

**FRAMEWORK FOR INFORMATION TECHNOLOGY SERVICE LEVEL
AGREEMENT FOR MDAS**



NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT AGENCY (NITDA)

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BACKGROUND

Wide scale failure of IT projects executed within MDAs necessitates the development of framework to guide MDAs in defining the scope, liability, limitation and nature of IT projects for the Government. This framework addresses technical issues that are germane to the success or otherwise of IT projects within MDAs. The National Information Technology Development Agency (NITDA) is mandated to, among other things, “regulate the practise of IT in Nigeria” and provide “advisory services to MDA’s in all matters relating to IT in Nigeria”. Pursuant to this role, NITDA hereby issues this framework to guide MDAs in selecting and appointing contractors and service providers for IT procurement projects, Public Private Partnership (PPP) and partnerships.

This Framework provides guidance on clauses, conditions, consideration, arbitration, contracting, support and so on. This Framework is by no means exhaustive on all issues of IT contracting but covers the basics elements that are primarily responsible for contract failure and other inefficiencies in the delivery of Government Information Technology projects. Chief Executives of MDAs, Directors of Procurement, Planning, IT and other line officers responsible for IT procurement are hereby advised to study and be conversant with its content to minimize failure of IT projects in MDAs. This document must be read in conjunction with other laws, regulations and guidelines validly issued by various Agencies of government saddled with the responsibility to provide guidance or regulation for procurements and delivery of IT Projects; these MDA’s include The Bureau for Public Procurement (BPP), Standards Organisation of Nigeria (SON), Galaxy Backbone Ltd etc.

Objectives of Service Level Agreements (SLA)

Sustainability

To ensure that IT projects are implemented in a sustainable way, considering resources and mandate of the MDAs. IT projects must consider the long-term view of resources to be deployed beyond the budgetary year.

Support

To ensure adequate and consistent levels of support for IT deployments within MDAs considering sunk cost, human capacity, change management and other non-technology issues necessary for successful projects.

Obligation of both parties

SLA’s must comprehensively state the responsibilities of all parties in IT deployments. These obligations must be understood and incorporated into contract terms between both parties. There must be clear limitations to transfer of responsibilities.

Clearly defined scope

SLA's must clearly define the scope of any IT project to be carried out, statements on limitation of scope should be included where necessary to aid clarity. Scope of project must only capture work to be remunerated under the contract and to exclude services to be done gratuitously or as Corporate Social Responsibility (CSR).

Crisis management

Clauses on crisis management and escalation should be included, where necessary arbitration or negotiations must be included. All arbitrations must be held in Nigeria and all parties must agree to submit to local jurisdictions

Payment schedule in line with milestones

Payments must be tied to milestones; milestones need to be clearly identified in an SLA which will basically define the schedule of payment. Any change in schedule will mean a modification of the contract.

Parties

- i. Parties must be juristic persons or procuring entities
- ii. Parties must have Nigerian address or must use address of local partners who must be cited in the agreement

Recitals

- i. Recitals must capture the entire service to be rendered to Public service
- ii. It must state the need or problem to be addressed
- iii. State the competencies and capacities of all service providers in the agreement

Definitions

An SLA or other binding Agreement for the provision of Information Technology service or product must have a definition section which shall address the following;

- i. Interpretation: state keys to interpreting the Agreement e.g. Reference to any statute, statutory provision or regulation includes reference to that statute, statutory provision or regulation as amended, modified or re-enacted
- ii. Experts: persons who are conversant with the issue under dispute
- iii. Mediator: a certified person registered as a mediator

Obligations within the duration of SLAs

- i. Payment for service in the scope of work should be limited to current budgetary circle subject to other regulations of Government.
- ii. Licences, plug-ins or other periodic payments can be identified but not included in the scope of work if payments for specific service shall not be captured within the budgetary year.
- iii. Services to be conducted beyond the current year must be completed within the stated period even if paid in a preceding budgetary year. No agreement

shall limit the liability of the Service provider to provide service paid for in full by an MDA.

- iv. Project phases delivered in a pilot phase can be stated in the recital but must not form part of the consideration for service rendered.

Disclosures

The following conditions must be disclosed under the agreement:

- i. Full disclosure of parties and capability for service under SLA
- ii. Full disclosure of vendor OEM agreements if any by service provider
- iii. Disclosure of terms of proprietary licence if any
- iv. Disclosure of operational support office or facility if separate from corporate office

Status of parties

- i. Agreement must state the role of technical partners and other parties with responsibilities in the project, the agreement must clearly state if party who is a non-signatory is a vendor, service provider, platform provider, infrastructure provider or a Ministry, Department or Agency.
- ii. Other agreements and frameworks referenced in Agreement: State all relevant Regulations, Guidelines and Agreements referenced, or other binding documents referenced in the document
- iii. State recurrent, specialized technical terms: All technical and professional registers must be stated in full e.g. *API- Application Programming Interface- the set of codes provided by the Service Provider for authorized personnel of the MDA to access the system of the Service Provider in a secure, safe and non-intrusive manner*
- vi. State all designated users and levels of use: describe the types and classes of users permitted to use the system and the levels of access or use where necessary.
- iv. Specialized or Year, Month, Week and Day: Define parties understanding of these.

