - 2.7 The Supplier shall during the Term and for a period of seven (7) years thereafter, provide appropriate access, (including to the Supplier'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 Supplier shall procure such compliance and assistance from its subcontractors to enable the exercise of these audit rights.

2.8 The Supplier acknowledges that the documents referred to in paragraph 2 include:

- 2.8.1 any reports, financial or otherwise, prepared in accordance with this Agreement;
- 2.8.2 accounting records (computerised or manual) from the Supplier's accounting system such as general ledger, sub ledgers and payroll accounts, fixed assets registers and other relevant accounting information;
- 2.8.3 proof of procurement procedures such as tendering documents, bids from tenderers and evaluation reports;
- 2.8.4 proof of commitments such as contracts and order forms;
- 2.8.5 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;
- 2.8.6 proof of receipt of goods such as delivery slips from Suppliers;
- 2.8.7 proof of completion of works, such as acceptance certificates;
- 2.8.8 proof of purchase such as invoices and receipts.
- 2.8.9 proof of payment such as bank statements, debit notices, proof of settlement by the Supplier;
- 2.8.10 for fuel and oil expenses, a summary list of the distance covered, the average consumption of the vehicles used, fuel costs and maintenance costs;
- 2.8.11 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.

2.9 The Supplier must ensure that the documents are easily accessible and filed so as to facilitate their examination and the Supplier must inform the auditors of their precise location.

2.10 The Supplier 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 DG INTPA.

3. Conflicts of Interest

3.1 The Supplier 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.

4. Joint Publicity and Visibility

4.1 Under the EC Contract, the Customer is obliged to publicise the fact that the European Union has financed or co-financed the AfricaConnect programme.

4.2 Where the Customer has provided its consent under clause 26.3 of Part A of the Agreement, the Supplier shall ensure that any press releases, public announcements, promotional material, website content or other statement or material made or issued by the Supplier 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 Supplier confirms that it has obtained.

4.3 In particular:

4.3.1 the Supplier 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;

4.3.2 any notice or publication by the Supplier 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

4.3.3 any publication by the Supplier 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 [SUPPLIER'S NAME] and can under no circumstances be regarded as reflecting the position of the European Union."

4.4 The Supplier authorises the Customer and DG INTPA to publish its name and address, nationality, the purpose of the Agreement, duration and location.

5. Confidential Information

5.1.1 For the purposes of clause 26 of Part A, if required by DG INTPA, the Customer may disclose any Confidential Information of the Supplier to DG INTPA.

6. Assignment

6.1 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 DG INTPA.

7. Payment

7.1 The Supplier acknowledges that the Services are being funded by a grant from DG INTPA.

7.2 Notwithstanding clause 12.9 of Part A of this Agreement, in the event that the Customer has not received funding from DG INTPA, any failure on the part of the Customer to make any payment under this Agreement by its due date shall not entitle the Supplier to terminate this Agreement and the Customer shall not be liable to pay any interest on such payment, provided that:

7.2.1 the Customer shall transfer the sums due to the Supplier within fourteen (14) days after receipt of sufficient funds from DG INTPA; and

- 7.2.2 the Customer notifies the Supplier 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.

8. Termination

- 8.1 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.
- 8.2 The Supplier acknowledges that in the event of the European Commission terminating the EC Contract with the Customer as a result of:
 - 8.2.1 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 Supplier; or
 - 8.2.2 false or incomplete statements made by the Supplier when prior to and during the Term of this Agreement;
 - 8.2.3 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 Supplier such amount, the Supplier shall immediately pay such equivalent sums to the Customer.

Part C CONNECTIVITY SERVICES

PART C.1 – TEMPLATE STATEMENT OF WORK: [CONNECTIVITY SERVICE]

SoW Number: SER-XX-XXX

The Statement of Work incorporated from page 33 of the MSA is added for reference only, and therefore it does not need to be signed. The updated Statement of Work which will require signature is attached for your review

THIS STATEMENT OF WORK ("SoW") is made on [date] (the "SoW Commencement Date")

BETWEEN:

- (1) UbuntuNet Alliance a no-profit association registered in Malawi, registration number: R.G.20754/IM/5.2005 and registered office at: Off Presidential Way, Golden Peacock House, P.O. Box 2550, Lilongwe, Malawi (the "Customer");
- and
- (2) [NAME], a company organized and existing under the laws of [COUNTRY] and having its registered office at [ADDRESS], Company registration No. [NUMBER] (the "Supplier").

BACKGROUND:

The terms of the Master Services Agreement ref MSA-XX-XXX (the "MSA") shall apply to this SoW.

NOW IT IS HEREBY AGREED as follows:

1. Definitions, Structure and Interpretation

1.1 This SoW comprises these clauses and the annexes (included in the MSA) listed in the table below.

Annex	Title
C.1.1	Contact Points
C.1.2	Project Plan
C.1.3	Charges
C.1.4	IRU Specific Terms (if applicable)
C.1.5	Service Levels and Service Credits
C.1.6	Acceptance Procedure
C.2.1	[Connectivity] Services to be provided
C.2.2	Acceptance test and criteria for [Connectivity]

If there is any inconsistency between any of the clauses of this SoW and the annexes of this SoW, the order of priority for the purpose of construction shall be as follows:

- 1.1.1 clauses of this SoW; and
- 1.1.2 Annexes of this SoW.

MSA-XX-XXX

- 1.2 Capitalised words and expressions used in this SoW shall have the meanings ascribed to them in this SoW and, unless expressly indicated otherwise in this SoW, the meanings ascribed to such words and expressions in this SoW shall supersede the meanings given to those words or expressions where such words and expressions are also defined in Part A (General Terms and Conditions) of this MSA.
- 1.3 Capitalised words and expressions which are not defined in this SoW shall have the meanings ascribed to them in Part A (General Terms and Conditions) of this MSA.
- 1.4 All references to deletion, amendment or variation of provisions in the MSA which are set out in this SoW are references to such deletion, amendment or variation for the purposes of this SoW only.

2. Term and Termination

- 2.1 Subject always to the provisions of the termination clauses within the Master Services Agreement with reference number MSA-XX-XXX, this SoW shall have effect as of the Commencement Date for an Initial Term of [insert time period] from the Operational Service Date.

