



NAPAFRICA

DOCUMENT NUMBER	
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NAPAfrica Participation Agreement

Entered into between

NAPAfrica Exchange Proprietary Limited

('NAPAfrica')

DESCRIPTION AND REGISTRATION NUMBER	A private company registered in accordance with the laws of South Africa with registration number: 2012/025333/07		
PHYSICAL ADDRESS	5 Brewery Street, Isando, 1609		
POSTAL ADDRESS	Postnet Suite #338, Private Bag X2020, Isando, 1600		
FAX NUMBER	+27 86 680 0405	EMAIL	legal@teraco.co.za
SIGNED AT		DATE	
		WHO WARRANTS THAT THEY ARE DULY AUTHORISED TO SIGN	
NAME		DESIGNATION	

And

CUSTOMER			
("Participant')			
DESCRIPTION			
ASN DETAILS			
PHYSICAL ADDRESS			
POSTAL ADDRESS			
VAT NUMBER		REGISTRATION NUMBER	
MAIN SWITCHBOARD		DIRECT LANDLINE	
PRIMARY CONTACT		DESIGNATION	
EMAIL		CELL NUMBER	
SIGNED AT		DATE	
		WHO WARRANTS THAT THEY ARE DULY AUTHORISED TO SIGN	
NAME		DESIGNATION	

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This Participation Agreement is entered into between **NAP Africa Exchange (Proprietary) Limited** (Registration No 2012/025333/07) ("**NAPAfrica**") and ("**the Participant**").

1 **Background**

1.1 NAP Africa wishes to provide a network access peering point Exchange ("**the NAPP Exchange**") for direct and indirect customers of Teraco Data Environments' ("**Teraco**") data centres.

1.2 The Participant is an indirect customer of Teraco and wishes to access the NAPP Exchange in order to enjoy the benefits thereof.

2 **Basis.** For the time being, the NAPP Exchange is provided as a free value-added service by NAPAfrica and accordingly, whilst NAPAfrica will use all reasonable commercial endeavours to ensure the availability and proper functioning of the NAPP Exchange:

2.1 **the NAPP Exchange is provided on an "as is" basis and NAPAfrica hereby disclaims all warranties, whether implied, statutory or otherwise to the fullest extent permitted by law; and**

2.2 **NAPAfrica 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 NAPP Exchange. Accordingly, the Participant hereby indemnifies and holds NAPAfrica harmless against any claims which may be instituted against NAPAfrica by any third party.**

3 **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, subject to the right of either Party to terminate this Agreement on no less than 30 (thirty) days written notice to the other party, unless otherwise terminated according to its terms.

4 **NAPP Exchange.** NAPAfrica shall provide the NAPP Exchange to the Participant on the basis set out in **Schedule 1**.

5 **Obligations of the Participant.** In order to ensure that the NAPP Exchange achieves its objective of universal interconnection and

operates effectively, 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 NAPAfrica from time to time to foster the effective operation of and granting of access to the NAPP Exchange.

6 **Data Protection**

6.1 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 NAPAfrica and for NAPAfrica to process such Personal Information for purposes relating to this Agreement.

6.2 The Parties shall at all times comply with applicable data protection legislation.

6.3 The Participant consents to the processing of its personal information if so required for purposes related to this Participation Agreement.

7 **Suspension and Termination**

7.1 If the Participant at any time fails to fulfil the obligations set out in **Schedule 2** then NAPAfrica may:

7.1.1 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;

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

7.1.3 terminate this Participation Agreement on written notice to the Participant.

7.2 Should the Participant be suspended for any reason:

7.2.1 its suspension will be notified immediately to all other participants in the NAPP Exchange;

