

# **BUSINESS INTERNET**

**ENHANCING CONNECTIVITY**



[www.telkom.co.ke](http://www.telkom.co.ke)

 @telkomenterprise  200

Customer information/Company name .....

**1. OWNER OF THE**

**CONTRACT Name:**

.....

**Represented by:**

.....

**Street / Address:**

.....

**Postal code:**

.....

**Billing account:**

.....

**PIN:**

.....

**Tel / Fax:**

.....

**Email:**

.....

**2. BILLING ADDRESS (OF DIFFERENT)**

**Name:**

.....

**Street / Address: Postal code:** .....

..... **Billing account: PIN:**

..... **Tel/ Fax: Email:**

.....

**3. TECHNICAL**

**REPRESENTATIVE Name:**

.....

**Represented by:**

.....

**Street / Address:**

.....

**Postal code:**

.....

**Tel/ Fax:**

.....

**Email:**

.....

**4. SITES INFORMATION**

**Number of sites:**

.....

5. ORDER TYPE

New service     Relocation  
 Upgrade     Downgrade

6. PROFILE OPTION

Business Internet Superlite     Business Internet Lite     Business Internet Standard  
 Telkom Business Internet Pro

7. COMMENTS

.....  
 .....

8. BILLING MODULE

Contract duration: ..... Billing cycle: .....  
 Prepaid     Postpaid  
 Monthly charges: ..... Customer deposit: .....  
 .....  
 Cheque number: .....  
 .....

9. SIGNATURE

The current Application Form is governed by the Telkom Business Internet Terms and Conditions. By signing the Application Form, the Customer acknowledges and accepts the review of the different contract documents.

The Provider

Name: .....

Signature: .....  
 .....  
 Function: .....  
 .....  
 Date: .....  
 .....

Company Stamp

The Customer

Name: .....

Signature: .....  
 .....  
 Function: .....  
 .....  
 Date: .....  
 .....

Company Stamp

Sales Representative

Name: ..... Company: .....

Tel / Fax: ..... Email: .....

## TELKOM BUSINESS INTERNET TERMS AND CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

- a. **“Access”** refers to the component of a Service allowing access to the Provider’s Network;
- b. **“Access Link”** or **“Link”** refers to any telecommunication circuit or any other capacity which enables the equipment to be connected to the Provider’s Network via a POP. The Link may be established on permanent (for the period of the contract) or occasional basis;
- c. **“Access Node”** or **“POP”** refers to the **“physical”** point of presence on the Provider’s Network, to which an Access is linked via an Access Link;
- d. **“Contract”** or **“Terms and Conditions”** means these terms and conditions, the Order Form and its associated Price;
- e. **“Beneficiary”** refers in general terms to any affiliate and/or partner designated by the Customer, likely to use or access any Service provided with respect to a Contract;
- f. **“Business Day”** means Monday to Friday between the hours of 0900 and 1700, excluding public holidays;
- g. **“Customer”** refers to the legal entity that signed the Contract with the Provider;
- h. **“Customer Network”** refers to the network set up by the Provider for the Customer, consisting of a set of Accesses which can inter-communicate via subscribed Services, including equipment, Access Links and the Provider Network;
- i. **“Customer Premises Equipment”** refers to the device provided by the Customer to connect to the Terminal Equipment, to allow access to the Service at the Customer’s premises. Unless otherwise provided, this device demarcates the beginning of the Customer’s responsibilities in regard to the provision of the Services.
- j. **“Deployment Service”** refers to specific service requested by the Customer over and above the service description.
- k. **“Deployment Phase”** refers to the period before the Operating Phase during which the Provider proceeds with the installation of the Service and/or Migration of the Access (es) ordered;
- l. **“Due Date”** means, in relation to non-disputed amounts, 14 days after receipt of a tax invoice. In respect to disputed amounts, 30 days after the resolution of the dispute.
- m. **“ebill Portal”** refers to the electronic web address provided by the Provider through which the Customer may access their monthly bills/invoices;
- n. **“Existing Network”** refers to the list of service Accesses as of the Commencement Date of the Contract and referenced in the Order, they are intended to migrate to the Target Network within the provisions of the Contract;
- o. **“Force Majeure Event”** means an event beyond the control of the Affected Party including, without limitation, strike, lock-out, labour dispute, act of God, act of war, riot, civil commotion, malicious damage, vandalism, accident, breakdown of plant or machinery, fire, flood and storm;
- p. **“Initial Scope”** refers to all the Accesses and associated Services ordered by the Customer to be deployed/migrated by the Provider during the Deployment Phase;
- q. **“Initial Term”** refers to the contract duration as defined in the Order Form.
- r. **“Interface”** enables a piece of the Customer’s equipment to be connected to the Service provided within the framework of the Contract;
- s. **“Migration”** refers to the configuration operations needed to enable a Network Access to be upgraded to a Target Network and then started up;
- t. **“Relocation”** refers to movement of the Service from one Customer Site to another
- u. **“Offending Material”** means any content that is:  
 (i) in breach of any law, regulation or code of practice invoked by Telkom or industry regulator or any policy adopted by Telkom with regard to the acceptable use of the Services;  
 or  
 (ii) abusive, indecent, defamatory, obscene, offensive, menacing or a threat to the health and safety of any third party; or  
 (iii) in breach of confidence, intellectual property rights, privacy or any right of a third party;
- v. **“Order”** refers to the Service(s) supplied with respect to the Order Form signed by the Customer, and accepted by the Provider. An Order is issued within the framework of a Contract to which it refers;
- w. **“Order Form”** refers to the standard documents attached to the Contract or, as applicable, which specify the information required from the Customer for the provision of the Services by the Provider;

