

AGREEMENT FOR COLLOCATION OF EQUIPMENT

General Terms and Conditions for Collocation Services

1 DEFINITIONS & INTERPRETATIONS

1.1 In these Terms and Conditions the following expressions shall mean:

- 1.1.1 **"Agreement"** means the agreement in relation to collocation services established by the Service Order Form as read together with these Terms and Conditions.
- 1.1.2 **"Apparatus"** means the equipment installed in the Licensor's collocation facilities by the Licensee.
- 1.1.3 **"Collocation Room"** means the room or part of a room in which the communications equipment will be housed.
- 1.1.4 **"Drawing"** means an illustration of the area licensed to the Licensee pursuant to the Agreement;
- 1.1.5 **"The License"** means the license granted by the Licensor pursuant to the Agreement.
- 1.1.6 **"License Period"** means the period of the License as set out in the Service Order Form, which may be renewed from time to time in accordance with paragraph 4.2 of Schedule 4 to these Terms and Conditions, reserving an initial rent of which rent shall be revised annually at the rate stated in Schedule 5 hereto. The rent reserved shall be payable yearly in advance.
- 1.1.7 **"The Licensor"** includes the company granting the other party a license on the Premises and the Licensor's successors in title to the Premises, and any other person who is at any time is entitled to the reversion immediately expectant on the term to be granted by the Agreement.
- 1.1.8 **"The Licensee"** includes the party being granted a license (Licensee) on the Premises by the Licensor and the Licensee's, affiliates and successors in title.
- 1.1.9 **"Other Licensee(s)"** means any person or persons holding a License or Licenses over other part of the premises.
- 1.1.10 **"The Premises"** means the Licensor's land and buildings.
- 1.1.11 **"The Commencement Date"** means the date of signature of the Service Order Form.
- 1.1.12 **"The Building"** means the Licensor's buildings in which equipment room is located.
- 1.1.13 **"Permitted Use"** means uses specific to the communications industry and a communications base station operating within the Kenya Information and Communications Act Cap 411 A (the Act) and Regulations.
- 1.1.14 **"Mast"** means the Licensor's tower in which telecommunications equipment will be mounted.
- 1.1.15 **"Service Order Form"** or **"SOF"** means the document signed by the Licensee and accepted by the Licensor describing the collocation services granted by the Licensor.
- 1.1.16 **"Works"** means the works to be carried out by the Licensee its agents or contractors (including any structural works reasonably requiring the laying of any necessary communications and electricity supply cables the installation of conditioning or handling units and all works necessary to comply with Health and Safety requirements) in connection with the installation of the Apparatus and any

subsequent inspection alteration or maintenance works.

- 1.1.17 **"Working Day"** means any day from Monday to Friday inclusive on which commercial banks in Nairobi are open during banking hours and **"Working Days"** shall be construed according. Notifications received after 12 noon will be deemed to be received on the next Working Day.

1.2 Words importing one gender shall be construed as importing any other gender; words importing the singular are to be construed as importing the plural and vice versa.

1.3 The clause, paragraph and schedule headings do not form part of the Terms and Conditions and are not to be taken into account in its construction or interpretation.

1.4 Where any party comprises more than one person, the obligations and liabilities of that party under the Agreement are to be joint and several obligations and liabilities of those persons.

2 The Licensor shall grant and the Licensee shall accept the License and execute a counterpart of it.

3 The exact location of the Licensee's equipment in the premises shall be governed by the Licensor's access procedures and determined by the Licensor so as to avoid interference with any of the Licensor's or any other licensee's cables, lines, equipment and/or any other property located on the premises, as may be applicable. **PROVIDED ALWAYS** the Licensor shall incur no liability howsoever arising from location assigned for the Licensee's equipment.

4 Except for the Licensor's assistance in identifying the exact location, the Licensee, at its own expense, shall be solely responsible for itself, or third party agents, to deliver, unpack, install and uninstall the equipment for use in the assigned location.

5 The Licensor has agreed that the Licensee shall have the right at its own expense to exercise the rights set out in the First Schedule.

6 The Licensee agrees to comply with the undertakings set out in the Second Schedule.

7 The Licensor agrees to comply with the undertaking set out in the Third Schedule.

8 These Terms and Conditions shall be subject to and shall incorporate the terms contained in the Fourth Schedule.

9 The Licensee agrees to make prompt payment of the charges outlined in the Fifth Schedule. For the avoidance of doubt such charges are exclusive of taxes or any other applicable charges thereon.

