**Dated day of 2022**

**Between**

**AF-CIX Limited**

**And**

**[Insert Company Name]**

**Participant Agreement**

**This Participant Agreement** is dated this …… day of ………………….. 2022:

**Between**

**AF-CIX Limited,** a limited liability company duly registered in Nigeria and having its office at [•] (hereinafter referred to as “**AF-CIX**” which expression shall where the context so admits include its successors-in-title, nominees and assigns) of the first part.

**And**

**[**•**],** whose address is [•] (hereinafter referred to as the “**Participant**” which expression shall where the context so admits include its successors-in-title, nominees and assigns) of the second part

(Each a **Party** and collectively the **Parties**).

**Whereas:**

1. AF-CIX provides interconnection services on its internet exchange point (the **Exchange**) for its customers including port access, peering, cloud, direct route, virtual PNI, global Peering, direct cloud, remote internet exchange, remote network access and blackholing
2. The Participant is a customer and wishes to access the Exchange in order to enjoy the benefits thereof.
3. The Parties have therefore entered into this Agreement to govern their contractual relationship.

**It Is understood** as follows:

# Definitions And Interpretation

* 1. **Definitions**

In this Agreement, including the recitals, unless a contrary intention appears or the context otherwise required, the following terms shall have the meanings set opposite them:

**Agreement** means this Participant Agreement;

**Confidential Information** means:

1. all trade secrets, and other intellectual property, data know-how, designs, processes or formulae, software, systems and procedures of a technical, sensitive or confidential nature in any form relating to either Party, including, without limitation, all business and marketing plans, marketing and financial information, pricing, profit margin, cost and sales information, operations information, forms, contracts, bids, agreements, legal matters, unpublished written materials, names and addresses of customers/agents and prospective customers/agents, systems for recruitment, contractual arrangements, market research data, information about employees, suppliers and other companies with which either Party has a commercial relationship, plans, methods, concepts, computer programs or software in various stages of development, passwords, source code listings and object code;
2. all reports, recommendations, communications, written information and all other material supplied to or obtained in the course of the Project;
3. any document marked “Confidential”;

**Exchange** means the AF-CIX network access peering point exchange;

**Force Majeure Event** means a cause or event beyond the reasonable control of, and without the fault or negligence of the affected Party, including, without limitation, floods, earthquakes, hurricanes, tornadoes, significant adverse weather conditions not reasonably anticipated or acts of God; sabotage; terrorism; war; riots; fire; explosion; blockades; insurrection; strike.

**Partnership Order** means the document executed by the Participant which details the products or services as well as the special terms being purchased from AF-CIX.

* 1. **Interpretation**

### In this Agreement, unless the context otherwise requires:

* + 1. Headings in this Agreement are for ease of reference only and shall not accept the construction of any term or provision contained therein.
    2. Reference to a clause is a reference to clause in this Agreement.
    3. A reference to a statute or statutory provision includes a reference to the provision as amended or replaced or any regulation or order made from time to time under such provision.
    4. Reference to persons include reference to individuals, body corporate, unincorporated associations, partnerships, joint ventures and government department or agencies.
    5. A reference to the singular includes a reference to the plural and vice versa and any reference to the masculine includes

# Scope of the Agreement

# This Agreement sets out the contractual relationship between AF-CIX and the Participant and shall apply to the Services provided by AF-CIX to the Participant in relation to accessing the Exchange.

# AF-CIX shall provide port access and peering within the Exchange to the Participant on the basis set out in Schedule 1. For the time being, port access and peering at the Exchange is provided as a free value-added service by AF-CIX and accordingly, whilst AF-CIX will use all reasonable commercial endeavours to ensure the availability and proper functioning of the Exchange:

* + 1. the Exchange is provided on an "as is" basis and AF-CIX hereby disclaims all warranties, whether implied, statutory or otherwise to the fullest extent permitted by law; and
    2. AF-CIX will not have any liability to the Participant or any third party, whether direct, indirect, consequential, punitive, special or general for any failure to provide the Exchange. Accordingly, the Participant hereby indemnifies and holds AF-CIX harmless against any claims which may be instituted against AF-CIX by any third party

# Obligations of Parties

## The Obligations of AF-CIX is as set out in Schedule 1 below.

## The Participant notes that AF-CIX is obliged to comply with certain statutory provisions and AF-CIX’s compliance with such statutory provisions may include steps which would otherwise constitute infringements of the Participant's privacy, such as the interception of the Participant's communications or the examination of the Participant's Data. The Participant agrees that no action shall lie against AF-CIX for any damages howsoever arising as a result of such steps, and the Participant further indemnifies and holds harmless AF-CIX in respect of any action brought by a third party resulting from such steps.