- x. **“Operating Phase”** refers to the period after the Deployment Phase upon implementation completion by the Provider;
- y. **“Party”** refers to either Telkom or the Customer individually and **“Parties”** refers to both Telkom and the Customer jointly;
- z. **“Preventive Maintenance Interruption”** refers to interruptions corresponding to periods when the Provider carries out preventive maintenance on the Provider Network.
- aa. **“Provider”** or **“Telkom”** refers to Telkom Kenya Limited of Post Office Box Number 30301 – 00100 Nairobi
- bb. **“Provider Network”** refers to the telecommunication network used by the Provider, to which the Customer will have access within the framework of the Contract via Access Links and Customer Provider Equipment are connected;
- cc. **“Quality Assurance Plan (QAP)”** refers to the document defining the standards and working methods needed to provide the Services during the Deployment Phase and for each Site until acceptance is given. It formally establishes the relations between the Customer and Provider and aims, in a non-restrictive way, to define the organization set up by the Provider, with details of escalation procedures and the roles of the various players;
- dd. **“Service”** refers to the service ordered by the Customer as further detailed in the Service Description Annex and **“Services”** shall be construed accordingly;
- ee. **“Site”** refers to the physical address in which the Provider will deploy the Service as defined in the Order Form;
- ff. **“Target Network”** refers to all the Accesses, including existing Network Accesses once they have migrated and/or put into service by the Provider as defined in the Service Description;
- gg. **“Terminal Equipment”** refers to the device provided by the Provider to terminate the Service at the Customer’s premises. Unless otherwise provided, the device provided demarcates the end of the Provider’s responsibilities in regard to the provision of the Services.
- 1.2 Reference to money, value and price are to the Kenyan currency unless otherwise stated.
- 1.3 Reference to a Party includes its successors and permitted assigns.
- 1.4 Reference to any Statute includes amendments or re-enactments to that Statute from time to time.
- 1.5 Words importing one gender shall be construed as importing the other gender.
- 1.6 Words importing the singular shall be construed as importing the plural and vice versa.
- 1.7 This Contract contains the entire agreement between the Customer and Telkom with respect to the Service and supersedes all previous understandings, commitments, agreements or representations, whether oral or written, express or implied, in relation to the subject matter between the Parties.
- 1.8 This Contract is made solely and specifically between the Parties for the Parties’ mutual benefit and is not intended to be for the benefit of or enforceable by any other person. Neither Party can declare itself a trustee of the rights under this Contract for the benefit of any such person.
- 1.9 In the event of a conflict between any provision of the Application Form, Schedule or Tariff Guide and the provisions of these Terms and Conditions, the provisions of the Terms and Conditions shall prevail, save to the extent otherwise expressly agreed by the parties.
- 1.10 If any of the words or provisions of this Contract shall be construed to be illegal, void or invalid, that shall not affect the legality and validity of the other words or provisions. If any restriction is held not to be valid but would be valid if part of the wording were deleted or its extent reduced or modified then such restriction shall apply with such deletion, reduction or modification may be necessary to make it enforceable.
- 1.11 Save as provided in Clause 12, any variation of this Contract shall be valid only if it is in writing and signed by or on behalf of each Party.

