



This Membership Agreement (the "Agreement") sets out the terms and conditions of the membership of the West Africa Internet Exchange (WAF-IX). This Agreement governs the Members' access to and use of the Service and the Member shall comply with the terms herein and all laws and regulations applicable to the use of the Service.

1. **DEFINITIONS:**

For the purposes of this Agreement, the following definitions apply:

"Agreement" shall collectively refer to this Membership Agreement as well as any applicable Service Level Agreement, Acceptable Use Policy and any other technical requirements, addenda, schedules, or exhibits attached hereto and/or incorporated herein by reference.

"Confidential Information" means (i) with respect to WAF-IX: server configurations, software configurations, proprietary information, proprietary technology, proprietary software, audit reports, information regarding products, and information contained in manuals, proposals or memoranda; and (ii) non-public technical, business or other information or materials disclosed or otherwise made available by one party in connection with the Service that are in tangible form and labeled "confidential" or the like, or are provided under circumstances reasonably indicating their confidentiality.

"Day(s)" shall mean calendar days unless otherwise set forth in this Agreement.

"Force Majeure Event" means any cause beyond the reasonable control of either Party hereto including, but not limited to, action by a governmental authority, moratorium on any activities related to this Terms and Conditions, labour dispute, flood, earthquake, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, adverse weather conditions, terrorism, embargo, third party carriers or suppliers force majeure, act or failure to act of any Governmental authority, computer viruses or worms, computer sabotage, 'Denial of Service' attacks, DNS spoofing attacks and/or other hacking attacks of a similar nature, save that either party will ensure that adequate safeguards including up to date insurance are in place at all times, against all such occurrences or other circumstances or conditions that render it unsafe or unreasonable for either Party's personnel to travel to or enter onto the affected site.

"Member" refers to an organisation that has (i) successfully met and continues to meet WAF-IX's joining requirements (ii) has signed this Agreement and (iii) has complied with the joining procedure as prescribed by WAF-IX.

"Ready for Service Date" or "RFS Date" "Ready for Service Date" or "RFS Date" shall mean the date which WAF-IX notifies the Member in writing or by electronic



communication that installation and provisioning is completed and the Service is ready for the Member's use.

"Service" means an internet exchange point through which Internet service providers (ISPs) and other content delivery networks (CDNs) exchange internet traffic between their networks in order to allow the Members interconnect directly.

2. **PROVISION OF THE SERVICE**

- 2.1 WAF-IX shall either alone, directly or through its affiliates or underlying providers, deliver the Services on a non-exclusive basis and the Member shall purchase and utilize the Services as per the specifications prescribed by WAF-IX. The Parties may, by mutual agreement, add additional Services (in the form of upgrades to existing services or purchase of additional Services).
- 2.2 Subject to the execution of this Agreement and the satisfaction of other requirements prescribed by WAF-IX, WAF-IX shall proceed with the provisioning and implementation of the Service, provided that It has received all necessary contractual documents and technical information, and support that it deems necessary for Service provisioning and implementation from the Member. Where the conditions above have not been met, WAF-IX hereby reserves the right to cancel the provisioning of the Service to the Member.
- 2.3 A term will be selected by the Member for the Service (a "Service Term") and will be specified on the applicable Service Order Form, provided that such requested Service Term shall not be less than a minimum period of one (1) year. The Service Term for the Service shall commence on the RFS Date or such other date agreed by the Parties in writing (the "Service Commencement Date").
- 2.4 Billing for the Service shall commence immediately on the Service Commencement Date unless the Member notifies WAF-IX within twenty-four (24) hours of its non-acceptance of the Service on the basis that agreed technical specifications for the Service have not been met. In that case, further tests of the Service will be conducted and a new Service Commencement Date will be agreed upon; provided that the use of the Service by the Member for any purpose other than testing (unless otherwise agreed) following notice of non-acceptance will be deemed to constitute acceptance of the Service.
- 2.5 Unless otherwise agreed in writing, the Member shall, at its sole cost and expense, arrange for its connection to WAF-IX. In no event shall WAF-IX be, or be deemed to be, responsible for any Service impairment or loss of functionality, or breach of any performance obligation under this Agreement where the Service failure, fault or delay in performance is directly or indirectly related to any failure by the Member to comply with the AUP, SLA or any other technical requirements prescribed by WAF-IX.