3. Relationship of this SoW to the MSA

- 3.1 The Parties acknowledge that under the MSA this SoW, when signed by both Parties, will contractually commit the Supplier to supplying the Services described in this SoW in accordance with the terms of the MSA.
- 3.2 If there is any inconsistency between the terms and conditions of this SoW and the terms and conditions of the MSA-XX-XXX, then the terms and conditions of this SoW shall take precedence unless the MSA-XX-XXX expressly states that certain specific provisions (or part of them) are to take precedence.

4. Contact Points

- 4.1 The Contact Points for this SoW are attached as Annex C.1.1 (Contact Points)

5. Project Plan

- 5.1 The Project Plan for this SoW is attached as Annex C.1.2 (Project Plan).

6. Charges

- 6.1 Subject to clause 4, the Charges for the Services are specified in Annex C.1.3 (Charges).

7. Description and scope of the Services

- 7.1 Service levels for the Services are as per Annex C.1.5 (Service Levels and Service Credits) except where variations are specified below:

Service Level Description	Service Level Measurement	Service Level Target	Service Credit	Service Threshold	Level

- 7.2 Subject to clause 5.1 of this SoW, the Services to be provided by the Supplier under this SoW are listed in Annex C.2.1 (Purchased Capacity Services to be provided).

8. Acceptance Procedure, Tests and Acceptance Criteria

- 8.1 The Acceptance Procedure for this SoW is attached as Annex C.1.6 (Acceptance Procedure).

8.2 The Acceptance Tests and Acceptance Criteria are specified in Annex C.2.2 (Acceptance test and criteria for Purchased Capacity).

9. Address for Notices

Supplier:
Address:
Attention:

Customer: UbuntuNet Alliance for Research and Education Networking
Address: Off Presidential Way, Golden Peacock House, P.O Box 2550, Lilongwe, Malawi
Attention: Procurement Team

10. BCDR

10.1 The Supplier shall produce a BCDR Plan in accordance with clause 7 (Business Continuity and Disaster Recovery) of Part A (General Terms and Conditions).

11. Novation

11.1 The Supplier hereby agrees that Customer may, at any time on written notice to the Supplier, novate, assign or subcontract any or all of its rights and obligations under this SoW to any entity within the Customer's Group.

12. Entire Agreement

12.1 In relation to its subject-matter, this SoW (together with the MSA) 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 and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral, including those upon which any quotation or tender response has been given to the Customer.

For and on behalf of UbuntuNet Alliance

For and on behalf of <<Supplier name>>

Signature:

Signature:

Name:

Name:

Title:

Title:

Place:

Place:

Date:

Date:

Annex C.1.1 Contact Points

1. NOC Contact Details

COMPANY	TELEPHONE NUMBER	EMAIL ADDRESS
UbuntuNet Alliance	+256772594029 +256 761 936919	For incidents and all other queries: noc@ubuntunet.net

2. Operations Centre (Set Up Contact Details)

COMPANY	TELEPHONE NUMBER	EMAIL ADDRESS
<< Supplier's Name >>		
Implementation	+256772594029 +256 761 936919	For delivery progress and status reports, set-up and configuration coordination: noc@ubuntunet.net

3. Finance Contact Details

DETAILS	CUSTOMER CONTACT	SUPPLIER CONTACT
Name	Finance Team	
Address	UbuntuNet Alliance Off Presidential Way Golden Peacock House P.O. Box 2550 Lilongwe Malawi	
Telephone Number	+ 265 999 829 393	
Fax Number		
Email	beatngambi@ubuntunet.net	

The Customer must be formally notified within 5 Business Days of any change in the person responsible for liaising with the Customer and / or the Customer Account

The Customer NOC will report Service problems to the Supplier's Help Desk phone or email. Problems may be reported 24 hours per day, 7 days per week. All communications will be in the English language.

The Supplier will report Service problems to the Customer's Help Desk by phone or email. Problems may be reported 24 hours per day, 7 days per week. All communications will be in the English language.

Annex C.1.2 Project Plan for commissioning Connectivity Services

The Supplier must submit a Project Plan based on the Outline Project Plan and deliver it to the Customer before signature of the SoW. This Project Plan must be in accordance with clause 3 (Implementation and Acceptance Testing) of Part A (General Terms and Conditions).

The Supplier should provide a sufficiently high-level project plan which shows the main milestones for the delivery of any awarded circuit in order to assure that the Supplier will have the offered Services available on the CDD (Committed Delivery Date), as specified this Annex C.1.2

[DN – Insert delivery and commissioning plan here when building any SoW]

Annex C.1.3 Charges for Connectivity Services

[Note: Charges to be inserted with relevant information taken from the ITT.]

1. Charges

The Charges set out within this Statement of Work are the Charges for the Service subject to the relevant minimum commitment tables set out below:

[Calculation model published in ITT and completed by Supplier will be entered in this section]

The charges are quoted excluding VAT (Value Added Tax). Due to the nature of the research funding grant, the Supplier shall not levy local VAT charges on the Service, or shall evidence, by virtue of formal written confirmation from the relevant finance ministry, that VAT is applicable and cannot be waived or avoided

The charges for the Services provided during any Extended Term shall be payable at the same (or less) rates that applied prior to the commencement of the Extended Term.

2. Other charges

[insert as required]

3. Payment Terms

The Non-Recurring IRU Charges (if applicable) will be invoiced when the Services are formally accepted by the Customer.

Recurring Charges will be invoiced quarterly in advance by the Supplier (unless agreed otherwise in the SoW) on the first (1st) day of each (preferably) new calendar year quarter.

Default terms are stated in the MSA

[Insert any special payment terms here]

4. Upgrades

The new charges will apply from the OSD of the upgraded service and will replace the previous Charges as of that date. The invoice for the calendar quarter in which the upgrade takes place will detail the period covered at each price.

Upgrades are subject to mutual agreement in writing.