THE FIRST SCHEDULE:

The Licensee's Rights

The Licensee is granted the right:-

- 1 To non-exclusive use and occupation of the Premises.
- 2 To erect, install, use, operate, maintain, repair, replace and renew (and when desired to remove any of) the Apparatus on/in the Building using all machinery necessary to undertake the Works.
- 3 To install within the Collocation Room such equipment as the Licensee requires for the Permitted Use.
- 4 To install on the Mast such equipment as the Licensee requires and as approved by the Licensor.
- 5 To lay, maintain, repair replace and use electricity cables from the Licensor's electricity supply serving the Premises (if the Licensor requires) to install a mains electricity supply and/or generator to the Apparatus through the building in the positions shown on the Drawing or as otherwise in positions approved by the Licensor.

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6 To install, maintain, repair, replace and use communications cables to and through the Building leading to and from the Apparatus in the positions shown on the Drawing or otherwise in positions approved by the Licensor.

7 The right at all times of full and free access to and through such part of the Building or Land as is reasonably necessary to gain access to and from the Premises or site and the Apparatus to carry out the Works and to exercise the rights granted by this Schedule upon Twenty-Four (24) hours notice (except In emergency when no notice shall be required) **PROVIDED THAT** all such persons comply with such reasonable security procedures as are required by the Licensor and that the Licensee shall seek the Licensor's prior written approval before the commencement of any works.

8 While the Works are being carried out to occupy a reasonable working space assigned in the Premises.

9 The right of support for the Apparatus from the Building.

THE SECOND SCHEDULE

The Licensee's Obligations

The Licensee covenants with the Licensor to:-

1 Notice of Works

To give to the Licensor at least Forty-eight (48) hours notice of its intention to commence of Works (except in an emergency when no notice shall be required).

2 Installation

to carry out the Works in a good and workmanlike manner causing as little inconvenience to the Licensor as reasonably possible and making good any damage caused by the Works to the reasonable satisfaction of the Licensor.

3 Maintenance of Apparatus and Reinstatement

To maintain the apparatus in a good and safe state of repair and condition throughout the license period as defined herein.

3.1 On the expiration or sooner determination of the Agreement (howsoever caused) the Licensee will immediately remove the Apparatus and deliver up the Premises having regard to the condition of the Premises at the date of the Agreement and at the date of such removal.

4 Insurance

To insure the Apparatus against loss or damage and to maintain insurance against public liability and other third party liability in connection with any injury loss or damage to any persons or property arising out of the exercise by the Licensee its employees or independent contractors of the rights granted by the Agreement and to provide details of such insurance to the Licensor on request.

5 Interest

To pay annual interest to the Licensor at 2% per month upon any arrears of payments due and payable under the terms of the Agreement which are unpaid for 14 days next after becoming payable.

6 Outgoings

7 To pay any rates taxes or outgoings levied in respect of the Apparatus during the term.

8 Indemnity

To be responsible for and to keep indemnified the Licensor against any losses and damages, costs, claims, actions, demands proceedings and liabilities that may be brought or made against the Licensor by any third person arising from any negligent act or omission of the Licensee, its servants or agents in the exercise of the rights granted by the Agreement or in the alternative any loss or liability arising out damage to the Licensee's equipment due to any act or omission of a third party howsoever arising **PROVIDED THAT** the Licensor either notifies the Licensee of all such actions, claims and proceedings.

9 Compliance with Legislation

To comply with all present and future national and local authority legislation, physical planning legislation that is applicable to the installation and operation of the apparatus and the exercise of the rights granted by the Agreement.

10 Use

To use the Premises for the Permitted Use.

11 Sub-Licensing

the Licensee will not transfer, grant a sub-license or share its rights under the Agreement or part with possession of the Premises to a third party save that the Licensee may (without the Licensor's consent being required) transfer the benefits of the rights granted by the Agreement or share rights with any company which is a member of the same group of companies or affiliated with the licensee

12 Access for the Licensor

To permit the Licensor reasonable access to the Premises with or without workmen upon reasonable prior notice and accompanied at all times by a representative of the Licensee for the purpose of inspection or carrying out necessary works of repair to the structure of the Building.