Scope

- i. Obligation of both parties: Specific roles and responsibilities to be assumed by each party should be clearly stated. These roles and responsibilities should be linked to the service level and performance target to be achieved.
- ii. Deliverables: All the services that are covered in the agreement should be identified.
- iii. Project activities: Identify any planning and execution activities to be carried out by each party.
- iv. Milestones: project progress levels should be established and documented.

- v. Timeliness: Project activities and milestones should be apportioned timelines and strictly adhered to. The length of the project and renewal modalities should also be established.

Warranties

A service, product or platform provider must provide warranties covering the following:

- i. Ownership, assignment or right to sub-license the service, product or platform. Where such Provider is selling as an agent of the owner, the name and address of such must be disclosed with a statement that the warranty is given on the authority of the Owner.
- ii. Provider warrants that it has the necessary management, administrative, technical and statutory authority and competence to provide the service, platform or product
- iii. Provider warrants that it has not directly or indirectly breached a third-party intellectual property in the provision of the product. Its further warrants that there is no pending dispute on third party IP
- iv. Provider warrants that the product, service or platform was made with due professional care and skill, that the product has been tested and tried and proven to have delivered on its promised functions.
- v. Provider warrants that the product is merchantable and fit for purpose so long as all prerequisite environmental and other conditions are provided by the product recipient.
- vi. Provider has business continuity and disaster recovery plan in place in the event of any delays or service disruption. The Provider has an in-country and remote support arrangement to deal with every support level agreed to by parties.
- vii. In the case of hardware and accessories, the Provider gives a minimum warranty of two (2) years with certain agreed exceptions in which case the warranty period must not be less than one year.
- viii. The Provider warrants that its service or platform shall be continuously available for at least one year after expiration of the warranty period for the purpose of recovery of data and other exigencies.

Limitation of liability

- i. The Provider shall not have absolute limitation of liabilities in case of loss of revenue, loss of data, indirect, incidental or consequential damages or actions brought under contract, torts, statute or otherwise. Liability shall not be limited if it is proved that the loss or damage arose directly or indirectly through the Provider's negligence or criminal intent.
- ii. There shall be no limitation of liability on damages arising from Intellectual Property rights, gross negligence or fraud which has been finally determined by a judicial or arbitral panel of first instance

Maintenance and Support

- Creating modalities for maintenance and support of systems and infrastructure is crucial to the long-term sustainability of a project. The SLA should typically contain;
 - i. A description of the support services to be provided.
 - ii. Incident reporting modalities.
 - iii. The times and days on which support will be provided.
 - iv. How support will be provided i.e. Onsite, off-line and online support.
 - v. Response and resolution times for dealing with problems.
 - vi. Maintenance times for carrying out updates, repair and maintenance software/ hardware services.

Periodic Review Process

The SLAs might require to be modified based on the project needs. Therefore, Federal Public Institutions need to ensure that the relevant clauses are included in the Agreement that would allow the Federal Public Institutions to modify the SLAs. The following clauses are provided as guidance to the departments while preparing the Service Level Agreement:

- i. During the contract period, it is envisaged that there could be changes to the SLA, in terms of measurement methodology/logic/criteria, addition, alteration or deletion of certain parameters, based on mutual consent of both parties
- ii. Each Party shall ensure that the range of the Services under the SLA is not varied, reduced or increased except by the prior written agreement of the Parties
- iii. The SLAs may be reviewed on an annual basis by the Parties in consultation with other Parties concern.
- iv. A clause must be inserted in the SLA stating its time for renewal of the project
- v. Minimum duration of service for renewal must be one (1) calendar year except if service is for Cloud Provisioning

The SLA shall Identify who has the authority to review the agreement, what form, format, and processes will be applied, and the roles and responsibilities of the parties after the agreement has been reviewed.

Dispute Resolution Mechanism

- i. Agreements must include mechanism for alternative dispute resolution
- ii. Where use, application, quality or scope of technology is in dispute a referral of first instance must be made to the NITDA Panel of Neutrals
- iii. A final place for Arbitration in Nigeria must be included
- iv. In the event a dispute arises that cannot be resolved by both parties, the Dispute Resolution provision will apply.

