

DEED OF AGREEMENT FOR CLOUD SERVICES/ CONNECTIVITY

This Deed of Agreement is prepared and executed on this date the.....of.....of the Christian Era.

BETWEEN

MetroSky a private company incorporated in Bangladesh under the Companies Act 1994, bearing Certificate of Incorporation No.... dated, having its head office at, Bangladesh, duly **represented by its.....** (hereinafter referred to as the “**Service Provider**”) which expression unless otherwise repugnant to the context hereof, shall mean and include its successors-in-interest, assignees, nominees, administrator, officer & legal representatives of the **One Part**.

AND

MetroNet Bangladesh Ltd., a private limited company duly incorporated under the Companies Act 1994 of Bangladesh, bearing Certificate of Incorporation No.... dated, an internet & data service providing company incorporated in Bangladesh under the Companies Act, 1994 and having **its registered Office at....., Bangladesh**, duly **represented by its.....**(hereinafter referred to as the “**Subscriber**” which expression, unless excluded by or repugnant to the context shall mean and include its successors-in-interest, executors, legal representatives, administrator and assigns) of the **Other Part**.

The **Service Provider** and the **Subscriber** are hereinafter referred individually as a “Party” and collectively as the “Parties.”

RECITALS/ PREAMBLES:

Whereas, the **Service Provider** being licensed by the relevant authority of Bangladesh is engaged in the business of providing telecommunications and related services in Bangladesh.

And whereas, the **Subscriber** is involved in the business of providing high-speed data communication and Communication device(s) and solutions through its own communication network to various the Subscribers.

And whereas,, the **Subscriber** is desirous of obtaining certain Services from the **Service Provider** and the **Service Provider** represents that it has the necessary expertise, skills, experience, competence and personnel required to deliver the Services desired and required by the **Subscriber** and is willing to enter into this Agreement with the **Service Provider** to provide the Services in accordance with the terms and conditions specified herein below.

NOW, WHEREFORE, in consideration of the foregoing premises and the mutual promises, covenants, and conditions hereinafter set forth, the **Service Provider** and the **Subscriber** hereby agree as follows:

The Service Provider Terms of Service & Privacy Policy

1. Terms of Services:

- a. The initial term of this agreement shall begin on the date that the **Service Provider** generates an email message to the **Subscriber** stating the service is now active and will continue for the number of calendar months specified in the order.
- b. The **Subscriber** agrees explicitly that the **Service Provider** will activate the service in receipt of cleared payment and that service will commence without delay.
- c. Upon expiration of the initial term, this agreement will renew automatically for successive renewal terms each the same as the initial term unless the **Service Provider** or the **Subscriber** provides the other with written notice of non-renewal at least thirty (30) days prior to the expiration of the initial term or then-current renewal term, as applicable.
- d. The Terms of Service and the relationship between you and the **Service Provider** shall be governed by the laws of People's Republic of Bangladesh. You and the **Service Provider** agree to submit to the personal and exclusive jurisdiction of the courts located in the **Service Provider**.

2. Subscriber Duties:

- a. In order to use the **Service Provider** services, you are required to provide current and factual identification, contact and other information as part of the registration process. You are responsible for the confidentiality of your account information and solely responsible for all content and Data within your account.

3a. Acceptable Use of Network and System Resources:

- b. Deployed servers on Public Cloud, include a set amount of data transfer, based on a generous 1.5TB of outbound transfer per month, per GB RAM allocated to your server for most locations, and 1TB outbound transfer for Premium Locations (see note 13). Maximum / Peak usage is 5Mbps per GB RAM allocated to your server for most locations and 2Mbps per GB RAM for Premium Locations. For the purposes of Example, a server with 10GB RAM allocated, is permitted a maximum of 50Mbps transit or 15TB transfer, whichever limit is reached first, or

in Premium Locations, the same server is permitted 20Mbps or 10TB on the same basis.