THE THIRD SCHEDULE

The Licensor's Warranty and Undertakings

1 Warranty

The Licensor warrants that it has legal title to the Premises and the Building and has obtained the consent of any mortgagee or other third party necessary to enable it to grant the Agreement.

2 The Licensor covenants with the Licensee that:- Non-Interference

2.1 Save in emergencies it will not interfere with the Premises or the Apparatus and will take all reasonable precautions and steps necessary to ensure that no other person shall interfere or tamper with the same.

2.2 If the Licensee cannot demonstrate to the Licensor reasonable satisfaction that any communications apparatus to be installed and operated on the Premises within the Licensor's control will interfere with the operation of the Apparatus then the Licensor may at its own discretion refuse to permit such installation.

2.3 The Licensee shall ensure its equipment does not interfere with the normal operation and working of the Licensor's Equipment on the site(s) or any adjoining site.

2.4 In the event that the Licensee's equipment does cause interference, the Licensor may give written notice to the Licensee effective immediately, for the immediate discontinuance of the use of any of the Licensee's Equipment which may be causing such interference, until the interference is resolved to the reasonable satisfaction of the Licensor.

3 Electricity

Subject to the supply of electricity by the Kenya Power & Lighting Company Ltd, the Licensor (if the Licensee is connecting into the Licensor's electricity supply) make such supply available to the Licensee and will if the supply fails at any time as a result of its or its agents actions use its best endeavor to reinstate the supply as soon as reasonably possible.

4 Clearance of Rates and Rents

That the Licensor undertakes to settle any rents or rates pertaining to the Building or Land (as the case may be) that may be outstanding, owed to any Local Government Authority or any other such body legally constituted under the Laws of Kenya and entitled to levy such rents or rates.

THE FOURTH SCHEDULE

Terms

1 No Interest in Premises

It is hereby declared and agreed that the Agreement constitutes a mere License and confers no tenancy or other interest in the Premises upon the Licensee and that possession of the Premises is retained by the Licensor subject to the rights created by this License. The License

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does not nor shall any provision herein contained grant or create in favor of the Licensee: -

1.1 Any legal or equitable estate or interest in or over the Premises;

1.2 Any tenancy or lease over any part of the Premises.

2 Renewal of License

If the Licensee shall request the Licensor in writing at least three (3) calendar months before the expiration of the license period, the Licensee may grant to it a license of the premises for a further term to be agreed upon to commence from the date of expiration of the license term at the rent to be agreed upon

3 Limitation of liability

3.1 Except as provided herein the Licensor will not be under any liability (including liability for negligence) for any loss or damage or injury to the Licensee howsoever arising and will not be under liability in respect of any claim made against the other party by any third party including without limitation liability arising out of any product liability legislation.

3.2 Except as provided herein the Licensor shall not be under any liability for any direct, indirect, consequential or contingent loss or damage (whether for financial loss or profits, contracts, anticipated business, savings, use, goodwill or otherwise) costs, expenses or other claims for consequential compensation whatsoever and whether caused by the negligence of the other parties, its employees or otherwise howsoever arising and whether foreseeable or not.

3.3 Except as provided herein either party's liability shall not whether in contract, tort or otherwise exceed for any breach or breaches the sum of Ksh. 500,000.00 (Kenya shillings five hundred thousand only).

4 Termination and Transfer

4.1 In the event that the Premises is or becomes unsuitable for the operation of the Apparatus for the Permitted Use (including but not limited to) (i) the complete or partial destruction of the site (ii) the erection of new buildings on any land near to the Building (iii) other environmental changes to the area in which the Premises is located (iv) any technical reason relating to the Apparatus then notwithstanding the provisions of paragraph 2.2 the Licensee may negotiate with the Licensor for surrender of the Premises.

4.2 Unless the parties otherwise agree in writing any Service requested by the Licensee shall be provided by the Licensor for a minimum duration of one (1) year from the activation date. If the Customer terminates the service before the expiry of the minimum period, payment for the remaining period shall remain due in full. Upon expiry of the duration of the License as set out in the SOF, the License shall be automatically renewed for further periods of twelve (12) months, until terminated in accordance with the terms of these Terms and Conditions.

4.3 The Licensee may terminate the Agreement with immediate effect in the event that planning consent incorporating conditions acceptable to the Licensee has not been granted within Sixty (60) days of the date of the Agreement.