Appendix 1 to Annex C.1.3

Supplier form

Company Name:	
Registered Address:	Business Address (if different from registered address):
Company Registration Number:	
VAT Number (if applicable):	
Website address:	
Main Telephone Number:	Direct Telephone Number:
Main Contact:	Mobile Number:
Main Contact's Title:	Email address:
Finance Department Address (if different to above):	
Finance Contact:	
Direct Telephone Number:	
Email address:	
Remittance Email address (if different):	
<u>BANK DETAILS</u> Bank Name: Address:	Bank Account Name: Bank Account Number: Bank Sort Code: <u>For overseas companies – please provide your:</u> SWIFT CODE: IBAN Number:

Name: _____ Signature: _____
Title: _____ Date: _____

<u>COMPANY STAMP</u>

[Note: Service Description to be inserted with relevant information taken from the ITT. This annex will be reviewed and amended in line with ITT / relevant services to be provided.]

1. Introduction

The Supplier will provide an indefeasible right to use ("IRU") the allocated bandwidth and associated infrastructure as further described in this SoW which the Customer may use and/or connect to, in order to provide telecommunications services. The IRU is the right of the Customer to exclusive use of the entirety of the bandwidth,

Unless otherwise provided in this SoW, the entirety of the bandwidth must remain available to, and accessible by, the Customer and conform to the specifications set out in this SoW at all times during the term of this SoW, and the Supplier must not allocate any of the bandwidth to any third party, or permit any third party to access or use any of the bandwidth.

Services to be provided in relation to the IRU terms are described in more detail in:

- Annex C.2.1 Purchased Capacity Services to be provided;

[Insert any special IRU term(s) defined in Stage 2 here]

2 Performance Measurement specific to the Service Items in this SoW

[Note: For an IRU as the charging structure is different (i.e. one off payment and annual maintenance charge) there needs to be a notional monthly recurring charge for the purposes of calculating service credits. This figure will be based on the one-off charge and annual charge]

For the purposes of calculating Service Credits pursuant to the MSA and this SoW, the parties hereby agree that the Monthly Recurring Charge for this IRU service shall be deemed to be: $\text{insert (Annual Recurring Charge) / 12}$

3 Charges

[Note: Charges to be inserted with relevant information taken from the ITT.]

From the OSD, the Customer shall pay the Supplier the following Charges:

- (a) a one-off charge of [insert amount]; and
- (b) an annual operating and Maintenance charge of [insert amount]

Notwithstanding any other term of the MSA and SoW, the Customer will not be obliged or liable to pay the one-off charge in respect of the grant by the Supplier of the IRU, or the provision of any Services, unless and until the bandwidth is acceptance tested, and is accepted by the Customer, in accordance with the MSA and SoW.

Other charges

[insert as required]

4. Payment Terms

[Insert any special payment terms here]

5. Upgrades

The new charges will apply from the OSD of the upgraded service and will replace the previous Charges as of that date. The invoice for the calendar quarter in which the upgrade takes place will detail the period covered at each price.

Upgrades are subject to mutual agreement in writing.

Annex C.1.5 Service Levels and Service Credits

Service Metrics

Except for Force Majeure Events and clause 5.1 of Part A (General Terms and Conditions) which shall always prevail, the following Service performance metrics shall apply. Paragraph references below refer to this annex except otherwise indicated.

A. For All Capacity Services

Service Level Description	Service Level Measurement	Service Level Target	Service Credit	Service Level Threshold
Recurrent Failures		Not more than two (2) failures of any service level target within a service measurement period (calendar month)		Material Default - See clause in main MSA (Part A)
Problem Reporting and Management	In accordance with 7.1.4 in this annex	Any requested Progress report to be provided within 60 minutes.	As per Para 7.1.4 in this annex	
Periodic Reporting and Management		92% on time delivery of periodic reports for a rolling twelve (12) months period	As per Para 9.1.2 in this annex	Three (3) consecutive late reports

B. Capacity Services KPIs

Service Level Description	Service Level Measurement	Service Level Target	Service Credit	Service Level Threshold
Availability (monthly) - Circuits	In accordance with 5.2.2 in this annex	99.95%	Calculated as per Para 7.2.1 in this annex	97.5% for two consecutive calendar months or 95% in any one calendar month
Time To Fix	In accordance with Para 7.3 in this annex	8 hours	Calculated as per Para 7.3.1 in this annex	Over 24 hours for two or more events occurring within a 3-month rolling period
Mean Time Between Failures	In accordance with Para 7.5 in this annex	10 days calculated over a calendar month	Calculated as per Para 7.5.1 in this annex	
Circuit Latency	In accordance with Para 7.4.1 in this annex. The distance ratio < 2.5	A One-Way Delay (measured in milliseconds) less than or equal to the length of the circuit (measured in kilometres of the declared physical path) as specified in the Statement of Work, divided by 180.	As per Para 7.4 in this annex	Less than 90% adherence in one calendar month
Delay – Service Delivery Guarantee	Time elapsed between CDD and actual Service commencement	Committed Delivery Date	Calculated as per Para 6.1 in this annex	
Planned Maintenance advance notification	In accordance with Para 1.1 in this annex	10 days' notice for Planned Maintenance		3 consecutive breaches of the Service level Target
Maintenance 'at risk' time	In accordance with Para 7.1 in this annex	Max 16 hours of total Maintenance window time per month Maximum 2 windows per month Working hours to be avoided: 0600-1800 UK Local Time Monday to Friday	Calculated as per Para 1.5 in this annex	16 hours of total Maintenance window time for 2 consecutive calendar months
Maintenance outages	In accordance with Para 1.1 in this annex	Maximum 8 hours outage per 12 month rolling period	Calculated as per Para 7.3.2 in this annex	
Bit Error Rate	In accordance with Para 7.5.2 in	10 ⁻¹²	Calculated as per Para 7.6 in this annex	

Service Level Description	Service Level Measurement	Service Level Target	Service Credit	Service Level Threshold
	this annex			

C. Ethernet Private Line (EPL): [Leased Capacity]

EPL services should comply to the MEF 6.2 and MEF 10.3 standards.