3. **TERM AND RENEWAL**

- 3.1 This Agreement will remain in full force and effect until: (i) No more Services are provided to the Member by WAF-IX, upon or after which event either Party may terminate this Agreement by



giving the other Party notice in writing; or (ii) It is terminated in accordance with its terms and conditions.

- 3.2 Subject to any contrary terms in a Service Order Form, at the end of the Service Term ("Service Expiration Date"), the Service Term for that Service will automatically be extended on the same terms on a yearly basis unless: (i) WAF-IX notifies the Member at least thirty (30) days prior to the applicable Service Expiration Date of revised terms in respect of the Service, in which case, and subject to the mutual agreement of the Parties, the Service shall be renewed on such revised terms; or; (ii) Either Party notifies the other Party in writing at least thirty (30) days before the applicable Service Expiration Date that it does not wish the Service Term to be renewed, in which case the Service, and any associated local access Services, shall expire on the Service Expiration Date.

4. **PAYMENT TERMS**

- 4.1 WAF-IX shall invoice the Member for the Service in accordance with the rates set out in the Applicable Service Order Form (the "Service Fees"). The Service Fees are exclusive of any and all applicable taxes. The Service Fees shall be subject to review during the Service Term to give effect to a reasonable adjustment for increases in the cost to WAF-IX of providing the Services to the Member as a result of factors including: statutory or regulatory changes; currency fluctuation during the Service Term; or changes in costs of services provided by third parties with reasonable notice to the Member.
- 4.2 Payment for the Service shall be made prior to, and as a condition precedent to the provisioning of the Service. WAF-IX will invoice the Member for the Service Fees which shall be payable upon the specified billing cycle.

5. **SUSPENSION AND TERMINATION OF THE SERVICE**

- 5.1 In addition to any other rights at law or in equity, WAF-IX may suspend the Service with immediate effect: (i) If the Member fails to make any payment when due; (ii) If it is obliged to do so to comply with an order, lawful instruction or request of a government agency, an emergency services organization, judicial authority, or other competent administrative authority; (iii) or where the Member uses the Service in a manner that violates the Acceptable Use Policy or the terms of this Agreement.
- 5.2 Either Party shall be entitled to terminate the Service Order Form in the event that: (i) the other Party commits a breach of any of its material obligations herein and fails to remedy such breach

within thirty (30) Days after delivery of written notice thereof from the non-defaulting Party; or (ii) the other Party becomes insolvent.

6. **CONFIDENTIALITY**

Each Party hereby agrees that the Terms and Conditions constitute Confidential Information, and all information disclosed by either Party to the other in connection with or pursuant to the Terms and Conditions or the Service(s) shall be deemed to be Confidential Information, whether or not



that written information is marked as being confidential or proprietary when given or confirmed in writing as such and hereby agrees to keep such Confidential Information in the strictest of confidence and afford such Confidential Information the same care and protection as it affords generally to its own confidential and proprietary information (which in any case shall not be less than reasonable care) to avoid disclosure to or unauthorized use by any third party.

7. **FORCE MAJEURE**

Neither Party shall be in default hereunder if and to the extent that any delay in such Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event, being any cause beyond the reasonable control of either Party hereto, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay. The Party claiming relief under this clause shall promptly notify the other in writing of the existence of the Force Majeure Event relied on, the anticipated length of delay, the cause of the delay and a timetable by which any remedial measures will be implemented. If the Force Majeure Event is not remedied within one month, either Party may terminate the Service forthwith upon providing written notice thereof to the other Party.

8. **ACCEPTABLE USE**

8.1 The Member further warrants that it shall use the Service in accordance with: (i) all applicable legislation, regulations, codes of practice, guidance and other requirements of any relevant government, governmental or regulatory agency, or other relevant body; and (ii) the Acceptable Use Policy (AUP) provided below. WAF-IX may immediately suspend part or all of the delivery of the Service(s) until further notice if the Member uses the Service(s) contrary to this provision:

8.1.1 The Member shall access and use the Service in accordance with the terms of the terms and conditions of this Agreement and the AUP. WAF-IX shall have the right to, upon becoming aware or having reason to believe that the Member has breached these terms and conditions, review the Member's use of the Service to verify the extent of compliance by the Member.