- c. Hybrid and Bare metal Servers are also provided with an inclusive generous set amount of data transfer, which is 50Mbps at 95th percentile metering for most locations, and 25 Mbps at 95th percentile metering for Premium locations (see note 13).
- d. The **Subscriber** significantly or repeatedly exceeding these guidelines will have their connections to the Public Internet throttled to the guideline limit without notice, may be subject to overages if usage is quite significant and will have the option to upgrade or purchase dedicated transit at the sole discretion of the **Service Provider**.

b. Spam and UCE:

- a. The **Service Provider** has a zero-tolerance approach to the sending of Unsolicited Commercial Email (UCE) or SPAM over our network. Very simply this means that the **Subscriber** to the **Service Provider** may not use or permit others to use our network to transact in spam messages. The **Subscriber** to the **Service Provider** may not host, or permit hosting of, sites or information that is advertised by UCE from other networks. Violations of this policy carry severe penalties, including termination of service.
- b. Violation of the **Service Provider**'s SPAM policy will result in severe penalties - Upon notification of an alleged violation of our SPAM policy, the **Service Provider** will initiate an immediate investigation (within 12-24 hours of notification). During the investigation, the **Service Provider** may restrict **Subscriber** access to the network to prevent further violations. If a the Subscriber is found to be in violation of our SPAM policy, The **Service Provider** may, at its sole discretion, restrict, suspend or terminate the Subscriber's account. Further, the **Service Provider** reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. The **Service Provider** will notify law enforcement officials if the violation is believed to be a criminal offense.
- c. First violations of this policy may result in an Administrative Fee of 8,000 taka at the discretion of management and your account will be reviewed for possible immediate termination. A second violation will result in an Administrative Fee of 35,000 taka and immediate termination of your account. The **Subscriber** who violates this policy agrees that these fees will be paid on request. Please see Failure to Pay and Payments and Fees information.

- d. The **Service Provider** reserve the right to charge up to a total of **Tk.1,50,000/-** for spam related violations due to costs which may be enforced on us by data carriers or data center administration fines.
- e. As our resellers are ultimately responsible for the actions of their clients over the **Service Provider** network, it is advisable that resellers develop a similar, or stricter, policy for their clients. The **Subscriber** are solely responsible for the use of their hosting account at all times.

c. **Prohibited Content:**

- a. Threatening, abusive, harassing, defamatory statements.
- b. Promotion of illegal activities (info on hacking, cracking etc).
- c. Information, instructions, links, etc containing malicious code.
- d. Hate speech or hate propaganda.
- e. Scripts or systems that cause server performance issues.
- f. Misrepresentation of member's identity, or impersonation.
- g. Collection of personal information for illegal purposes.
- h. Collection of personal information without user's permission.
- i. Content that is deemed by the **Service Provider**, in its sole discretion, to be harmful to the **Service Provider**.
- j. Solicitation or sale of any harmful/illegal products or service such as pornography, gambling, drugs...etc.
- k. The **Service Provider** does not tolerate abusive, threatening or inappropriate behavior towards its staff or agents. Your account can be suspended or terminated without warning for any such behavior.

3. **Indemnification:**

- a. The **Subscriber** agrees to indemnify and hold harmless the **Service Provider**, its affiliates, and each of their respective officers, directors, agents, and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable legal fees) brought by a third party under any theory of legal liability arising out of or related to the actual or alleged use of the **Subscriber** services in violation of applicable law or the Acceptable User Policy by the **Subscriber** or any person using the **Subscriber** log on information, regardless of whether such person has been authorized to use the services by the **Subscriber**.

4. **Disclaimer of Warranties:**

- b. The **Service Provider** does not warrant or represent that the services will be uninterrupted, error-free, or completely secure. To the extent permitted by

applicable law the **Service Provider** disclaims any and all warranties including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. To the extent permitted by applicable law, all services are provided on an "as is" basis.

5. Limitation of Liability:

- c. In no event will the **Service Provider**, its suppliers, or third parties mentioned on this site be liable for any special, indirect or consequential or any damages whatsoever (including, without limitation, those resulting from lost profits, lost data or business interruption) arising out of the use, inability to use, or the results of use of this site, any web sites linked to this site, or the materials or information contained at any or all such sites, or in connection with the use or performance of software or of failure to provide services, whether based on warranty, contract, tort, negligence or any other legal theory and whether or not advised of the possibility of such damages.