Service Level Description	Service Level Measurement	Service Level Target	Service Credit	Service Level Threshold
Availability (monthly) - Circuits	In accordance with 5.2.2 in this annex	99.5% for single services 99.99% for protected & diverse Services	Calculated as per Para 7.2.1 in this annex	97.5% for two consecutive calendar months or 95% in any one calendar month
Time To Fix	In accordance with Para 7.3 in this annex	8 hours	Calculated as per Para 7.3.1 in this annex	Over 24 hours for two or more events occurring within a 3-month rolling period
Mean Time Between Failures	In accordance with Para 7.5 in this annex	10 days calculated over a calendar month	Calculated as per Para 7.5.1 in this annex	
Circuit Latency	In accordance with Para 7.4.1 in this annex. The distance ratio < 2.5	A One-Way Delay (measured in milliseconds) less than or equal to the length of the path (measured in kilometres of the declared physical path) as specified in the Statement of Work, divided by 180.	As per Para 7.4 in this annex	Less than 90% adherence in one calendar month
Delay – Service Delivery Guarantee	Time elapsed between CDD and actual Service commencement	Committed Delivery Date	Calculated as per Para 6.1 in this annex	
Planned Maintenance advance notification	In accordance with Para 1.1 in this annex	10 days' notice for Planned Maintenance		3 consecutive breaches of the Service level Target
Maintenance 'at risk' time	In accordance with Para 7.1 in this annex	Max 16 hours of total Maintenance window time per month Maximum 2 windows per month Working hours to be avoided: 0600-1800 UK Local Time Monday to Friday	Calculated as per Para 1.5 in this annex	16 hours of total Maintenance window time for 2 consecutive calendar months

Service Level Description	Service Level Measurement	Service Level Target	Service Credit	Service Level Threshold
Maintenance outages	In accordance with Para 1.1 in this annex	Maximum 8 hours outage per 12 month rolling period	Calculated as per Para 7.3.2 in this annex	
Packet Loss	In accordance with Para 7.5.2 in this annex	0.001%	Calculated as per Para 7.6 in this annex	1% or more for more than 48 hours

1. Availability

- 1.1 Subject always to the relevant SoW, the guaranteed availability of the Service is set out in this Annex C.1.5 (Service Levels and Service Credits). The Supplier shall provide a Service that is available 24 hours per day, 7 days per week except for scheduled Maintenance.

2. Scheduled and Emergency Maintenance

- 1.1 The Supplier will inform the UbuntuNet Alliance Operations Centre in advance by e-mail of any scheduled Maintenance which might lead to service disruption. The Supplier will specify the 'at risk' time window within which the service may be impacted. Any outage occurring outside of this window, subject to Para 7.3 (Time To Fix), will not be considered Maintenance Time for the purposes of Availability calculations in accordance with Para 5.2.2 (Service Availability Report), and for the purposes of Service Performance in accordance with Para 7.2.1 (Reimbursement).
- 1.2 The Supplier will attempt to perform all scheduled Maintenance outside of specified working hours. For non-scheduled Maintenance at least 48 hours' notice by e-mail should be given where possible.
- 1.3 If the Supplier conducts emergency Maintenance advance notice may be less than 48 hours but it must be given, by e-mail to the UbuntuNet Alliance Operations Centre, in advance of the Maintenance starting. If any Maintenance impacts a service before e-mail notification is received then the consequent outage will not be deemed as Maintenance Time for the purposes of Availability calculations in accordance with Para 7.2.2 (maximum compensation), and for the purposes of Service Performance in accordance with Para 7.2.1 (Reimbursement).
- 1.4 The maximum Maintenance Time allowed by the Service Level is a combination of scheduled and emergency Maintenance.
- 1.5 If the Supplier announces more Scheduled Maintenance windows than the Service Level Target allows for then for each window in excess of the target maximum there shall be a Service Credit of 5% of the Monthly Recurring Charge. A Scheduled Maintenance window which is rescheduled in advance of it opening is not considered an additional window.

3. Escalation Procedure

The Supplier will provide the proper escalation contact for escalations according the following table:

	Supplier
Escalation 1	

Escalation 2	
Escalation 3	

4. Demarcation Points

- 4.1 The Supplier will be responsible for the cabling up to the Customer's Meet-Me-Room positions as set out in **Annex C.2.1 / (Purchased Capacity Services to be provided)** of the relevant SoW - Services to be provided.

5. Reports

- 5.1 In addition, and subject always to the agreed conditions set out in the relevant SoW, the Supplier will provide one regular service performance report:

- For Leased Capacity Services the service performance report must be submitted each calendar month within ten (10) Business Days of the end of the month.
- All service performance report must comprise:
 - Service fault report; and
 - Service availability report.

- 5.2 The Supplier must provide the reporting information in Microsoft Excel or Microsoft Word format as specified by the Customer. In the event that the Customer requests a non-standard report from the Supplier, the Supplier will have ten (10) Business Days to deliver such report.

- 5.2.1 Service Fault Report: The service fault report will detail all faults reported during the month with respect to the service provided and will be based on trouble tickets in the Supplier's system and outages they have detected.

The following information must be included:

- Record and description of each fault;
- Total down time for each fault (in minutes);
- Outage start time for each fault
- Outage end time for each fault;
- Any portion of the time due to delays down to Customer;
- Action undertaken to resolve the fault;
- Supplier ticket number;
- Confirm if target time to restore was met.

The report must contain a summary of the following:

- Downtime of Service (in minutes);
- Percentage of faults cleared within the target time;
- Mean Time Between Failures (MTBF) – to be reported in days per month on a rolling 12-month basis;
- Mean time to Restore (MTTR);
- Number of tickets opened by the Customer;
- Total number of incident tickets raised;
- Total number of Maintenance tickets raised;

The report must be provided in the Microsoft Excel format.

5.2.2 Service Availability Report (Circuits)

The percentage availability must be calculated for the Service, based on the downtime of the link(s) according to the time derived from the trouble ticket system each calendar month, and will be calculated as follows:

$\text{Circuit Monthly Availability (Percentage)} = \frac{(\text{TCS} - \text{TCU})}{(\text{TCS} - \text{TCN} - \text{TCM})} \times 100$
--

Where (durations are in minutes):

- TCS (Total Circuit Service) = the total minutes that the service has been active during the calendar month (or partial calendar month for the first month of activation). (TCS = Number of days for the relevant reporting month x 1440 or pro-rated in the first month of activation);
- TCU (Total Circuit Unavailability) = the total duration of all unavailability periods (in minutes) of the circuit in the calendar month;
- TCN (Total Circuit not Available) = the total duration (in minutes) of all unavailability periods (in minutes) of the circuit attributable to the Customer and/or its agents (not the service Supplier) in the calendar month;
- TCM (Total Circuit Maintenance) = total duration (in minutes) of all circuit outages in the calendar month due to scheduled or emergency Maintenance, up to the maximum specified in the relevant Service Metrics Performance table above.