## The Participant understands that AF-CIX may monitor any of its ports or connections associated with the Exchange, but only where:

### the information is required by law;

### the information is generic in nature and is only gathered for statistical or network management purposes;

### AF-CIX reasonably believes the Participant is failing to comply with its obligations under this Agreement; or

### the Participant has explicitly requested the specific monitoring or has consented to it following a request from AF-CIX;

## The Participant shall comply with the technical and other requirements set out in Schedule 2 as well as all other processes and procedures as may be stipulated by AF-CIX from time to time to foster the effective operation of and granting of access to the Exchange Obligations.

# Term and Duration

# This Agreement shall commence on the date of the last-dated signature of this Agreement by a party and shall continue thereafter for an indefinite period, unless otherwise terminated in accordance with Clause 5 below.

# On the commencement of this Agreement in accordance with clause 4.1, the Participant shall enter into a Partnership Order which shall be executed by both Parties. Upon execution of the Partnership Order, the Partnership Order shall form part of this Agreement and shall incorporate the terms and conditions of this Agreement and in cases of conflict, the terms and conditions of the Partnership Order shall supersede this Agreement.

# AF-CIX reserves the right to review this agreement to add, delete, and/or modify any clause as required for the effect delivery of its business objectives. Such review shall be communicated to the Participant.

# Termination

## Either Party may terminate this Agreement on the provision of at least 30 days’ notice in writing to the other Party.

## Without prejudice to Clause 5.1 above, either Party shall be entitled to terminate this Agreement immediately by written notice to the other if:

### the other commits any material breach of this Agreement and (in the case of a breach capable of remedy) fails to remedy the same within seven (7) days after the receipt of notice giving full particulars of the breach complained of; or

### the other shall have a receiver or administrative receiver appointed over it or its assets or shall pass a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the defaulting Party shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order; or

### defaulting Party ceases or threatens to cease to carry on its business (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction).

## If the Participant at any time fails to fulfil the obligations set out in Schedule 2 then AF-CIX may:

## provide the Participant with written notice detailing the nature of the failure and the steps required to remedy same and the timeframe within which such steps must be taken;

## in addition, suspend the Participant's access to the Exchange, with or without prior notice, pending remediation of the failure complained of, provided that shall notify you of such suspension as soon as reasonably possible before or after such suspension occurs; and/or

## terminate this Agreement on written notice to the Participant.

## Should the Participant be suspended for any reason:

## its suspension will be notified immediately to all other Participants in the Exchange;

## it will be disconnected from all services related to the Exchange while suspended;

## the Participant must continue to comply with all its obligations under this Participation Agreement which are not affected by the suspension;

## the Participant may not hold itself out as a Participant in the Exchange and

## the Participant may appeal against the decision of AF-CIX to suspend its access by following the appeal procedure specified by AF-CIX from time to time.

## The Participant may reapply for access if this Agreement is terminated for any reason other than reasons stated in Clause 5.2 above, subject to its complying with the requirements set out in Schedule 2.

## In addition to the above, AF-CIX may be required to suspend access to the Exchange in order to carry out routine maintenance to the Exchange, provided that AF-CIX shall endeavour to undertake same at times of low traffic volume.

## Any waiver by either Party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision of this Agreement.

## The rights to terminate this Agreement given by this clause shall be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

# Force Majeure

# Neither Party shall be under any liability to the other Party for any delay or failure to perform any obligations under this Agreement if the delay or failure is wholly or partly caused, whether directly or indirectly, by circumstances beyond its reasonable control (“Force Majeure Event”), provided the affected Party provides the other Party with written notice of Force Majeure event within a reasonable time after its occurrence.

# In case the Force Majeure persists for more than thirty (30) days, either Party shall be entitled to terminate at its discretion this Agreement by way of a written without incurring any liability for such termination.