1.1 Headings are for convenience only and do not affect the interpretation.

## 2. COMMENCEMENT



This Contract shall be deemed to have commenced on the date the Customer is connected by the Provider (“Commencement Date”) and shall continue for such a period as indicated in the Order Form (“the Initial Term”). The Contract will then automatically be renewed for further periods of twelve (12) months until terminated in accordance with the terms of this Contract.

### 3. SUPPLY OF THE SERVICES

#### 3.1 Deployment Phase

The Deployment Phase consists of the installation of Accesses as defined:

- (a) In Initial Scope.
- (b) In the Service Description Appendix or,
- (c) In the Deployment Service Description Appendix when the Customer has subscribed to the Deployment Service.

#### 3.2 Operating Phase

During the Operating Phase, the Provider will provide the Customer with the Services in compliance with applicable regulations and according to the functions described for each Service in the “Service Description” Appendix.

The Provider reserves the right to make operational changes to the Provider Network operating mode, provided these changes do not affect the Service or generate additional costs for the Customer.

- 3.3 The Service is provided under the conditions described in each Order Form concerned. In order to ensure that the quality of a Service is maintained, the Provider may need to carry out work on the Provider Network, which may temporarily affect regular operation of the said Service and, as far as possible, will endeavour to reduce any resulting disruption for the Customer. Should this work affect provision of the Service to the Customer, the Provider must advise the Customer at least two calendar days before the date of the work by letter, email, fax, sms or through the media indicating the dates, times and provisional timeframes when the Service will be interrupted. If the Service provided to the Customer is

the only one likely to be affected by the work, the Provider will agree on a timeslot for the work with the Customer. If, at the Customer’s request, after studying possibilities, the scheduled work takes place during non-working hours, the resulting additional costs will be paid by the Customer. Service interruptions due to work scheduled by the Provider, either in compliance with the above minimum notice period or by agreement with the Customer, carried out during a negotiated timeslot are not considered incidents and will not give rise to penalties in relation to the Provider’s service level agreement commitments when applicable.

- 3.4 Although the Provider will take all reasonable steps to ensure that the Services are available to the Customer at all times, it cannot guarantee a continuous fault free service. The quality and availability of Services may be affected by factors including (but not limited to) acts of God, malicious acts of third parties, geographical topography, weather conditions, planned maintenance or rectification work on the Provider Network or the Terminal Equipment that may interfere adversely with the quality and provision of the Services.

- 3.5 The Service provided by the Provider to the Customer shall be governed by the terms and conditions contained herein. These are subject to amendment by the Provider as the needs of the Service may require, from time to time as provided in Clause 12.

### 4. CUSTOMER OBLIGATIONS

- 4.1 The Customer declares acceptance of the characteristics and limits of the Service and, in particular, acknowledges that:

- (a) It possesses the appropriate equipment and software and staff qualified to operate the Access correctly;
- (b) It is aware of the nature of the Service and agrees to use the Service in a reasonable manner and will refrain from using Offending Material;
- (c) It will not knowingly or negligently transmit any electronic and/or software element via the Service that might cause or be liable to cause damage of any kind either to the Provider’s information systems or the Provider’s customers. In the event of obvious breach of this article by the Customer, the latter accepts that the Provider is entitled to interrupt the

internet and/or application service immediately without any further formalities, without the Customer being entitled to any indemnity and without prejudice to any damages that the Provider may claim should its liability be invoked due to the breach by the Customer.

4.2 When the provision of the Service requires the installation of equipment by the Provider on the premises designated by the Customer, the Customer will, at its own expense, make space available to the Provider, that meets the technical prerequisites for installation of this Equipment. Installation and connection conditions are indicated in the corresponding Contract. Customer, at its own expense, will make any and all necessary adjustments or ensure the compliance of premises. The Service can only be provided to the Customer once the premises satisfy the above-mentioned conditions and prerequisites. The Provider will not become involved in any dispute arising between the Customer and the owner or the premises or its representative in respect of provision of the Service.

4.3 For any work justified by the installation, operation or maintenance of a Service, the Customer must allow access to the premises by the Provider and persons authorized by the Provider. If installation or other work needs passing through the property of a third party, the Customer will be responsible for obtaining the authorisation of the third party.

4.4 No work may be carried out on Customer or third party premises without the presence of the Customer or its representative. Any period during which the Customer's premises cannot be accessed by the Provider or its authorised representatives, pursuant to the above stipulations, will not be taken into account for the calculation of the lead times allowed for the Provider to carry out its obligations. The Customer must inform the abovementioned technicians of the existence and location of pipes/ducts (e.g. gas, electricity, water, etc.) and equipment of any kind, as well as any other risk which may occur on the premises accessed by technicians for Service implementation purposes. Before the Provider carries out any work on the premises, the Customer will provide all the necessary information on hygiene and security rules in force on the premises. The Customer shall indemnify the Provider against any loss, claim or liability arising from the Customer's failure to fulfill its obligations under this Clause 4.3.

## 5. PRICE, TAXES AND DEPOSIT

5.1 The prices for Services and related pricing structures are indicated in the concerned Order Form.

5.2 Prices are expressed in Kenya Shillings and exclude taxes. The Customer will bear any tax payable in Kenya in respect to this Contract in addition to the Service prices. Prior authorisation is required from the Provider for payment by the Customer or Beneficiary in another currency. In any event, the total amount due to the Provider will be converted by the latter on the basis of prevailing exchange rates.

## 6. INVOICING AND PAYMENT CONDITIONS

6.1 The Provider reserves the right to evaluate a Customer's credit worthiness before or after providing the Services in accordance with the Provider's postpaid terms and conditions and its credit policies in place and as amended from time to time.

6.2 The Provider reserves the right to demand payment in advance of such amount as the Provider considers reasonable to cover the risk for continuing services to the Customer if the services to the Customer are at any time suspended for nonpayment of accounts.

6.3 The Provider will provide an electronic bill/invoice to the Customer through the e-bill Portal. The Customer will access the e-bill Portal through their username and password ("Credentials"). The Customer undertakes to keep their Credential confidential and so manage the said Credentials to ensure that the Customer is able to access its bills online. Any Customer requiring a printed hard copy bill will pay the Provider a fee as determined by the Provider.

6.4 The Customer agrees to pay to Telkom all charges (Access fees, rent fees or other monies which are more particularly set out in the relevant Order Form) in accordance with the tariff rates from time to time prescribed by the Provider (or any other authority that may from time to time be authorized to set or alter such tariffs) including the following:

- a) An advance monthly access fee for the Services;
- b) An advance one-time installation fee for the apparatus and equipment necessary for the provision of the Services to the Customer ("One-Time Charge" or "OTC"); and

- c) Monthly access fees (otherwise known as “monthly recurrent costs” or “MRC”).

6.5 The Customer must pay the billed charges for the Services without any set-off, counterclaim or deduction (except where the Parties agree thereto to set-off, counterclaim or deduction). Telkom may, in its discretion, add interest charges, from the Due Date, to any past due amounts at a per annum rate of 4 percentage points above the Central Bank of Kenya prevailing base lending rate at any given time, compounded daily.

6.6 In the event that Charges remain unpaid after the Due Date, Telkom reserves the immediate right to suspend provision of service. The process that Telkom will follow prior to the suspension under this Clause or subsequent termination of the Services for non-payment is elaborated in the Dunning Process Schedule.

6.7 If applicable, the Customer shall deduct and pay Kenya Revenue Authority (KRA) withholding tax payable on the Charges at such rate as may be prescribed by the Kenyan taxation law from time to time. Upon such deduction, the Customer shall present to Telkom an original Withholding Tax Certificate in such form as may be prescribed by KRA from time to time. Should the Customer fail to provide such Certificate, the Customer shall be liable to pay the Provider any such amount purportedly deducted as withholding tax.

6.8 All charges due to the Provider under this Contract shall be payable by the Customer in Kenya Shillings. Payment of all charges due may be done by the Customer to the bank account or designated Telkom cashiers notified from time to time by the Provider or by such other method as may be agreed between the Parties from time to time. In the event that charges remain unpaid after the Due Date, the Provider reserves the right to immediately suspend provision of Service.

6.9 The Customer will promptly, but in no event later than 14 days from date of invoice, notify the Provider in writing of any disputed invoice, together with all information relevant to the dispute, including the account numbers, circuit identification, and trouble ticket numbers, if any, and an explanation of the amount disputed and the reasons. The Customer must pay all undisputed amounts in accordance with Clause 6.5 unless the disputed amount is less than 5% of the total invoice amount in which case the total invoice amount shall be due and payable by the Due Date. Disputes shall be resolved promptly and the resolved amount, if any, payable within fourteen (14)

Business Days after resolution. Interest will accrue from the due date on subsequent payments of amounts withheld or credits on overpayments refunded.

6.10 The Customer will remain obliged to settle all other undisputed invoices.

6.11 Failure to pay the charges as invoiced by Telkom shall constitute a material breach of this Contract and may lead to termination of this Contract.

## 7. SCOPE AND CONTRACT SUBSCRIPTION CONDITIONS

7.1 Unless expressly stipulated in the Service Description, every Order is considered to be issued by the Customer on its own behalf.

7.2 Beneficiaries may use or access the Service. The Customer undertakes to communicate with the said Beneficiaries of the content of this Contract together with any subsequent modification thereto. In any event, the Customer remains liable for the contractual obligations of Beneficiaries. As a result, the Provider does not have to make any direct response to a Beneficiary concerning any request in relation to the purpose of the Contract.

7.3 As necessary, the Customer may also issue Orders in the name and on behalf of Beneficiaries in its capacity as authorised representative, provided that:

- (i) this is expressly indicated in the concerned Order Form;
- (ii) information concerning the Beneficiaries is forwarded by the Customer. This information will be indicated in the Appendix and the Customer will inform the Provider in writing promptly of any modification that might occur, the effect of which would exclude a Beneficiary from the benefit of the Contract;
- (iii) the Customer is responsible for obtaining powers of attorney from Beneficiaries to manage the global relationship with the Beneficiary with respect to the Provider. As a result, the Provider does not have to make a direct response to a Beneficiary concerning any request;
- (iv) the Customer will provide copies of the powers of attorney immediately on first demand of Provider and will assume vis-à-vis the Provider



a joint and several liabilities for all rights and obligations of the Beneficiaries;

- (v) the Services subscribed to by the Customer on behalf of partners designated as Beneficiaries are used for communication or cross-connection purposes with the Customer or one of its affiliates;

7.4 The Provider reserves the right to request a financial guarantee from the Customer prior to the signature of an Order or at any time during execution of the Contract, such as the payment of a guarantee deposit, an on-demand guarantee or a creditworthy joint and several guarantee of solvency. The Customer will inform the Provider of the amount and date of payment or setup of the financial guarantee requested.

7.5 During execution of the Contract, the non-production or failure to update the financial guarantee requested by the Provider will lead without any notification to the suspension of the Order(s) concerned, without prejudice to any other remedy available to the Provider such suspension will continue until the financial guarantee is set up. Nonetheless, during this period, the Customer will still be liable for payment of the price for the Services concerned by the said suspension which were rendered prior to the suspension.

7.6 Previous debt contracted with respect to an Order or separate contract concluded with the Provider must be settled before subscribing to a new Order.

## 8. FORCE MAJEURE

8.1 If a Party (the "Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under this Contract (other than a payment obligation) by a Force Majeure Event:

(a) the Affected Party's obligations under this Contract are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;

(b) as soon as reasonably possible after the start of the Force Majeure Event, the Affected Party shall notify the other Party in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the

effects of the Force Majeure Event on its ability to perform its obligations under this Contract;

(c) If the affected Party does not comply with Clause 8 (d) it forfeits its rights under Clause 8(d). The Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Contract; and

(d) as soon as reasonably possible after the end of the Force Majeure Event, the Affected Party shall notify the other Party in writing that the Force Majeure Event has ended and resume performance of its obligations under this Contract.

(e) If the Force Majeure Event continues for more than six months starting on the day the Force Majeure Event starts, a Party may terminate this Contract by giving not less than thirty days' written notice to the other Party.

## 9. LIMITATION AND EXCLUSION OF LIABILITY

9.1 Telkom's liability in contract, tort or otherwise (including liability for negligence) under or in connection with this Contract is limited to Kshs one hundred thousand (Kshs 100,000). This limitation of liability is cumulative and not per incident.

9.2 The Customer agrees that the following exclusions of liability are reasonable:

9.2.1 Telkom, its officers, employees, sub-contractors agents and partners will not be liable to the Customer or any other party for:

(a) any indirect or consequential loss or damage whatsoever, whether it is foreseen or unforeseen, including but not limited to loss of profits, data, revenue, business, anticipated savings or goodwill or loss of life;

(b) any losses arising in connection with any failure, interruption, delay, suspension or restriction in providing the Services to you which is due to a Force Majeure event;

(c) the loss, late receipt or non-readability of any download, transmission, or other communications or loss of data, data privacy or security transmission;

(d) any damage to the Customer Premises Equipment following the use of the Services. The Customer acknowledges and accepts that Telkom does not guarantee the security of the Services against unlawful access or use and the Customer shall therefore be required to take reasonable precautions while using the Services including adopting such appropriate security measures against unauthorised access to and interference with Customer equipment, associated software or equipment, hardware and data (including back up) as the Customer deems necessary; and

(e) any charges or losses incurred as a result of or unauthorised use of the Services including following a theft of the same.

**9.2.2** Except as provided in this Contract, Telkom provides no warranties, conditions or guarantees as to the description or quality of the Services and all warranties, conditions or guaranties implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as is permitted by law.

**9.3** Notwithstanding any other provisions of this Contract, the Customer confirms and undertakes to indemnify and keep indemnified Telkom on demand for and against all proceedings, costs (including reasonable legal fees), claims, damages, expenses and liabilities of whatsoever nature howsoever suffered or incurred by Telkom arising out of or by reason of any act or omission by the Customer, the Customer's employees, representatives or agents in the performance of the Customer's obligations under this Contract including but not limited to any breach or non-compliance with any terms of this Contract or negligence.

## **10. TERMINATION AND SUSPENSION**

**10.1** The Provider may in its sole discretion suspend the Service in any of the following circumstances:

(i) If the Customer account remains unpaid for fourteen days from the date of invoice;

(ii) If in the Provider's sole opinion the Customer fails at any time to meet the credit test criteria as deemed necessary in any case.

(iii) Such a suspension or variation is necessary to facilitate modifications to, or allow for planned maintenance of the Provider's Network;

(iv) If the Customer writes to the Provider to discontinue the service or other facilities provided under the Contract.

(v) If the Customer dies or is declared bankrupt or being a company, goes into liquidation or has a receiver appointed over its assets.

(vi) If the Provider gives the Customer one calendar months' notice in writing terminating the services, this Contract or any supplemental contract executed by the Customer.

(vii) If the Customer allows the telecommunication lines provided to be damaged, destroyed, accessed using unconventional methods, used for any improper or illegal purposes or contravenes any laws or other provisions or any other statute or regulations made or applicable thereunder.

**10.2** The Provider may in its sole discretion terminate the Customer's access to the Services without liability to compensate the Customer for any period during which:

(a) the Customer fails to comply with the Customer's obligations under this Contract;

(b) the Provider is required or requested to comply with an order or instruction of or on recommendation from the Government, court, regulator or other competent authority;

(c) the Provider reasonably suspects or believes that the Customer is in breach of the terms and conditions of this Contract or any other terms and conditions referred to herein;

(d) the Customer fails to pay any charges required to facilitate access to the Services;

(e) for any reason the Provider is unable to provide the Services; or

(f) the Customer is in breach of any fair usage policy implemented by the Provider from time to time.

“Fair usage policy” for the purposes of Clause 10.2(f) above refers to a policy implemented by the Provider to facilitate equitable access to the Services by all Telkom subscribers.

10.3 The Customer may, without prejudice to Clause 11.2, terminate this Contract at any time by giving notice in writing to the Provider.

10.4 The Customer shall reimburse the Provider for all reasonable costs and expenses incurred as a result of the suspension, termination or variation of the Services where the suspension, termination or variation is implemented by the Provider as a result of any act or omission by the Customer.

## 11. CONSEQUENCES OF TERMINATION

11.1 Termination shall not affect any provision of this Contract expressed to have effect after termination, or any other rights either Party may have against the other Party subsisting at the time of termination.

11.2 If the Customer terminates the contract before the expiry of the Initial Term then the Customer shall be liable to pay the Provider all monthly recurrent charges for the rest of the duration of the Contract as signed and any other monies outstanding at the time of termination. Telkom shall be entitled to claim this amount from the Customer as a debt.

## 12. VARIATION OF THE AGREEMENT

Telkom may change this Contract at any time and will give you notice of the changes under clause in accordance with clause 13 (Notices and No Waiver).

Any modification to this Contract including but not related to Upgrade, Downgrade, Relocation, Migration of Access Link will be in writing and signed by both Parties.

## 13. NOTICES AND NO WAIVER

Any notices in regard to any information that Telkom may wish to send to the Customer from time to time including but not limited to variations to these, modifications/variations to the Services or Charges, any promotions and other information will be through advertisement in a daily newspaper or on the Telkom website [www.Telkom.co.ke](http://www.Telkom.co.ke). The Customer will be deemed to have been bound by such variation by continuing to use the Services.

(a) Any invoices or notices for purposes of legal proceedings will be served:

(i) In the case of the Customer: at your last known address as set out in the Order Form completed by the Customer; or

(ii) In the case of Telkom: by hand delivery to Telkom Plaza, Ralph Bunche Road and marked to the attention of the Chief Executive Officer.

Such notices will be deemed to have been received (if dispatched in the manner described above) 5 business days after mailing if forwarded by post and the following business day if hand-delivered or dispatched by e-mail.

“Business Day” means Monday to Friday between the hours of 0900 and 1700, excluding public holidays.

(c) Any failure to exercise or delay in exercising a right or remedy provided by this Contract or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Contract or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

(d) No other terms or conditions endorsed upon, delivered with or contained in any Customer documentation will form a part of this Contract and the Customer waives any right which it otherwise might have to rely on such terms and conditions.

## 14. TRANSFER

14.1 In the event of the transfer of all or part of the Contract by the Customer, the Parties will meet to analyse the transfer operation, the cost of this transfer and the consequences for the Contract and also to agree upon and validate the Terms and Conditions for the transfer. The Contract may only be transferred by the Customer, in part or in whole, with the prior written authorisation of the Provider.

14.2 In any event, no transfer may be made without the balance of the Customer's account of any amounts billed to Beneficiaries first being paid.

14.3 The Provider is free to assign, or transfer the rights and obligations in all or part of the Contract to an affiliate or a third party, provided the Provider ensures all the rights and obligations undertaken by the Provider under the Contract with respect to the Customer are taken over. The Provider will be released from its obligations on the effective date of the transfer, which will be notified to the Customer by the Provider within a reasonable timeframe which may not be less than 30 days.

**15. DISPUTE RESOLUTION**

Any disputes or claims arising between the Parties that are not amicably resolved between the Parties may be referred to the court of jurisdiction by the aggrieved Party.

**16. GOVERNING LAW**

The construction, validity and performance of this Contract shall be governed in all respects by the Laws of Kenya.

I/We \_\_\_\_\_  
\_\_\_\_\_ have read and understood the terms and conditions herein and agree to be bound by them at all times.

Date: \_\_\_\_\_

Stamp