The following information must be included:

- Availability (percentage);
- Total scheduled Maintenance per service (hours);
- Total downtime per service (percentage);
- Mean Time Between Failures (MTBF) (days);
- Mean Time To Restore (MTTR) (hours);-
- Latency (where applicable).

The report must be provided in Microsoft Excel format.

5.2.3 Fault Handling Report

The Fault Handling Report must set out the faults reported during the calendar month with respect to reliability and trouble ticket response time. Mean time between failure needs to be reported in days per calendar month on a rolling 12-month basis.

6. Delivery Guarantee

- 6.1 Delivery guarantees are given to the Customer, and the Supplier will compensate the Customer if the OSD exceeds the agreed CDD for reasons caused by the Supplier, its agents, contractors or sub-contractors. The Supplier will also commence the necessary procedures to ensure that alternative connectivity is provisioned in order to ensure continuity of the Customer Services in those countries affected by any delay from the OSD.
- 6.2 If the OSD of a Service Item occurs after its CDD, the Supplier will compensate the Customer by a rate of 4% of the monthly recurring charges per day payable for the period between the CDD and the OSD subject to a cap of 100% of the monthly recurring charge. If necessary, the Supplier will also commence the necessary procedures to ensure that alternative connectivity is provisioned in order to ensure continuity of service in respect of Service Items affected by any such delay.
- 6.3 At the Customer's sole discretion such compensation may be deducted from any subsequent charge payable by the Customer. Compensation will be applied as a deduction from the charges otherwise payable by the Customer for the month following the month giving rise to the compensation. Cash compensation will be made in case such payables do not exist.

7. Service Performance

7.1 Problem Reporting and Management

- 7.1.1 The Supplier and the Customer may each detect faults in the Service. The Supplier shall take all necessary steps to remedy the faults, and to inform the Customer of progress to remedy faults.
- 7.1.2 The Supplier will operate a Service Desk that is contactable by telephone 24 hours per days, 7 days per week. The Supplier will be able to receive problems reported by the customer by telephone, and by e-mail and/or a web-portal.
- 7.1.3 The Supplier will operate a trouble ticketing system recording all problems reported by the Customer as well as any faults detected by the Supplier. Trouble tickets will be opened within 15 minutes of problems being reported by the Customer or its agents, or being detected by the Supplier. The Supplier will inform the Customer of the trouble ticket number as soon as it has been created.
- 7.1.4 The Supplier will keep the Customer informed at such intervals as are reasonable in the circumstances of the progress which is being made in repairing the fault. In the event that the Customer specifically requests information on the status of fault investigation or repair then the Supplier will provide a complete and up to date reply within the target Update time. If such a reply is not made within the target Update time (measured from time of Customer request to delivery of an update with incremental information) then a Service Credit of 2% of the Monthly Recurring Charge will be due. The Service Credits for this service level target shall be capped at 10% of Monthly Recurring Charge per month.
- 7.1.5 Trouble tickets will be closed when service has been restored and the Customer has agreed that the trouble ticket should be closed. In the event that the Supplier closes a trouble ticket before an outage has been cured, the Customer will be entitled to re-open such trouble ticket as of the time that it was originally raised by the Customer.

7.2 Availability

Calculation of service availability and of the excess above the maximum allowable Unavailable Time is calculated according to the figures below, and based upon the event reports as recorded in the trouble ticket system and the monitoring tools.

Guaranteed Service Availability Per SERVICE MEASUREMENT PERIOD	Unavailable Time Limit (UTL) (per service item - minutes/calendar month)
99.4%	259 minutes per month
99.5%	219 minutes per month
99.9%	44 minutes per month
99.95%	21 minutes per month
99.99%	5 minutes per month

7.2.1 Calculation of Unavailable Time and Reimbursement will use the following formula:

$R = \frac{(UT - UTL)}{7200} \times T$
--

Where:

UT	=	Unavailable Time in minutes not Maintenance Time* or due to the Customer or its agents ((100 – current monthly availability %) x number of minutes in the month)).
UTL	=	Unavailable Time Limit
T	=	Tariff/month
R	=	Reimbursement, to a maximum of 100% x T

7.2.2 The maximum compensation in any month is 100% of the monthly charge.

Provided that, if the total amount of outage in any 12 month period caused by scheduled or emergency Maintenance exceeds the value stated in the relevant Service Metrics Performance table above then the excess time will be deemed as 'Unavailable time' for the purposes of calculating service availability and Service Credits.

7.3 Time To Fix

In event of a fault or any other cause of outage the Supplier commits to restoring service within a specified time. Service may be restored using a temporary solution e.g. an alternative pair of fibres, with the final fix being conducted at a later date (where possible during a Scheduled Maintenance window).

7.3.1 In the event that the Supplier is not able to restore service within the 'Time To Fix' target then the consequent Service Credits will be as per the table below. These Service Credits are to be provided in addition to any Service Credits due to an Availability service level breach.

The sum of the Service Credits for excessive (un)Available and excessive Time to Fix will not exceed [100%] of the MRC equivalent (pro rated from the O&M charges), excluding Force Majeure events.

7.3.2

Outage time (in hours) past Time To Fix target	Service Credit (percentage of Monthly Recurring Charge of the affected service)
00:00 – 03:59	5%
04:00 – 07:59	10%
08:00 – 11:59	15%
12:00 – 15:59	20%
Over 16:00	25%

7.4 Circuit Latency

7.4.1 Circuit Latency is defined as the time taken for a data packet to travel from the Customer's equipment at one end of the circuit service to the equipment at the other end of the circuit. This is also referred to as 'One Way Delay'. For convenience circuit latency may be expressed in terms of a Round Trip Time, which is calculated as twice the One-Way Delay.