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- 7.2.2 it will be disconnected from all services related to the NAPP Exchange while suspended;
- 7.2.3 the Participant must continue to comply with all its obligations under this Participation Agreement which are not affected by the suspension;
- 7.2.4 the Participant may not hold itself out as a participant in the NAPP Exchange and
- 7.2.5 the Participant may appeal against the decision of NAPAfrica to suspend its access by following the appeal procedure specified by NAPAfrica from time to time.
- 7.3 The Participant may reapply for access if this Participation Agreement is terminated for any reason, subject to its complying with the requirements set out in **Schedule 2**.
- 7.4 In addition to the above, NAPAfrica may be required to suspend access to the NAPP in order to carry out routine maintenance to the NAPP Exchange, provided that NAPAfrica shall endeavour to undertake same at times of low traffic volume.
- 8 Statutory Compliance**
- 8.1 The Participant notes that NAPAfrica is obliged to comply with certain statutory provisions including, but not limited to those set out in:
- 8.1.1 the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2003 (Act 70 of 2003), and
- 8.1.2 the Film and Publications Act, 1996 (Act 65 of 1996), and
- 8.1.3 The Electronic Communications and Transactions Act, 2002 (Act 25 of 2002).
- 8.2 NAPAfrica'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 NAPAfrica for any damages howsoever arising as a result of such steps, and the Participant further indemnifies and holds harmless NAPAfrica in respect of any action brought by a third party resulting from such steps.
- 8.3 The Participant understands that NAPAfrica may monitor any of its ports or connections associated with the NAPP Exchange, but only where:
- 8.3.1 the information is required by law;
- 8.3.2 the information is generic in nature and is only gathered for statistical or network management purposes;
- 8.3.3 NAPAfrica reasonably believes the Participant is failing to comply with its obligations under this Participation Agreement; or
- 8.3.4 the Participant has explicitly requested the specific monitoring or has consented to it following a request from NAPAfrica.
- 8.4 Where NAPAfrica does monitor a port/connection, it will endeavour (where possible) to make sure that such monitoring will neither:
- 8.4.1 have a substantially adverse affect on the services provided to the Participant; nor
- 8.4.2 compromise the Participant's confidentiality (save in the circumstances contemplated in clause 8.2 above.
- 8.5 Where NAPAfrica does monitor a port/connection, unless prevented by law, NAPAfrica will use reasonable efforts to notify the Participant of such monitoring.
- 9 Indemnity**
- 9.1 The Participant hereby indemnifies and holds NAPAfrica harmless against any claim instituted by any other participant in the NAPP Exchange or other third party against NAPAfrica, which claim arises out of any wrongful act or omission on the part of the Participant.
- 9.2 The Participant further agrees that it shall have no claim against NAPAfrica for any loss harm or damage arising out of this Participation Agreement or its participation in the NAPP Exchange, including, without limitation, due to any wrongful act or omission of any other participant in the NAPP Exchange or any other third party.
- 10 Consideration.** No consideration is payable by the Participant for access to the NAPP Exchange. Should it become commercially unviable for NAPAfrica to continue to provide the NAPP Exchange at no cost to the Participant, NAPAfrica may, on 60 (sixty) days written notice to the Participant, levy a nominal charge to cover its costs. Should the Participant not be prepared to pay such charge, it may terminate this Agreement in accordance with the provisions of clause 3.

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- 11 **Confidentiality.** Each Party shall treat and hold as confidential all information which it may receive from the other party or which becomes known to it concerning the other party during the term of this Participation Agreement which is marked as confidential or has the necessary quality of confidentiality about it ("**Confidential Information**").
- 12 **Communications**
- 12.1 The Parties contact details are set out beneath their signatures below. The Parties select the physical addresses stated as their respective domicilia citandi et executandi, provided that either party may change its address details on written notice to the other, provided that in respect of its physical address, such change shall take effect 14 (fourteen) days after delivery of such written notice.
- 12.2 Email is the primary means of communication between NAPAfrica and the participants in the NAPP Exchange and any reference to "in writing" in this Participation Agreement shall include communication by email.
- 13 **Publicity.** The Participant hereby agrees that NAPAfrica may communicate via its (or Teraco's) website, and in other forms of marketing media, the names of participants that access the NAPP Facility. 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.
- 14 **No Assignment.** 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.
- 15 **Force Majeure**
- 15.1 A Party shall not be liable to perform any of its obligations in terms of this Participation Agreement insofar as it is able to prove that such failure was due to an impediment beyond its reasonable control and, for purposes of this clause 14, the following events shall be deemed to be impediments beyond the control of the Parties, namely: war, natural disasters, boycotts, strikes, lockouts, cable cuts, destruction of equipment and installations, acts of authority and any other similar events beyond either Party's reasonable control.
- 15.2 If a force majeure event continues for a period of more than 30 (thirty) days, then the other Party may terminate this Participation Agreement by written notice to the Party seeking relief by reason of force majeure.
- 16 **General**
- 16.1 The Parties shall at all times owe each other a duty of good faith.
- 16.2 Each Party warrants that:
- 16.2.1 it has the full corporate right, power and authority to enter into this Participation Agreement and to perform its obligations hereunder;
- 16.2.2 when executed and delivered by such Party, this Participation Agreement will constitute a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- 16.3 Nothing in this Agreement shall be construed as constituting a temporary employment service as contemplated in section 198 of the Labour Relations Act, 1995.
- 16.4 Nothing in this Agreement shall be construed as creating a partnership between the parties and neither party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.
- 16.5 This Agreement constitutes the entire agreement between the Parties in respect of the subject matter hereof and replaces all prior agreements or arrangements between the Parties in regard to the subject matter of this Agreement.
- 16.6 No amendment or modification to this Agreement shall be effective unless in writing and signed by authorised signatories of the Parties.
- 16.7 No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.
- 16.8 Each party shall be responsible for its own legal and other costs relating to the negotiation of this Agreement.
- 16.9 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.

- 16.10 References to:-
- 16.10.1 persons shall include companies, corporations and partnerships;
- 16.10.2 any party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;
- 16.10.3 the singular shall include the plural and vice versa;
- 16.10.4 any one gender shall include a reference to all other genders; and
- 16.10.5 any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended from time to time.
- 16.11 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination notwithstanding that the clauses themselves do not expressly provide for this.
- 16.12 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next business day.
- 16.13 The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.
- 16.14 This Participation Agreement shall be construed and governed in accordance with the laws of the Republic of South Africa and the Parties submit to the exclusive jurisdiction of the courts of the Republic of South Africa.

Schedule 1 The NAPP Exchange

NAPAfrica shall provide the following services associated with the provision of the NAPP Exchange:

1 BILATERAL OR PRIVATE PEERING

- 1.1 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.
- 1.2 Private peering at NAPAfrica is subject to the technical guidelines as stated in Schedule 2.
- 1.3 Private Peering agreements are the responsibility of the connecting networks.
- 1.4 Private peering service details. The following configurations are available
 - 100M (FE) - 100BASE-TX
 - 1G (GE) - 1000BASE-TX
 - 1G (GE) - 1000BASE-SX
 - 1G (GE) - 1000BASE-LX
 - 10G (GE) - 10000BASE-LX

2 MULTILATERAL OR OPEN PEERING

- 2.1 The MLP is a service which facilitates route exchange between multiple participants over one BGP session.
- 2.2 Multilateral peering at NAPAfrica is subject to the technical guidelines as stated in Schedule 2, as well as the terms stated below.
 - 2.2.1 MLP Service details. The following configurations are available
 - 100M (FE) - 100BASE-TX
 - 1G (GE) - 1000BASE-TX
 - 1G (GE) - 1000BASE-SX
 - 1G (GE) - 1000BASE-LX
 - 10G (GE) - 10000BASE-LX
 - 2.2.2 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.
 - 2.2.3 Rights
 - Participation on the MLP 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.

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- 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.

2.2.4 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 NAPAfrica 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 The Participant Obligations