4.4 The Agreement may also be terminated by the Licensor upon issuing a ninety (90) day's notice to the Licensee in the event that the Premises are required for the Licensor's future expansion programs. By signing the Agreement the Licensee is deemed to have given its consent to modify its installations or vacate the premises if so required by the Licensor.

4.5 The Licensor may terminate the Agreement without cause and without incurring any liability thereof by giving thirty (30) days notice of termination upon expiry of

which the Agreement shall stand terminated. **THIS HAS TO BE RETAINED.**

4.6 Either party may terminate the Agreement at any time after giving ninety (90) days written notice to the other party (see 3.4). Upon termination of the Agreement, the Licensee shall be required to immediately remove all its apparatus from the premises. In the event that the Licensee fails to remove the apparatus within seven (7) days of termination of the Agreement, the Licensor reserves the right to remove all of the Apparatus from the premises at the Licensee's risk and expense and shall not be held liable for any damage and/or loss which may occur during removal of the said apparatus.

4.7 The Licensee may not assign or transfer or purport to assign or transfer the Agreement without having first obtained the Licensor's consent. The Licensor is free to assign, or transfer the rights and obligations in all or part of the Agreement to an affiliate or a third party, provided the Licensor ensures all the rights and obligations undertaken by the Licensor under the Agreement with respect to the Licensee are taken over. The Licensor will be released from its obligations on the effective date of the transfer, which will be notified to the Customer by the Licensor within a reasonable timeframe which may not be less than 30 days.

5 Breach

5.1 The Licensor shall be entitled to terminate the Agreement by written notice with immediate effect if the Licensee is otherwise in substantial breach of its obligations under the Agreement and it has not remedied the breach within Ninety (90) days of being given notice of such breach by the Licensor.

5.2 The Licensee shall be entitled to terminate the Agreement by written notice with immediate effect if the Licensor is otherwise in substantial breach of its obligations under the Agreement and it has not remedied the breach within Ninety (90) days of being given notice of such breach by the Licensee

6 Notices

6.1 Any notice to be served by either party upon the other shall be served by registered post or recorded delivery post addressed in the case of the Licensee to its registered office or last known address and in the case of the Licensor to its registered or last known address and such notice shall be deemed to have been received seven (7) working days after having been posted.

7 Variation and Waiver

7.1 The Licensor may change these Terms and Conditions at any time and will give notice of the changes, modifications/variations to the License or charges, any promotions and other information through advertisement in a daily newspaper or the Licensor's website www.telkom.co.ke. The Licensee shall be deemed to have been bound by such variation by continuing to collocate on the Premises.

7.2 Further, the parties agree that no act or waiver by either party shall be construed as a release of the other from their obligations under the Agreement unless done in accordance with this Clause.

8 Arbitration

8.1 Save as may be otherwise provided herein, all questions in dispute arising between the Parties hereto and all claims or matters in such dispute not otherwise mutually settled between the parties shall be referred to Arbitration by single Arbitrator to be appointed by agreement between the parties or in default of such agreement within Fourteen (14) days of the notification of such dispute by either party to the other, upon application by either party to the Chairman for the time being of the Kenya Branch of Chartered Institute of Arbitrators of the United Kingdom.

8.2 Every award made under this clause shall be subject to and in accordance with the provisions of the Arbitration Act 1995 (Act No. 4 of 1995) as amended

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from time to time or other Act or Acts for the time being in force in Kenya in relation to Arbitration.

8.3 To the extent permissible by law the determination of the Arbitrator shall be final and binding upon the parties.

8.4 Any Arbitration proceedings shall take place in Nairobi.

9 Laws

These Terms and Conditions and their performance shall be governed by and construed in all respects in accordance with the laws of Kenya.

10 General

10.1 The Apparatus belongs to the Licensee who shall have the right to remove all or any part of it at any time.

10.2 Where the Licensor's consent or approval is required under the terms of the Agreement it shall in all cases be subject to a requirement on the Licensor not to unreasonably withhold or delay such approval to consent.

10.3 The rights granted to the Licensee by the Agreement shall extend to the exercise of those rights by its agents contractors personnel link providers and others authorized by the Licensee from time to time.

THE FIFTH SCHEDULE

Specific Terms and Conditions for collocation services

1 Charges

1.1 As stated in Collocation Service Order Form.

1.2 Charges will escalate at 10% annually.