8.1.2 The Member shall not access or use the Service: (i) in contravention of any applicable legislation, regulation, code of practice or other requirement of a relevant government, governmental or regulatory agency, or other relevant body; (ii) to violate any rights of others; (iii) to try to gain unauthorized access to, test the vulnerability of, or disrupt the Service or any other service, device, data, account or network; (iv) to spam or distribute malware; (v) in a way that could harm the Service or impair anyone else's use of it; (vi) in a way intended to work around the Service's technical limitations, recurring fees or usage limits; or (vii) in any application or situation where failure of the Service could

lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.

8.2 Violations of the terms of this section may result in the suspension of the Service to the Member or the Termination of the Agreement altogether. The Member shall be required, upon becoming aware of any violation of the terms of the AUP to take immediate action to rectify the violation. Where the Member fails to take action, or to take action within reasonable time of a request to do so by WAF-IX, to cure a violation of this clause, WAF-IX will suspend the Service only to the



extent reasonably necessary, and shall provide reasonable notice of such suspension except where an immediate suspension is required.

9. **DATA PROTECTION**

WAF-IX will maintain appropriate technical and organizational measures (administrative, physical and technical safeguards) in the protection of the Member's data.

10. **CONTENT SECURITY**

Except as otherwise provided in the Terms and Conditions, the Member is solely responsible for the security of its content, including any access to content that the Member may provide to its employees, clients, or other third parties, and when such content is in transit to and from the Service. The Member agrees to implement such security measures as are reasonable for its use of the Service and shall maintain appropriate steps regarding the protection and backup of its content. The Member is responsible for complying with any laws or regulations that might apply to its content and is responsible for any losses or other consequences arising from its failure to encrypt or back up its content.

11. **INTELLECTUAL PROPERTY OWNERSHIP**

11.1 WAF-IX and its licensors own and retain all right, title and interest in and to the Service and any related software, including all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein. The Member is not granted any title or Intellectual Property Rights in or to the Service or any software provided as part of the Service and may only use the Service and associated software as permitted under this Agreement. The Member's rights to use the Service are limited to those expressly granted in these Terms and Conditions. No other rights with respect to the Service, any related software, or any related Intellectual Property Rights are implied.

11.2 The Member retains all right, title and interest in and to its content and all Intellectual Property Rights therein. WAF-IX's rights to access and use the content are limited to those expressly granted in this Agreement. No other rights with respect to the content or any related Intellectual Property Rights are implied.

12. **REPRESENTATIONS, WARRANTIES AND DISCLAIMER**

12.1 Each Party represents and warrants in relation to itself, to the other Party, that:

(i) It has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and has been fully authorized by all requisite corporate actions to do so.

(ii) It has all necessary statutory and regulatory permissions, rights, authorizations, approvals and permits for the running and operation of its business, more particularly for the Services and the execution and performance of this Agreement by either of the Parties does not and shall not violate any provision of applicable law.



(iii) The person signing this Agreement is duly authorized and has legal capacity to execute and deliver this Agreement; and the execution and delivery of the Agreement and the performance of its obligations hereunder have been duly authorized and that the Agreement constitute a valid and legal agreement binding on it and enforceable in accordance with its terms.

- 12.2 WAF-IX warrants to the Member that it shall provide the Service in accordance with all laws and regulations applicable to the Service and with all reasonable skill, diligence and care. Where partial refunds in the form of service credits or rights to terminate this Agreement are specified in a Service Order Form or Service Level Agreement as remedies for failure in Service performance, such remedy will be the Member's sole and exclusive remedy against WAF-IX in respect of the relevant failure in service performance and the Parties agree that any partial refunds or termination rights constitute liquidated damages which represent a genuine estimate of the Member's loss.
- 12.3 WAF-IX warrants to the Member that it shall provide support for all faults or complaints reported in respect the Service in accordance with the SLA.
- 12.4 The Member hereby indemnifies and holds WAF-IX harmless against any claim instituted by any other WAF-IX member or other third party against WAF-IX, which claim arises out of any wrongful act or omission on the part of the Member.
- 12.5 The Member further agrees that it shall have no claim against WAF-IX for any loss harm or damage arising out of this Agreement or its membership of WAF-IX, including, without limitation, due to any wrongful act or omission of any other WAF-IX member or any other third party.
- 12.6 To the maximum extent permitted by applicable law except for the warranties set forth in these Agreement, WAF-IX and its licensors and service providers disclaim all warranties and conditions, whether express, implied, or statutory, including and warranties of merchantability, satisfactory quality, fitness for a particular purpose, title, and non-infringement, and any warranties arising from course of dealing of course of performance, relating to the Service or any materials or Services provided to the Member under this Agreement. All Services are provided "AS-IS". WAF-IX and its licensors and service providers do not warrant that the Service will be uninterrupted or free from defects, or that the Service will meet (or is designed to meet) the Member's business requirements.
- 12.7 WAF-IX compliance with such statutory provisions may include steps which would otherwise constitute infringements of the Member's privacy, such as the interception of the Member's communications or the examination of the Member's Data. The Member agrees that no action shall lie against WAF-IX for any damages howsoever arising as a result of such steps, and the Member further indemnifies and holds harmless WAF-IX in respect of any action brought by a third party resulting from such steps.
- 12.8 The Member understands that WAF-IX may monitor any of its ports or connections associated with the Service, but only where:
- (i) the information is required by law;