6. Law Enforcement Information:

- a. The **Service Provider** term specifically prohibits the use of our service for illegal activities. Therefore, the **Subscriber** agree that the company may disclose any and all the account holder's information including assigned IP numbers, account history, account use, etc. to any member of Law Enforcement Agency of Bangladesh who makes a written request, without further consent or notification to the **Subscriber**. In addition, the **Service Provider** shall have the right to terminate all service set forth in this Agreement.

b. Uptime Guarantee:

- a. The **Service Provider** provides a 99.5% Uptime Guarantee on Network Connectivity. In any given month, if your server is off-line due to the **Service Provider** unscheduled hardware failure, or an unscheduled failure of the **Service Provider** network for more than 0.01% of the time (4 minutes), you may request a pro-rata credit for the down time. Specific exclusions exist where the **Service Provider** network is working normally, but upstream issues, such as a Data Centre or Carrier failure or DDOS is impacting the Subscriber routes to the cloud. Planned maintenance announced via internal ticket or our the **Service Provider** status page is not covered by this guarantee.

b. Support & Services:

- a. The **Service Provider** provides comprehensive 24/7/365 technical support to the **Subscriber** via our Ticketing System (available via Email and GUI). Some general guidelines and terms are:

- The **Service Provider** supports fully any issue related to the **Service Provider** virtual server physically functioning
- The **Service Provider** does not offer technical support for application specific issues, such as configuration, programming, web or mail server configuration or any such issue
- The **Service Provider** does not provide technical support to your the Subscribers or users
- The use of all the **Service Provider** services is at your own risk
- The **Service Provider** Snapshots and backups are not guaranteed or validated in any way
- You agree to take full responsibility for all files and data in your account
- You agree to maintain an appropriate backup of files and data stored on the **Service Provider** clouds

b. Invoicing and Payment:

- i. You agree that the **Service Provider** shall be permitted to charge your credit card on a monthly, annual or other agreed upon basis in advance of providing services.
- ii. Payment is due on invoicing unless cancellation is requested.
- iii. Any payments not made within 7 days of due date will have the associated service suspended without further notice, other than Fixed Instances, which will be suspended 48 hours after due date.
- iv. Any suspended service will be terminated and destroyed after 15 days suspended without further notice.
- v. The **Subscriber** is aware that the **Service Provider** may prospectively change the specified rates and charges from time to time in accordance with foreign exchange rates.
- vi. The **Subscriber** is responsible for any additional Bank fees, interest charges, finance charges, overdraft charges or any other fees resulting from charges billed by the **Service Provider**.
- vii. The **Service Provider** provides the option to pay natively in BDT and USD to help **Subscribers** avoid currency fluctuations and conversion exchange costs. Please open a ticket with Billing should you wish to change currency.
- viii. Up and Downgrading service within your billing cycle will result in Pro-Rata charges and credits on your account. Pro-rata credits are only possible where the **Subscriber** retains at least one service and are not refundable in the event of service or account cancellation.
- ix. Once service has commenced, the **Subscriber** agrees that the minimum term of service applies and no refunds will be provided.
- x. When an account becomes overdue the **Service Provider** reserves the rights to suspend active and paid-for services until such time outstanding unpaid invoices are settled.

- xi. All Microsoft OS servers deployed on our clouds must conform with the Microsoft The Service Provider License Agreement. As such, any Windows server you deploy will automatically be licensed and added to your account within 48 hours of deployment.

c. Suspension and Cancellation:

- a. The **Service Provider** reserve the right to suspend network access to the **Subscriber** if, in the sole judgment of the **Service Provider**, the **Subscriber** server is the source or target of a violation of any of the other terms of service or the **Subscriber** account is in arrears of one month or more, or for any other reason which the **Service Provider** chooses. The **Service Provider** will use all reasonable care in notifying the **Subscriber** and in resolving the issue in a method ensuring the minimum service interference.
- b. Continued and repeated violations of the terms of service will result in termination without refund. Prior notification is not assured.
- c. The **Subscriber** may cancel service at any time using the ‘Request Cancellation’ links in your GUI, which is under the Billing Tab for each service. Account cancellation requests to be accepted by email and ticket. Cancellation of a service does not relieve the **Subscriber** of responsibility for the payment of all accrued charges. Accounts cannot be confirmed Cancelled until all due invoices have been settled. Non- confirmation of the cancelation may result in charges continuing to be levied.

d. Notice:

- a. You agree that the **Service Provider** may provide you with notices, including those relating to changes to the Terms of Service by Email and/or postings on the **Service Provider** systems and services.
- b. You agree that the **Service Provider** may, from time to time and at it's sole discretion, need to impact single Virtual Machine uptime due to essential maintenance, and where possible, we aim to provide 48 hours notice of any impact of more than 1 hour.