Data Protection, Security and Confidentiality

- i. **Privacy:** Specify any personal information held by the provider and the purpose for which it is collected, used, retained, and disclosed. Departments that provide services to or on behalf of another will require access to data related to the delivery of those services, including personal information.
- ii. **Data Localization:** Federal Public Institutions need to first consider the following: type of data they plan to place in a cloud environment, the laws, regulation and policies of the country where the cloud providers' servers are located in order to fully understand who may host or have access to this data.
- iii. **Unfettered Right of Access:** Federal Agencies must have the right to retrieve and process their data as required by law or extant regulation
- iv. **Data Sharing:** Provision shall be made within the service agreement in accordance with the provisions of Nigerian Data Protection Regulations or law where sharing or hosting of data/information is necessary and desirable, and is lawfully authorized.
- v. **Access to Information and Privacy Considerations:** The agreement must state who must have custody of government data where processing of data is required and under what terms will data be processed.
- vi. Where Personal Identifiable Data (PIDs) will be processed, reference must be made to the data processing under the Nigerian Data Protection Regulation or any law being in-force.
- vii. **Privacy Impact Assessment:** The service provider must conduct a Privacy Impact Assessment (PIA) of data for any new or increased collection and use, processing, disclosure, retention of PIDs connected to the delivery of the service.
- viii. **Security:** Outline appropriate security measures that will be undertaken to safeguard assets and information used in the delivery of the service and in accordance with any relevant legislations. Security should be involved during the design process to be fully aware of any possible implications for the organization.
- ix. **Disclosure and use of Information:** Where information or data may be a sensitive issue, address the roles and responsibilities of the parties involved with respect to the protection of sensitive information or data.
- x. **Specific requirements:** Specify any unique operational provisions required to support a particular jurisdiction or requirement.
- xi. **Service disruptions/Continuity Plans:** Include requirements for the provider to have a Continuity Plan (CP) in place. The ability to quickly adapt and add new services in a time of emergency, such as to provide disaster assistance or the ability to continue to provide service during such a time is an important consideration for the service agreement.

Dispute Resolution

- i. This section defines mode and process disputes will be identified and resolved between the Parties in agreement.
- ii. The purpose of the dispute resolution process is to enable the prompt, satisfactory resolution of any issues within the spirit of cooperation underlying the SLA. To achieve the prompt resolution of issues to the satisfaction of all parties, the following principles shall be adhered to
 - A. All issues raised will be adequately documented, including agreed actions to resolve issues.
 - B. Issues shall be considered resolved only when actions agreed upon have been implemented to the satisfaction of all parties.
 - C. Reference should be made to an objective standard of performance recognized by the parties in developing corrective action alternatives for disputes concerning the cost.
 - D. Issues raised may include, but are not limited to the following four categories:
 - a. Failure to achieve required service standards
 - b. Failure to meet the responsibilities outlined in the SLA
 - c. Request for amendments to required service standards or responsibilities
 - d. Service quality/stakeholder satisfaction issues

Non-acceptance issues that cannot be resolved informally will be handled as follows:

- a. The parties shall request for the NITDA Dispute Resolution Panel of Neutrals to mediate between both parties; the following process is to be followed:
 - i. Aggrieved party shall refer the dispute to the NITDA Panel of Dispute Resolution Panel in writing with a copy to the other party. Such a reference should contain a description of the nature of the dispute, the quantum in dispute (if any) and the relief or remedy sought suitable;
 - ii. The panel shall make every effort to conclude the mediation within a certain/agreed number of days from the date the reference is made by either party;
 - iii. If no resolution can be reached through mutual discussion or mediation within the agreed number of days, then the matter should be referred to an Arbitration panel for further dispute resolution.

Termination

- i. Either party can only terminate the Agreement before its expiration by giving the other party not less than Twelve (12) months written notice of its intention to do so.
- ii. Where termination is at the instance of the MDA, such MDA shall pay any outstanding amount owed the Provider within six months after the effective date of such termination notice.
- iii. When termination is at the instance of the Provider, such Provider shall refund any outstanding sums paid to it in advance by the MDA. This payment shall be made on or before the effective date of such termination notice.
- iv. The right to terminate shall not prejudice any other right or remedy of either party in respect of the breach occasioned by any of them.
- v. Where parties mutually or individually decide to terminate this Agreement before the expiration of its tenure, and in the event of a dispute as to outstanding sums or obligations owed, both parties shall commission a consensus nominee to undertake an independent assessment of the sum.
- vi. MDAs shall not violate the terms of the Agreement by continuous use of licensed or unassigned products and services of the Provider after termination has been effected.

Notices

- i. Notices must be served to the right officers with proper designation within MDAs.
- ii. Notices on service providers must be delivered at business addresses and place of business where these offices are different.
- iii. MDAs are advised to keep details of project managers for support of deployed service.
- iv. Chief Executives of Service providers must be served, however; MDA's must ensure contact of senior technical officers are captured in the SLA.
- v. Jurisdiction for Arbitration or Adjudication must be in the Federal Republic of Nigeria except where parties so agree for specific purposes clearly stated in the agreement.