# Neither party is excluded from any liability arising out of the fulfilment of obligations under this Agreement, already incurred prior to the occurrence of the Force Majeure event on the basis of the termination in 6.2 above

# Fees

* 1. No fee is payable by the Participant for port access, peering and exchange of local traffic within the Exchange provided the Participant effectively utilizes the allocated ports on the Exchange. The Participant shall pay applicable charges for other services which shall be negotiated and agreed with the Participant and set out in the Partnership Order.
  2. However, should it become commercially unviable for AF-CIX to continue to provide the Exchange at no cost to the Participant, AF-CIX may, on 60 (sixty) days written notice to the Participant, include fees for the port access, peering and exchange of local traffic services. Where the Participant is not prepared to pay such charge, it may terminate this Agreement in accordance with the provisions of clause 5.
  3. Where the Participant fails to utilize the allocated ports for a continuous period of three months, the Participant shall be liable for a port access fee invoiced monthly upon written notice to the Participant. The port access fee shall be as set out in the Partnership Order and shall cease on the provision of evidence of three months effective utilization of the allocated ports.

# Confidential Information

# Neither Party shall use or disclose to any person any Confidential Information about the practice, business dealings or affairs of the other Party or any of its business contacts, or about any other confidential matters which may come to their knowledge in the course of this Agreement and the execution of the Project.

# The restriction imposed by this clause does not apply to the following:

* + 1. any use or disclosure authorised by the other Party or as required by law;
    2. any information which is already in, or comes into, the public domain otherwise than through an unauthorised disclosure;
    3. any use or disclosure by either of the Parties with the prior written approval of the other; and
    4. disclosure made in a judicial or administrative proceeding or any regulatory and supervisory body.

# 

1. **Indemnity** 
   1. The Participant hereby indemnifies and holds AF-CIX harmless against any claim instituted by any other Participant in the Exchange or other third party against AF-CIX, which claim arises out of any wrongful act or omission on the part of the Participant.
   2. The Participant undertakes to indemnify AF-CIX on demand against any all losses, liabilities, claims, damages, costs or expenses of whatever nature incurred or suffered by AF-CIX in connection with this Agreement.
   3. The Participant acknowledges that AF-CIX may bring an application for third party proceedings to join it in any suit or action brought against it in respect of any obligation or claim arising out of the Contract of Employment.

# Data Protection

# Parties shall at all times comply with the Nigeria Data Protection Regulation, 2019.

# The Participant warrants that it has voluntary, specific and informed consent from its employees, contractors, agents and other authorised third parties who may act on its behalf for purposes relating to this Agreement, to provide their personal information, including special personal information such as images, to AF-CIX and for AF-CIX to process such Personal Information for purposes relating to this Agreement.

# General

## Variation

Any modification of this Agreement shall be in writing and signed by the Parties.

## Severability

## Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable.

## All signatories hereto acknowledge that they have read the foregoing Agreement and by their signatures that they have full and complete authority to execute the Agreement for and in the name of the Party for which they have appended their respective signatures.

## Entire Agreement

This Agreement constitutes the entire agreement between the Parties. This Agreement supersedes and replaces all prior negotiations and agreements relating to the subjects addressed herein except as specifically addressed herein. All agreements, proposed or otherwise, whether written or oral, concerning all subject matters covered herein are incorporated into this Agreement.

## Governing Law And Dispute Resolution

## The interpretation and construction of the Agreement and all disputes arising in connection thereto shall be governed by the laws of Federal Republic of Nigeria.

## Any disputes and differences arising from or in connection with the Agreement shall be settled amicably between Parties.

## Where Parties are unable to amicably resolve any dispute arising out of this agreement within 30 days of holding consultations, such dispute shall be submitted to Arbitration before a Sole Arbitrator to be agreed on by both parties and in accordance with the Arbitration and Conciliation Act. Where Parties are unable to agree on the Sole Arbitrator within 14 days of issuance of the Notice of Arbitration, appointment shall be made by Chartered Institute of Arbitrators UK (Nigeria Branch). The Place of the Arbitration shall be Lagos and the arbitration shall be conducted in be English. The Award of the Arbitrator shall be final and binding on the Parties.