- (ii) the information is generic in nature and is only gathered for statistical or network management purposes;
- (iii) WAF-IX reasonably believes the Member is failing to comply with its obligations under this Agreement; or
- (iv) the Member has explicitly requested the specific monitoring or has consented to it following a request from WAF-IX.

12.9 Where WAF-IX does monitor a port/connection, it will endeavour (where possible) to make sure that such monitoring will neither:

- (i) have a substantially adverse effect on the Services provided to the Member; nor
- (ii) compromise the Member's confidentiality (save in the circumstances contemplated in clause 12.8 above).

12.10 Where WAF-IX does monitor a port/connection, unless prevented by law, WAF-IX will use reasonable efforts to notify the Member of such monitoring.

13. **LIMITATION OF LIABILITY**

13.1 To the maximum extent permitted by law, neither WAF-IX nor its employees, agents, representatives, service suppliers, or licensors will be liable for any punitive, indirect, consequential or special damages or for any lost profits or business opportunities, loss of use of the Service or content, loss of revenue, loss of goodwill, business interruption, loss of data, even if advised of the possibility of same, and regardless of whether the claims are based in contract, tort, negligence, product liability or any other legal or equitable theory. In any event, the liability of WAF-IX under this Agreement will not, regardless of whether the claim is based in contract, tort, strict liability or otherwise, exceed the total amount actually paid by the Member for the Service in the twelve (12) months prior to the event giving rise to the claim.

13.2 The foregoing limitations shall not limit a Party's liability for negligence or wilful misconduct if prohibited by applicable law.

14. **INDEMNIFICATION**

14.1 Subject to the Limitations of Liability provisions herein contained, WAF-IX shall indemnify the Member against:

(a) Third party claims alleging that the Services infringe or violate third party's intellectual property rights recognized in Nigeria (an 'Infringement Claim'). If the Member's use of the Service is, or in WAF-IX's opinion, likely to be, enjoined as a result of an Infringement Claim, WAF-IX shall at its sole option, in its sole discretion and expense: (i) procure for the Member the right to continue to use the Service as contemplated herein; or (ii) replace or modify the Service to make it non-infringing. If WAF-IX determines that none of these alternatives is reasonably available, then WAF-IX may terminate this Agreement upon written notice to the Member and shall refund to the Member, any prepaid unused Service Fees.

(b) WAF-IX will have no responsibility or liability for Infringement Claims to the extent that such Infringement Claim is based upon: (i) any use of the Service after receipt of notification to



discontinue use; (ii) use of the Service in combination with any products or services not developed by WAF-IX; (iii) Third Party software; or (iv) any use of the Service in violation of this Agreement, the Acceptable Use Policy or the Service Schedule or any other misuse or unauthorised use of the Services or failure to comply with its obligations hereunder. The Member understands and agrees that WAF-IX has no control over the particular conditions or circumstances under which the Member uses the Service and that WAF-IX shall not incur any liability as a result thereof.

(c) Any and all claims arising from or relating to: (i) the breach by WAF-IX of its obligations under the Agreement; or (ii) any violation of law by WAF-IX in connection with WAF-IX's provision of the Service.

14.2 The Member agrees to indemnify, defend and hold WAF-IX harmless from and against any and all claims arising from or relating to: (a) a breach by the Member of the Agreement; (b) the use by the Member of the Service or any Content on the Service; (c) an alleged or actual infringement or misappropriation of any Intellectual Property Rights by the Member, agents or representatives of the Member in connection with the Member's use of the Service; (d) any violation of law by the Member in connection with use of the Service; (e) the Member's, use of any third party content. WAF-IX will provide the Member with notice of the existence of any basis for indemnification and reasonably cooperate in response to a request for assistance. The Member may not settle or compromise any indemnified claim without WAF-IX's prior written consent.

15. **GOVERNING LAW AND DISPUTE RESOLUTION**

These Terms and Conditions shall be construed in accordance with and shall be governed by the laws of Nigeria without regard to conflict of laws principles. Except as otherwise provided herein, any dispute or controversy arising under or in connection with these Terms and Conditions shall be finally settled pursuant to the provisions of Arbitration and Conciliation Act, Cap A18, Laws of the Federal Republic of Nigeria, 2004 (the "Act") by a sole arbitrator to be agreed upon by both Parties. To the extent that the Parties are unable to agree on a sole arbitrator, an arbitrator shall be appointed by the Chartered Institute of Arbitrators (Nigeria Branch), in accordance with the Act without regard to any additional or longer waiting period set forth in the Act. The place and seat or location of arbitration shall be Lagos, Nigeria, and the procedural law applicable to the arbitration proceedings shall be the laws of Nigeria. The arbitration shall be conducted in English and shall be binding on the Parties. The Arbitrator shall have the power to grant any legal or equitable remedy or relief available under law, including injunctive relief (whether interim and/or final) and specific performance and any measures ordered by the arbitrator may be specifically enforced by any court of competent jurisdiction in Nigeria. Each Party retains the right to seek interim or provisional measures, including injunctive relief and including pre-arbitral attachments or injunctions, from any court of competent jurisdiction in Nigeria and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. The Parties agree that venue for any judicial proceeding will be proper in Lagos, Nigeria. The Parties agree not to assert any defense to any suit, action or proceeding initiated by the other within Lagos based upon improper venue or inconvenient forum.



SERVICE LEVEL AGREEMENT

1. Connection Types

WAF-IX will provide peering to members via **10G** connections.

2. WAF-IX Support Structure

WAF-IX will provide the following support Services:

- 100% coverage and 24/7 monitoring of network switches, servers, ancillary network devices, software portals, APIs and databases.
- 100% coverage and 24/7 response to log file entries and/or detected service failures capable of causing an outage on the peering platform.
- 100% coverage and business hour response to log file entries and/or detected service alarms capable of causing degradation on the peering platform.
- Fault Investigation.
- Exchange platform maintenance (Planned and Emergencies).

3. Service KPIs

The WAF-IX Member link is considered degraded if the measured KPIs between two locally connected Ethernet ports at the exchange is experienced at a rate larger than the aimed service level in the below table.

KPI	Target value	Description
Packet loss	<0.05%	Average per hour in a 24 hour period
One way delay	<500 micro-seconds	Average per hour in a 24 hour period
One way delay variation	<100 micro-seconds	Average per hour in a 24 hour period

Note:

- Exception is made for Member ports with a 5-minute average traffic load larger than 70% for either incoming or outgoing traffic.
- Members at a 70% port utilization threshold are advised to commence planning for a port upgrade.
- These values apply to customers whose peering devices are physically connected to WAF-IX.
- For Members whose peering device(s) are outside WAF-IX, their location and transport medium would determine these values.

4. Maintenance Scheduling and Management

- 4.1 Maintenance will be conducted regularly on network switches, servers, other devices, software portals, APIs, databases and any other systems which together form the internet exchange point.
- 4.2 These maintenance activities will be attempted during scheduled maintenance periods with as little impact as possible to the exchange platform. Scheduled maintenance work will be communicated to the Member in advance via email with a minimum of 5 days' notice. Communication will describe a start and end time for maintenance (maintenance window) during which the provisions in this SLA are suspended.
- 4.3 The nature of security or emergency related maintenance sometimes requires that a maintenance activity takes place at short or no notice. An appraisal of each requirement to perform maintenance on the system will occur to determine if work must take place on an emergency basis (immediately or shortly after the work is planned) or on a planned basis. Emergency maintenance work will be communicated to the customer via email upon confirmation of the unplanned event.



4.4 WAF-IX will investigate fault complaint calls from a Member, in order to troubleshoot Service to identify the fault. This investigation will commence within 15 minutes of the end of the call from the Member and will confirm or refute the fault within sixty minutes thereof.

5. SUCCESS CRITERIA FOR THE SERVICE

Optimize traffic routing, Access to top CDN content i.e Google and Facebook while IXPN is shutdown, Proactive support by MainOne and quick resolution of issues as they arise.