Privacy Policy

1. Introduction

- a. We at the **Service Provider** respect your right to privacy and comply with our obligations under the Data Protection Acts 1988 and 2002. The purpose of this Website Privacy Policy is to outline how we deal with any personal data you provide to us while visiting this website, systems and apps (The **Service Provider**). Naturally, if you are not happy with this Website Privacy Policy you should not use this website.

- b. By visiting this website, you are accepting the terms of this Website Privacy Policy. Any external links to other websites are clearly identifiable as such, and we are not responsible for the content or the privacy policies of these other websites.

2. Types of Information Collected:

- a. We retain two types of information:

- a. **Personal Data:**

- This is data that identifies you or can be used to identify or contact you and may include your name, address, email address, telephone number and billing information.

- b. **Non-Personal Data:**

- Like most websites, we gather statistical and other analytical information collected on an aggregate basis of all visitors to our website. This Non-Personal Data comprises information that cannot be used to identify or contact you, such as demographic information, browser types and other anonymous statistical data involving the use of our website.

3. Purposes for which we hold your Information:

- b. We use the **Non-Personal Data** gathered from visitors to our website in an aggregate form to get a better understanding of where our visitors come from and to help us better design and organize our website.
- c. We will process any **Personal Data** you provide to us for the following purposes:
 - to provide you with the goods or services you have ordered
 - to contact you if required in connection with your order or to respond to any communications you might send to us
 - to keep you informed of updates to our services

4. Disclosure of Information to Third Parties:

- a. We may provide Non-Personal Data to third parties, where such information is combined with similar information of other users of our website. For example, we might inform third parties regarding the number of unique users who visit our website, the demographic breakdown of our community users of our website, or the activities that visitors to our website engage in while on our website. The third parties to whom we may provide this information may include commercial partners, sponsors, licensees, researchers and other similar parties.

- b. We will not disclose your Personal Data to third parties unless you have consented to this disclosure or unless the third party is required to fulfill your order (in such circumstances, the third party is bound by similar data protection requirements). We will disclose your Personal Data if we believe in good faith that we are required to disclose it in order to comply with any applicable law, a summons, a search warrant, a court or regulatory order, or other statutory requirement.

5. Sale of Business:

- a. We reserve the right to transfer information (including your Personal Data) to a third party in the event of a sale, merger, liquidation, receivership or transfer of all or substantially all of the assets of our company provided that the third party agrees to adhere to the terms of the Website Privacy Policy and provided that the third party only uses your Personal Data for the purposes that you provided it to us. You will be notified in the event of any such transfer and you will be afforded an opportunity to opt-out.

6. Security:

- a. Your Personal Data is held on secure servers hosted by the **Service Provider**. The nature of the Internet is such that we cannot completely guarantee or warrant the security of any information you transmit to us via the Internet. No data transmission over the Internet can be guaranteed to be fully 100% secure. However, we will take all reasonable steps (including appropriate technical and organizational measures) to protect your Personal Data at all times.

7. Updating, Verifying and Deleting Personal Data:

- a. You may inform us of any changes in your Personal Data, and in accordance with our obligations under the Irish Data Protection Acts 1988 and 2002 we will update or delete your Personal Data accordingly. To find out what Personal Data we hold on you or to have your Personal Data updated, amended or removed from our database, please email us at support@ the Service Provider.co. Any such data subject requests may be subject to the prescribed fee.

8. Changes to the Website Privacy Policy:

- a. Any changes to this Website Privacy Policy will be posted on this website so you are always aware of what information we collect, how we use it, and under what circumstances, if any, we disclose it. If at any time we decide to use Personal Data in a manner significantly different from that stated in this Website Privacy Policy, or otherwise disclosed to you at the time it was collected, we will notify you by email, and you will have a choice as to whether or not we use your information in the new manner.