1 INITIAL TECHNICAL REQUIREMENTS

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

- 1.1 Connected ports must be Ethernet. 100Mbit ports should be configured with a fixed 100Mbit speed, and Full Duplex. Gigabit Ethernet ports can be configured as auto-sensing or manual, as notified by the Participant to NAPAfrica prior to going live.
- 1.2 Any intermediate devices between the NapAfrica 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.
- 1.3 By default, participants will be assigned an access port on the public peering VLAN. Multiple VLAN ports are available, and NAPAfrica 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 NAPAfrica 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.
- 1.4 NAPAfrica 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.
- 1.5 All frames from a single port, which are forwarded to the NAPAfrica exchange must have the same source MAC-address. If this is not configured, then port-security on the NAPAfrica switch will shut down your peering port. This technique is the most important loop prevention technology used on the NAPP Exchange, so exceptions are not permitted
- 1.6 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.
- 1.7 Connected networks should disable Proxy ARP on the router interface connected to the NAPP Exchange.
- 1.8 Connected networks should disable non permitted link-local protocols on the router interface connected to the NAPP 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.
- 1.9 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.
- 1.10 It is always forbidden to point any static routes at other exchange participants.
- 1.11 NAPAfrica recommends against overloading your ports, and we will get in touch when traffic at the 95th percentile exceeds 75% of the port capacity. When traffic reaches 50% of your port capacity, NAPAfrica will discuss suitable upgrade options (higher port capacity or aggregated links) with the Participant.
- 1.12 Networks using aggregated ports will follow 802.3ad specifications. The aggregated links must be of the same media type and link speed.
- 1.13 All connected networks must BGP peer with the Internet Exchange's collector. This session allows NAPAfrica to check the health of the Internet Exchange.
- 1.14 Connected networks should not export the NAPAfrica peering LAN address space to other networks without permission.

2 TECHNICAL REQUIREMENTS

- 2.1 In addition, in order to participate in and enjoy continued access to the NAPP Exchange, the Participant shall, at all times during the term of this Agreement:
 - 2.1.1 have an ASN (Autonomous System Number) assigned by one of the Regional Internet Registries (or their predecessors) or an alternative agreed by NAPAfrica;
 - 2.1.2 present to NAPAfrica an Autonomous System that is visible from the NAPAfrica Route Collector;
 - 2.1.3 use BGP-4 for peerings.

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- 2.2 The Participant must achieve operational peering within three months of becoming a NAPAfrica participant. This is achieved by:
 - 2.2.1 connecting to at least one port on the NAPAfrica network, and
 - 2.2.2 peering with the NAPAfrica route collector, and
 - 2.2.3 peering with at least one existing NAPAfrica participant or the NAPAfrica route servers.
- 2.3 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 NAPAfrica may suspend your participation in the NAPP Exchange on written notice to the Participant.
- 2.4 Failure by the Participant to adhere to the requirements set out in this Schedule shall constitute a breach of this Agreement and entitle NAPAfrica to
 - 2.4.1 suspend the Participant from the NAPP Exchange without notice; or
 - 2.4.2 terminate this Agreement on written notice to the Participant (or both).

3 GENERAL REQUIREMENTS

- 3.1 The Participant shall appoint one or more persons to be its corporate representative in terms of this Participation Agreement. The Participant shall advise NAPAfrica of the identity of its Corporate Representatives within 7 (seven) days of the commencement date of this Participation Agreement. The Participant agrees that its Corporate Representatives shall have the authority to make binding decisions with regard to this Participation Agreement and the Participant's participation in the NAPP Exchange, which may be communicated through authenticated access to the NAPAfrica website or otherwise. Such decisions may include the appointment of further Corporate Representatives and the removal of Corporate Representatives.
- 3.2 The Participant shall maintain at least one member of operations personnel who understands the rights and obligations of the Participant under this Participation Agreement.
- 3.3 The Participant will ensure that all its contact information provided to NAPAfrica is correct and up-to-date. Such contact information will include:
 - 3.3.1 details of how to contact the Participant's operations staff 24x7x365 for the use of NAPAfrica staff and other participants,
 - 3.3.2 an email address to which requests for peering should be sent;
 - 3.3.3 an email address for each of your Corporate Representatives, which should be individual to each representative, not to a group or role.
- 3.4 The Participant will confirm receipt of a peering request made to the email address specified in 3.3.2 above by any NAPAfrica participant within two working days of the request. In this regard an auto-response is acceptable.
- 3.5 The Participant will not refer any of its customers, or their representatives, directly to NAPAfrica support staff unless specifically agreed by a member of NAPAfrica staff by email.
- 3.6 The Participant will make sure that at least one member of its staff is subscribed to the NAPAfrica mailing list.
- 3.7 The Participant undertakes that its usage of the NAPP Exchange will not be harmful to the NAPAfrica network or the other participants in the NAPP Exchange at any time. "Harmful" means usage which, in the reasonable opinion of NAPAfrica, adversely affects other participants or the entire exchange, and either:
 - 3.7.1 does not conform to the requirements stated in this Schedule; or
 - 3.7.2 causes undesirable load or traffic patterns.