## Notices

* + 1. Any notice (which term shall in this clause include any other communication) required to be given under this Agreement or in connection with the matters contemplated by it, shall, except where otherwise specifically provided, be in writing in the English language.
    2. Email is the primary means of communication between AF-CIX and the Participants in the Exchange and any reference to "in writing" in this Agreement shall include communication by email.
    3. Any such notice sent via email, in which case it shall be deemed to be given when actually received in readable form if it is received not later than 17.00 hours on a Business Day, or, if it is received later than 17.00 hours on a Business Day or at any time on a day which is not a Business Day, at 09.00 hours on the next Business Day.
    4. The addresses and other details of the Parties for the purposes of this Clause:

|  |  |
| --- | --- |
| For AF-CIX: | For Participant |
| Name: [] | Name: [] |
| Address: [] | Address:[]. |
| Telephone: [] | Telephone: [] |
| Email: [[]](mailto:info@rack-centre.com) | Email: [] |

* + 1. Either Party may notify the other Party of any change to the addresses or any other details specified in this Clause, provided that such notification shall only be effective fourteen (14) Business Days after the notice is given, whichever is the later.
  1. **Publicity** 
     1. The Participant hereby agrees that AF-CIX may communicate via its website, and in other forms of marketing media, the names of Participants that access the Exchange. Either Party may make or send public announcements, public circulars or public communications to any person without the prior written consent of the other Party by way of advertising, sales promotions, press releases or other publicity which does not use the Intellectual Property of the other Party.
  2. **Assignment**
     1. Neither Party shall be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

**Schedule 1**

1. Bilateral or private Peering
   1. Private peering is the direct interconnection between only two networks, across a Layer 1 or 2 medium that offers dedicated capacity that is not shared by any other parties.
   2. Private peering at AF-CIX is subject to the technical guidelines as stated in Schedule 2.
   3. Private Peering agreements are the responsibility of the connecting networks.
   4. Private peering service details. The following configurations are available
      * 1G (GE) - 1000BASE-TX
      * 1G (GE) - 1000BASE-SX
      * 1G (GE) - 1000BASE-LX
      * 10G (GE) - 10000BASE-LX
2. Multilateral or Open Peering (MLP)
   1. The Multilateral Peering is a service which facilitates route exchange between multiple Participants over one BGP session through the Route Server.
   2. Multilateral peering at AF-CIX is subject to the technical guidelines as stated in Schedule 2 as well as the terms stated below.
      1. MLP Service details. The following configurations are available
      * 1G (GE) – 1000BASE-TX
      * 1G (GE) – 1000BASE-SX
      * 1G (GE) – 1000BASE-LX
      * 10G (GE) – 10000BASE-LX
      1. MLP Rules
      * Exchange of routes will be performed using BGP4.
      * Participant agrees to use an Autonomous System number for its route exchange communications.
      * The Participant agrees that route prefixes (blocks of IP address space) advertised to each other under this agreement will be of maximum prefix length of 24 bits.
      * The Participant agrees that only routes for IP address space allocated and registered by a Regional Internet Registry to the Participant or the Participant’s customers are advertised.
      * Participant agrees to never “default route” to the MLP service, or via that service or directly to any other MLP Participant, without full agreement between both parties. The act of using a “default route” without permission will result in immediate termination of this agreement.
      1. Rights
      * Participation on the Multilateral Peering network is voluntary.
      * Any Participant has the right to withdraw at any time.
      * The Participant is entitled to select routing paths among the MLP Participants.
      * The Participant is entitled to enter into Bi-Lateral Peering Agreements with MLP Participants and non-MLP Participants.
      * The Participant may engage in transit agreements as provider or consumer where transit is defined as routing through another Participant via a direct connection (not via the MLP) to a network not directly connected to the same MLP service.
      * The Participant is strongly advised to utilise the route server in participating on the MLP as peering with the route server helps in building the exchange community by making traffic and resources available to everyone equally.
      1. Exclusions
      * The Participant is not obligated to provide transit to other MLPA Participants
      * The Participant is not obligated to announce the routes obtained from its Bi-Lateral Peering Agreement partners to the MLPA Participants
      * Monetary settlements are not required by this agreement
      * The Participant is not obligated to provide transit of packets from AF-CIX to other exchanges
      * This agreement does not cover or disallow cross-connects or private peering between Participants
      * Hosting of router hardware, connections to the exchange and the costs thereof, are not covered by this agreement

**Schedule 2**

1. iNITIAL tECHNICAL rEQUIREMENTS

Prior to connecting to the Exchange, the Participant must comply with the following technical requirements:

* 1. Connected ports must be Ethernet. Gigabit Ethernet ports can configured as auto-sensing or manual, as notified by the Participant to AF-CIX prior to going live.
  2. Any intermediate devices between the AF-CIX switch and the Participant's router, for example an aggregation switch, a third-party Ethernet transport provider, or media conversion device must not emit any traffic towards the exchange.
  3. By default, Participants will be assigned an access port on the public peering VLAN. Multiple VLAN ports are available, and AF-CIX will use 802.1q VLAN tags (ethertype 0x8100) to signal which VLAN the frame is in. The Participant should not send frames with VLANs that are tagged for VLANs which AF-CIX has not configured on your port. A change of service from a single VLAN port to a port supporting 802.1q tagging will cause a small interruption to the Participant's service.
  4. AF-CIX suggests that interfaces on an access port have 1500 byte MTUs. Ports with 802.1q VLAN tagging can be 1516 so that the containing frame does not need to be fragmented.
  5. All frames from a single port, which are forwarded to the AF-CIX exchange must have the same source MAC-address. If this is not configured, then port-security on the AF-CIX switch will shut down your peering port. This technique is the most important loop prevention technology used on the AF-CIX Exchange, so exceptions are not permitted
  6. On the public peering LAN, only ethertypes 0x0800 (IPv4), 0x08dd (IPv6) and 0x0806 (ARP) are permitted. If you wish to exchange other types of packets with connected Participants, then a Closed User Group VLAN can be created between the Participants who wish to exchange other types of traffic.
  7. Connected networks should disable Proxy ARP on the router interface connected to the AF-CIX Exchange.
  8. Connected networks should disable non permitted link-local protocols on the router interface connected to the AF-CIX Exchange. Illegal protocols include DHCP, Spanning Tree, DEC MOP, CDP, VTP and Layer 2 Keepalive packets. The only permitted link-local protocols are ARP and IPv6 Neighbour Discovery.
  9. Connected networks must only use BGP to exchange routing information. This explicitly means that other routing protocols such as OSPF, ISIS, EIGRP, and IPv6 Router Solicitation should never be used.
  10. It is always forbidden to point any static routes at other exchange Participants.
  11. AF-CIX recommends against overloading your ports, and AF-CIX will get in touch when traffic at the 95th percentile exceeds 75% of the port capacity. When traffic reaches 50% of Participants port capacity, AF-CIX will discuss suitable upgrade options (higher port capacity or aggregated links) with the Participant.
  12. All allocated ports must be utilised by the Participant. In the event of non-utilisation of assigned port, clause 7.3 of this agreement shall be applied.
  13. AF-CIX recommends that Participants request for port capacity within their expected traffic needs. AF-CIX may in its discretion engage the Participant and request that verifiable evidence for the requested port capacity be provided by the Participant.
  14. Where for a continuous period of three months, Participant’s traffic falls within a lower port capacity, AF-CIX reserves the right to downgrade the Participant to such lower port that best suits their capacity.
  15. Networks using aggregated ports will follow 802.3ad specifications. The aggregated links must be of the same media type and link speed.
  16. All connected networks must BGP peer with the Internet Exchange's collector. This session allows AF-CIX to check the health of the Internet Exchange.
  17. Connected networks should not export the AF-CIX peering LAN address space to other networks without permission.
  18. The Participant shall within the first six (6) months of approval, advertise its membership to the Exchange on PeeringDB.

1. tECHNICAL rEQUIREMENTS
   1. In addition, in order to participate in and enjoy continued access to the AF-CIX Exchange, the Participant shall, at all times during the term of this Agreement:
      1. have an ASN (Autonomous System Number) assigned by one of the Regional Internet Registries (or their predecessors) or an alternative agreed by AF-CIX;
      2. present to AF-CIX an Autonomous System that is visible from the AF-CIX Route Collector;
      3. use BGP-4 for peering.
   2. The Participant must achieve operational peering within three months of becoming an AF-CIX Participant. This is achieved by:
      1. connecting to at least one port on the AF-CIX network, and
      2. peering with the AF-CIX route collector, and
      3. peering with at least one existing AF-CIX Participant or the AF-CIX route servers.
   3. If the Participant does not achieve operational peering within three months of signature of this Agreement, or subsequently do not maintain operational peering for more than twenty-one continuous days, then AF-CIX may suspend your participation in the Exchange on written notice to the Participant.
   4. Failure by the Participant to adhere to the requirements set out in this Schedule shall constitute a breach of this Agreement and entitle AF-CIX to:
      1. suspend the Participant from the Exchange without notice; or
      2. terminate this Agreement on written notice to the Participant (or both).

**In Witness Whereof** this Agreement has been executed by the Parties the day and year first above written.

**By: AF-CIX Limited**

……………………………………

**Director**

**By: [Insert Company Name]**

……………………………………

**[Insert Tile]**