9. **Termination & Renewal of Agreement:**

- a. This Agreement may be terminated by mutual consent of the parties upon serving of 90 (Ninety) days prior written notice to the other party without assigning any reason;
- b. The **Subscriber** shall be entitled to immediately terminate this Agreement for the following reasons:
 - i. If the government of Bangladesh or any of its agency impose any policy/ regulation that forces the **Service Provider** to terminate the contract for any reason;
 - ii. By mutual consent of the parties upon serving of **90 (ninety)** days prior notice to the other party in case the following events occur:
 - a. Breach of this Agreement; which are not capable of being remedied: or
 - b. Breach of this Agreement; which are capable of being remedied but the defaulting party fails to provide an adequate remedy of the same within 7 (seven) days of receipt of written notice from the non-defaulting party.
 - c. Both the **Service Provider** and the Subscriber have the right to terminate this agreement in the event of either of the parties going into insolvency or bankruptcy as may be declared by any Court of Law or any receiver is appointed.
 - iii. If the **Service Provider** is dissolved or taken-over or files a voluntary petition for bankruptcy or if an order is passed pursuant to any law relating to amalgamation, winding up, bankruptcy, insolvency or re-organization;
 - iv. If a Force Majeure condition as defined in this Agreement persists for more than 90 (ninety) days;
 - v. If the **Service Provider** commits any other material breach of this Agreement and the same is not rectified or remains uncured even after 7 (seven) days following written notice thereof being given to the **Service Provider**;
- c. The **Service Provider** shall be entitled to terminate this Agreement under mutual consent or providing 90 (ninety) days' notice for:
 - i. If the Government of Bangladesh or any of its agency imposes any policy/ regulation that forces the **Subscriber** to terminate the service for any reason;
 - ii. If the **Subscriber** is dissolved or taken over or files a voluntary petition for bankruptcy or if an order is passed pursuant to any law

relating to amalgamation, winding up, bankruptcy, insolvency or re-organization;

- iii. If a Force Majeure condition as defined in this Agreement persists for more than **90 (ninety)** days.

9. Modification Clause:

- a. Any amendments/ modifications of the existing terms and conditions of the services as stipulated under this Agreement shall be made in writing upon mutually agreement between the parties hereto. If the **Service Provider** requires installing any new equipment/providing services for the modification job under this Service Level Agreement, then they will provide the quotation to the **Subscriber** as per current market price.

11. Confidentiality:

- a. The parties agree to use the utmost degree of care to maintain and protect the confidentiality of any and all confidential information it has obtained by reason of the performance of services and not to disclose such information to any third party. The parties undertake that its respective employees, agents and consultants who have access to any of the confidential information shall keep such information in strictest confidence.
- b. The provisions of this clause shall survive within **1 (one)** year of termination of this Agreement for any reason whatsoever.
- c. The **Service Provider** shall have in place, all measures that are necessary to prevent any interruption, intrusion, or interception of the services and to prevent any act or abstinence that can compromise the confidentiality, integrity, and availability of the information assets of the **Subscriber**. The defaulting party shall indemnify the other party for suffering any loss arising directly or indirectly out of failure of security.

12. Settlement of Dispute:

- a. Any dispute or difference whatsoever arising between the Parties out of or in connection with or incidental to the Agreement including the operation or interpretation of this Agreement shall be solved amicably by mutual discussions between the Parties. In the event of failure to solve any such disputes within 7 (seven) days from the date of notice, the matter shall be referred to arbitration in accordance with the provisions of the Arbitration Act 2001. Each Party shall appoint its own arbitrator and the arbitrators of the Parties; so appointed, shall appoint a third arbitrator who shall be the Chairman of the Arbitral Tribunal.
- b. The language of the arbitration shall be English and the venue shall be at Dhaka.
- c. Parties shall equally share the cost of arbitration.
- d. This Agreement is subject to exclusive jurisdiction of the laws of Bangladesh.

13. Governing Law & Jurisdiction:

- a. The validity, interpretation, meaning and effect of any of the terms and conditions under this Agreement shall be governed by and construed in accordance with the law of the Bangladesh and any suits, actions or claims in relation to or arising out of this Agreement shall be filed exclusively in the appropriate courts having the necessary and exclusive jurisdiction (territorial or otherwise).