7.4.2 Any period of time that the Circuit Latency target is not met is considered Unavailable Time.

7.4.3 If a circuit is re-routed as a result of automated protection mechanisms and, in a given month, spends more time on the alternate path than the primary path than the maximum time committed in the Statement of Work, then that excess time is considered Unavailable time.

7.5 Mean Time between Failures (MTBF)

Calculation of MTBF will be based upon the event reports as recorded in the Trouble Ticket system and detected by the monitoring tools. All events as measured over each calendar month that contribute to Unavailable Time will count as a Failure. In the case of a sequence of Failures the Supplier may choose to classify the whole period (from the start of the first event to the end of the last event) as a single Failure. If such a decision is made then the whole period, from the start of the Failure to the end of the Failure, will be considered Unavailable Time for the purposes of calculating Availability.

7.5.1 Where the MTBF target is exceeded, compensation at the rate of one day's pro-rata part of the recurrent Service fee per Failure will be made, from (and including) the fourth (4th) Failure in each calendar month.

7.5.2 Where Availability or MTBF compensation calculated in accordance with Annex C.1.5 (Service Levels and Service Credits) have both exceeded the minimum requirements, compensation payments will be added together but the total combined payment in each calendar month will not exceed 100% of the monthly recurring charges paid for the Services affected.

7.6 In-service Bit Error Rate (BER) and Packet Loss

7.6.1 Where Customer observes, via its monitoring systems, that the BER or packet loss of a circuit service item has exceeded the Service Level Target then Customer will raise a trouble ticket with the Supplier's help desk stating that the circuit is effectively unavailable (not fit for purpose) due to its high level of errors.

If the Supplier disputes that the Service Level Target has been breached then, subject to confirmation from the Customer Operations team, the Supplier (or, if preferred by the Customer, the Customer Operations team) will then take the circuit out of service at an agreed time, and for an agreed period, in order to perform appropriate end-to-end tests. The Party conducting the tests will share the results with the other Party. Should these tests show that the Service Level Target has been breached then the circuit will be deemed to have been unavailable from the time that the original trouble ticket was raised. The period of unavailability in this context will be deemed to have ended when the Supplier makes the circuit available for use by the Customer, provided that the Customer Operations team accepts the repaired circuit, following any further acceptance tests that Customer may wish to perform on that circuit. Should the tests show that the error rate is within specification then for the purposes of Availability calculations the time taken for the tests will be considered as an outage due to the Customer, not Maintenance Time.

7.7 Exceptions to the SLA

7.7.1 Customer shall not be eligible to any credits under this SLA in connection with any failure or deficiency of the Service caused by or associated with:

- Unavailability Periods when Customer reports of an outage of the Service but fails to provide access to Supplier or any entity acting on its behalf in order to conduct tests, adjustments and repair works;
- Failure and/or unavailability of backhauled and local loops, systems and/or equipment beyond either end point of the Service, including equipment and electric systems located on Customer's premises or being under Customer's control or being operated or provided by or on behalf of Customer;
- Customer's acts or omissions, improper use by Customer of the Service and/or equipment and/or applications, in breach of the MSA;
- Temporary or permanent suspension of Service due to Customer's breach of the MSA.
- A maximum of 8 hours scheduled and Emergency Maintenance is allowed on a rolling 12 month basis.

8. Service Restoration

- 8.1 Where there is an undersea fibre cut or other fault that is beyond the Supplier's reasonable control, the Parties agree that as soon as reasonably practicable after the fault is reported they shall meet to discuss in good faith whether there are any reasonable alternative routes available which may be used for the provision of the Circuit, taking into account commercial and practical constraints.
- 8.2 In the event of temporarily re-routing a circuit, round trip delay on the circuit should not increase by more than 15% of original RTD as measured during testing. Any permanent re-routing of a circuit may only be conducted under the formal Change Control process.

9. Reports

- 9.1 The periodic reports will be delivered on time and as specified a minimum of 92% of the time for a rolling 12 month period.
- 9.2 In the event that the Supplier is not able to submit their periodic report on time then the consequent Service Credits will be as per the table below.

Late Report delivery	Service Credit (percentage of equivalent Monthly Recurring Charge of the affected service)
Up to 1 week late	5%
More than one week late	10%

Total combined credits in each calendar month will not exceed 25% of the monthly recurring charges paid for the Services affected.

10. Contact Points

- 10.1 See the relevant Annex C.1.1 (Contact Points) of the relevant SoW.

Annex C.1.6 Acceptance Procedure

1. Testing Methodology

The Supplier 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.

The Acceptance Tests shall be run during Normal Working Hours or Hours agreed in advance with the Customer. The Supplier shall carry out the agreed Acceptance tests unless the Customer notifies the Supplier 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.

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 Supplier's ability to meet the Project Plan for the relevant Test Item.

After completion of the Acceptance Tests:

The Supplier shall provide the Customer with a copy of the test results in the Supplier'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 an alternative method acceptable to the Customer.

If a test item meets all of the Customer's Acceptance Criteria for that test item it shall be deemed to have passed the Acceptance Tests and be Accepted.

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 Supplier shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time, not to exceed fourteen (14) days.

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 Supplier, choose at its sole discretion:

- a) 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 or proceed under paragraphs 2 or 3 that follow;
- b) 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 Supplier provided that such conditions may not without the prior written agreement of the Supplier increase the obligations or restrict any right or remedy of the Supplier under this Agreement. Unless otherwise agreed in writing between the Customer and the Supplier 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 Customer, the Customer shall be entitled to proceed under paragraph 3; or
- c) if the Supplier is unable to correct the defects within a period of one month from the commencement of Acceptance Tests under paragraph 1,2 and 3, to reject the Test Item as not conforming to the Agreement, in which event the Customer may terminate the affected service.

Customer can accept a four (4) hours BER test on individual sections of a circuit with a zero (0) error threshold. However, the complete end to end circuit testing still requires a 24 hour BER test with a zero (0) error threshold.

The Supplier's standard format hand-over pack will include, but not limited to, the following:

- For Capacity Services:
 - Description of the delivered service (Including bandwidth supplied);
 - Full set of test results as defined in appropriate annex;
 - The Connectivity End Point location (A end B End) Details including location names, Site ID Numbers, full address and co-ordinates, provided by the co-location provider;

- Full end point demarcation details including address, room/cage, rack and port;
- A KMZ file showing the final supplied Route;
- The service ID of the provided Circuits;
- The Ready for Service date;
- Contact e-mails and telephone numbers for associated Support/NOC arrangements including escalation contacts

2. Acceptance

Acceptance will be by e-mail

3. Reserved Rights

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.

PART C.2 – PURCHASED CAPACITY

Annex C.2.1 - Purchased Capacity Services to be provided

[Note: Service Description to be inserted with relevant information taken from the ITT. This annex needs to be reviewed and amended in line with ITT / relevant services to be provided.]

1. Introduction

[INSERT DETAILS]

2. System Information and standards

2.1 Standards

The following general ITU-T and other recommendations apply for the Digital Circuit Service Item(s) (except where other service parameters such as bit error rate performance are explicitly specified elsewhere in this Contract):

SDH SERVICES			
FRAMING TYPE	REFERENCE		KEY ASPECTS
SDH / SONET	ITU-T	G.826	Concerning end-to-end error performance parameters and objectives for international, constant bit-rate digital paths and connections
	ITU-T	G.828	Concerning error performance parameters and objectives for international, constant bit rate synchronous digital paths
	ITU-T	G.957	Concerning optical interfaces for equipment and systems relating to the synchronous digital hierarchy
	ITU-T	M.210 1	Concerning performance limits for bringing-into-service and Maintenance of international multi-operator SDH paths and multiplex sections

WAVELENGTH SERVICES			
FRAMING TYPE	CAPACITY	REFERENCE	KEY ASPECTS
SDH / SONET	40 Gbps (STM-256/OC-768)	ITU-T: G.707 & G.693	
OTN	40 or 100 Gbps (OTU-3/OTU-4)	ITU-T: G.709 & G.693	This Service must transit OTN switching equipment and/or DWDM equipment only such that the OTN overheads are carried end-to-end over the entire length of the Service. Services that transit equipment such as Ethernet switches that do not transit the OTN overhead do not qualify as an OTN service.
Ethernet	1 / 10 / 40 / 100 Gbps (LAN-PHY)	IEEE 802.3z, 802.3ae and 802.3ba standards	Full bit-transparency of the entire 10.3125/41.25/103.125 Gbps signal facilitating transparency to the following: Large (“jumbo”) Ethernet frames of at least 9216 bytes length IEEE 802.1Q VLAN tagged Ethernet frames IEEE 802.1ad (“Q-in-Q”) Ethernet frames IEEE 802.1ah (“MAC-in-MAC”) Ethernet frames PAUSE frames as used in IEEE 802.3 Flow Control Where a solution does not provide full transparency (e.g. to the Ethernet preamble and/or inter-packet gap) then details must be provided.
			IEEE 802.1ag: Connectivity Fault Management (CFM) [IEEE 802.1ag] or parts thereof (as agreed).
			ITU-T Y.1731: OAM functions and mechanisms for Ethernet-based networks or parts thereof (as agreed).
			IEEE 802.3ah: Ethernet in the First Mile OAM [IEEE 802.3ah] or parts thereof (as agreed).
	OAM support (Point-to-point Ethernet transport)		MEF E-LMI: Ethernet Local Management Interface [MEF E-LMI TechSpec or parts thereof (as agreed).

2.2 System information

The Supplier will ensure the Service provided is fully transparent.

2.3 List of Service Items – Service Connectivity

MSA-XX-XXX

The Supplier will provide a full digital circuit according to the relevant ITU-T recommendations, undertaking contractual arrangements with other supplier(s) as required.

3 System information

[INSERT relevant diagrams; circuit routing and kmz-data] .

The end to end length of the Service will be not more than [length in kilometres].

[If, because of protection mechanisms, the Service might be re-routed over a longer length path, specify the maximum length of that alternate path and the maximum time, as a monthly percentage, that the alternate path may be in use]

4 Parameters and Settings

Acceptance Test Start Date is: [DATE]

Committed Delivery Date ("CDD") is: [DATE]

The Service will be implemented with the following bandwidth interfaces:	
Customer Bandwidth	
UBUNTUNET ALLIANCE Interface Type/Framing	
Physical Characteristics	
Connection Type	

5 Service End Points

Service termination points	A-end	B-end
Address		
Floor & Room Number		
Rack or Cabinet		
Equipment Slot & Port		
Zip Code & City		
Country		

6 Performance Measurement specific to the Service Items in this SoW

The following performance metrics are committed under this Statement of Work in addition to the applicable performance metrics set out in Annex C.1.5 (Service Levels and Service Credits); of the MSA. Additional or revisions to the standard SLA for Leased Capacity Services in Annex C.1.5 (Service Levels and Service Credits); for table A,B and/or C will be set out below.

Service Level Description	Service Level Measurement	Service Level Target	Service Credit	Service Level Threshold
Tbc at award stage from ITSFB				
Tbc at award stage from ITSFB				
Tbc at award stage from ITSFB				
Tbc at award stage from ITSFB				

Annex C.2.2 - Acceptance test and criteria for Purchased Capacity Services

The expected Acceptance Test Start Date (ATSD) for each Circuit Service Item will be, at the latest, five (5) Business Days prior to the CDD, but not before the Customer has received a copy of the Supplier's test results, and will have the following stages. The CDD may be brought forward by up to twenty (20) Business Days subject to mutual written agreement from both Parties.

Stage 1. Notification.

The Supplier will notify Customer three (3) Business Days before the expected ATSD whether the Service Item will be handed over to Customer for testing on the date planned, or if there is a delay expected the Supplier will inform the Customer of the duration of the delay. For notification, the Supplier will use the document template that will be supplied by the Customer for this purpose.

Stage 2 Handover for Acceptance Testing

Before handing over the circuit for testing by Customer, the Supplier will perform the appropriate ITU-T recommended tests and a 24-hour bit error rate test during which no bit errors are recorded.

On completion of the ITU-T tests the Supplier will inform Customer by e-mail, using the document template supplied by the Customer for this purpose, and will provide a copy of the test results. For SDH circuits, this will include the test reports for both the primary and secondary circuits. Customer will confirm receipt of the e-mail to the Supplier.

The ATSD will be the next Business Day after the test results are received by Customer.

Stage 3 Acceptance Testing

Customer will have five (5) Business Days from the ATSD to carry out tests over the link. If no problems arise, the procedure moves straight to Stage 5 (omitting Stage 4).

Stage 4. Acceptance Test Problem Resolution

If Customer identifies problems during the ATSD, the Supplier will be informed as soon as possible. It is the Supplier's responsibility to work in a timely fashion with Customer to determine the source of the problem. If the source of any problems is determined to be in the Service provided by the Supplier, the Supplier will remedy the problem. If the source of any such problem is determined to be outside the Supplier's Service or in the Customer equipment, Customer will take appropriate action and continue its testing.

If the source of the problem is in the Service provided by the Supplier, a further period of acceptance testing will take place once the remedial action has been completed. The procedures will follow Stages 2, 3 and (if necessary) 4 as described above.

Stage 5 Service Acceptance

The Service Items must be handed over to Customer and be operational by the Committed Delivery Date (CDD)

Customer will be deemed to have accepted the Service Item when Customer has received the hand-over pack, as specified in Annex C.1.6 (Acceptance Procedure), and declares that the Service meets the specification or if the allowed acceptance test period expires without Customer providing evidence to the Supplier that the Service does not meet the specifications.

The OSD will be set as the date Customer accepts or is deemed to have accepted the Service Item. The CDD must be the same date as the OSD unless prior written permission is provided by Customer.

Defects in (to be) provided Services

The cycle as described above of testing, taking corrective action and re-testing shall take place until the Customer (acting reasonably) is satisfied that the Leased Capacity Services meet the specifications in all material respects and issues (or is deemed to issue) an acceptance confirmation with respect to the same in accordance with the above.

In the event that the Customer decides to accept the Leased Capacity Services by issuing to the Supplier an acceptance confirmation in circumstances where the Customer has identified defects, the Supplier shall remain obliged to correct such defects as expeditiously as possible and shall notify the Customer as soon as is reasonably practicable once such defects have been cured.

Where the Supplier either: (a) fails to achieve the OSD by the CDD; or (b) fails to remedy defects within ten (10) Business Days of notification, the Supplier undertakes and agrees, at the Customer's sole discretion, to either continue to supply the Services to the Customer free of charge until the OSD or to pay to the Customer liquidated damages. These liquidated damages represent an amount equal to 0.5% of the total contract value divided by the duration (Initial Term) annual charge per day for the Service in question. In no event shall the Customer be entitled to receive a payment of liquidated damages the value of which exceeds 15% of the first year's annual charge for the Service in question. The liquidated damage payments shall be accrued daily together with interest at the rate set in the MSA and shall be paid on the OSD.

Where the Supplier either: (a) reaches the maximum amount of liquidated damages payable; or (b) fails to remedy the non-performance issues within the timeframe, as set out directly above, then the Customer shall be entitled to terminate the relevant Service and/or all related Services and/or this SoW and the Agreement for the Supplier's irremediable material breach.

The Parties acknowledge that the liquidated damage payments set out above are a genuine pre-estimate of the loss that the Customer would suffer as a result of a failure by the Supplier to deliver the Service on the CDD, and such liquidated damages are recoverable by the Customer by way of compensation and not as a penalty. Any liquidated damages payable to the Customer by the Supplier under this SoW are non-exclusive and shall be without prejudice to the Customer's other rights and remedies under this SoW and the MSA or at law.

Summary

Acceptance Testing Stages	Timescales	Comment
Stage 1 Notification of ATSD	At least three (3) Business Days before ATSD	
Stage 2 Handover for Acceptance Testing		Supplier provides test results to Customer
Stage 3 Acceptance Testing	Up to five (5) Business Days from the ATSD	
Stage 4 Acceptance Test Problem Resolution (This stage only required where problems found during acceptance testing)		Customer needs to provide evidence that the service is unacceptable. When remedial action is completed, Stages 2 and 3 are repeated.
Stage 5 Committed Delivery Date and Operational Start Date	The service is required to be delivered and operational by the Committed Delivery Date. The CDD must be the same date as the OSD unless prior written permission is provided by Customer for the OSD to differ from the	The date that the Service is accepted by Customer is the Operational Start Date and billing will commence from this date.

	CDD.	
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Part D – DATA PROCESSING AGREEMENT (GDPR)

1. Data Processing Agreement (DPA)

- 1.1 A data processing agreement (DPA) is a legally binding document to be entered into between the controller and the processor in writing or in electronic form. It regulates the particularities of data processing – such as its scope and purpose – as well as the relationship between the controller and the processor.
- 1.2 The GDPR requires data controllers to take measures to ensure the protection of personal data they handle. If data controllers decide to outsource certain data processing activities, they must be able to demonstrate that their suppliers and sub-processors also provide sufficient guarantees to protect the data and act in a GDPR compliant manner.

2. When do you need to sign a DPA?

- 2.1 When UbuntuNet Alliance involves other suppliers to process personal data on behalf of UbuntuNet Alliance, UbuntuNet Alliance must enter into a Data Processor Agreement with these suppliers. This agreement rules out that the other party may process personal data for their own purposes.

3. Statement of Non-Processing Personal Data

<<Supplier name>> will ensure full compliancy with the Regulation (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL and declares that no personal data is or will be processed during the duration of the Master Service Agreement (MSA) with reference number <<MSA number>>.

If the supply of the service(s), initially agreed in the Statement(s) of Work (SoW), change for any reason and personal data starts being processed, <<Supplier name>> will contact UBUNTUNET ALLIANCE immediately for initiating further actions as described below.

UbuntuNet Alliance will be entitled to conduct a process to verify the conditions to process personal data, in a condition of Data Controller. The process consists in four (4) steps:

- 1- Information Security Assessment;
- 2- Data Protection Assessment;
- 3- UBUNTUNET ALLIANCE's evaluation and possible meeting with Supplier (if necessary, may be performed an audit);
- 4- Acceptance and sign the UBUNTUNET ALLIANCE DPA (Data processing Agreement), referred to in Part D of the MSA.

For and on behalf of <<Supplier>>

Signature:

Name:

Title:

Place:

Date:

MSA-XX-XXX