14. Assignment:

- a. The **Service Provider** shall not assign any or all its rights and obligations under this Agreement to any third party without the prior written consent of the **Subscriber**. Nothing in this Agreement shall restrict the **Subscriber** to assign its rights and obligations to other party with a reasonable notice to the **Subscriber**.

15. Force Majeure:

- a. Failure on the part of either party to perform any of its obligations set forth in this Agreement will not be deemed to be a breach of the Agreement to the extent that such failure arises from force majeure as soon as possible after the occurrence.
- b. Any party hereto who fails because of force majeure to perform its obligations hereunder will upon the cessation of force majeure, take all reasonable steps within its power to resume with the least possible delay compliance with its obligations.
- c. Force Majeure shall include any civil commotion, natural disasters, strike, 'hartal', government action, lockout, accident, epidemic or any other event of any nature or kind whatsoever beyond the control of the parties that directly or indirectly hinders or prevents the parties from commencing or proceeding with consumption of the transactions contemplated hereby.

16. General Terms:

- a. Without prejudice to the other stipulations relative to the responsibility of the **Service Provider**, it is also the responsibility of the **Subscriber** for strict compliance of this Agreement and to comply with all the warranties and guarantees provided to herein. The **Service Provider** shall be equally liable for any non compliance on the part of its employees, personnel, sub-contractors, suppliers etc. of all such warranties and guarantees.
- b. The **Service Provider** hereby warrants and represents that;
 - i. It has the requisite corporate authority to enter into this Agreement and consummate the transactions contemplated by the Agreement.

- ii. It is conversant with the requirements of the **Subscriber** and undertakes to perform under this Agreement with due diligence, willingly and conscientiously.
- iii. It possesses all requisite and adequate licenses, approvals and insurances for the performance under this Agreement.
- iv. The execution and performance of this Agreement shall not contravene any agreement, deed instrument statute, regulation direction or rules which is applicable to it.
- v. The **Service Provider** will not knowingly commit any act, which might prejudice or damage the reputation of the **Subscriber**.
- vi. The **Service Provider** undertakes not to purchase production, materials or to incur costs chargeable to the **Subscriber** without the **Subscriber's** prior approval and consent.
- vii. The **Service Provider** will take every responsible precaution to safeguard the **Subscriber's** property, equipment entrusted to the care of the **Service Provider** for maintenance.
- viii. The **Service Provider** shall not at any time, even after termination of this agreement; destroy, dismantle, or discounts any materials of the **Subscriber**, product held for the **Subscriber** without the prior written consent of the **Subscriber** and shall be responsible for loss or damage of any such materials.

- Terms of Warranty:

- a. The **Service Provider** will provide warranty as per quotation. Warranty will be void if any of the following instructions violated by any user of the **Subscriber**:
 - Relocation of any of the Equipments provided by the **Service Provider** to the **Subscriber** during the period of this Agreement without consultation with the **Service Provider**.
 - Usage of any cleaning liquid to clean surface of equipment.
 - Failure to maintain dust and damp free environment.
 - Failure to ensure the suitable international pre-installation site requirements for the installation area, earthing facility, electrical outlets for installation, passage, electrical connections and prevention of power problem, fire, theft or sabotage, water submerge, contact with water, drop from height and damaged partly or fully.
- b. In such case; the **Subscriber** will bear the cost of the damaged item.

- Mishandling:

- (a) In any case and condition, the **Service Provider** are allowed to do the maintenance works only.
- (b) If, due to negligence or wilful misconduct of the **Subscriber** or any of its employees, any equipment or peripheral is impaired, destroyed or

damaged, the **Subscriber** shall bear the cost of that damaged equipment or peripheral.

17. Entire Agreement:

- a. The parties acknowledge that this Agreement contains the whole agreement between the parties and it has not relied upon any oral or written representation made by the parties.
- b. This Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the date this Agreement is deemed to have commenced but without prejudice to any rights which have already accrued to either of the parties.

IN WITNESS WHEREOF THE UNDERSIGNED DO HEREBY EXECUTE THIS AGREEMENT BY DULY AUTHORIZED REPRESENTATIVE AS OF THE DATE SET FORTH BELOW: