
GENERAL TERMS & CONDITIONS



Nairobi, Kenya

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General Terms and Conditions

1. INTERPRETATION

1.1 In these Terms and Conditions:

- 1.1.1 **“Act”** means Kenya Information and Communications, 1998.
- 1.1.2 **“Agreement”** means (if entered into by the Parties), the Enterprise Agreement together with the schedules thereto and the SLA, the Service Order Form(s) and these Terms & Conditions and appendices.
- 1.1.3 **"Authority"** means the Communications Authority of Kenya established in accordance with the Act.
- 1.1.4 **“Customer”** means the entity which has signed the enterprise agreement and /or Service Order Form relating to the provision of the Services by Telkom Kenya.
- 1.1.5 **“Disputed Amounts”** means the difference between the amount invoiced by Telkom Kenya and the Customer’s own amount obtained from their internal data for the Services.
- 1.1.6 **“Due Date”** means: (a) in relation to non-disputed amounts, 30 days after receipt of a Tax Invoice; and (b) in respect to disputed amounts, 30 days after the resolution of the dispute by the taskforce or the independent auditors as referred to in the Agreement.
- 1.1.7 **"Effective Date"** means the date of execution of the agreement or service order form between Telkom Kenya and the Customer.
- 1.1.8 **“Effective Order Date”** means the date of signature by the Party supplying the transmission capacity acknowledging the order of the Party requesting capacity.
- 1.1.9 **“Enterprise Agreement”** means a comprehensive agreement between Telkom Kenya and the Customer in relation to the provision of Services by Telkom Kenya.
- 1.1.10 **"Impairment of Service"** means any interference with or degradation or interruption of service provided over any systems of a Party, or any connected facilities of any third party.
- 1.1.11 **"Message"** means the delivery or conveyance, as the context requires, of voice, data, video over a Telecommunication System.
- 1.1.12 **“Parties”** means Telkom Kenya and the Customer and **“Party”** means any one of them.
- 1.1.13 **"Point of Presence" (POP)** means a location where an operator owns a building equipped with telecommunication apparatus, including transmission equipment or Switch that is part of an operator’s network.
- 1.1.14 **"Regulations"** means the regulations promulgated from time to time by the Authority in accordance with the Act.
- 1.1.15 **“Review Notice”** means a written notice requesting a review of the Agreement and which sets out in reasonable detail the issues to be discussed by the Parties.
- 1.1.16 **“Routes”** means Telkom Kenya’s designed, engineered and constructed fibre optic link and any other facility that may be designed, engineered and constructed by Telkom Kenya for the exclusive use by and at the request of the Customer.
- 1.1.17 **“Service Order Form”** or **“SOF”** means the document signed by the Customer and accepted by Telkom Kenya describing all administrative, technical and billing information needed by Telkom Kenya to provision, manage and invoice a high capacity link for the Customer.

- 1.1.18 **“Services”** all unregulated services that Telkom may from time to time offer the Customer.
 - 1.1.19 **“SLA”** means the Service Level Agreement referred to in Schedule 6 to the Enterprise Agreement or otherwise entered into by Telkom Kenya and the Customer.
 - 1.1.20 **“Supporting Billing Information”** means such information, as is agreed between the Parties, which is necessary to ascertain the charges payable by either Party under the Agreement.
 - 1.1.21 **“Switch”** means telecommunication apparatus within a telecommunication system, which performs the function of switching and routing Calls (but excluding the base station controller);
 - 1.1.22 **“System”** means the either The Customer System or the Telkom Kenya System, as the context may require.
 - 1.1.23 **“System Alteration”** means a change to one Party’s System, plant or apparatus or equipment otherwise used in connection with that System, which is such as to materially affect or impact the operation of the other Party’s System, plant, apparatus or equipment used for the conveyance of Calls/Messages as contemplated by the Agreement in a material way.
 - 1.1.24 **“Telecommunications System”** means a system for the conveyance of voice, data and video through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy.
 - 1.1.25 **“Telkom Kenya”** means Telkom Kenya Limited.
 - 1.1.26 **“Working Day”** means Monday through Friday with the exception of Kenyan public and religious holidays.
- 1.2 In these Terms and Conditions:
- 1.2.1 Words and phrases shall have the same meaning as in the Act and the licences granted to each of the Customer and Telkom Kenya unless the context requires otherwise;
 - 1.2.2 any reference in the singular includes the plural and vice versa;
 - 1.2.3 any reference to any act, statutory provision, Regulation or other subordinate legislation shall be to that Act, statutory provision, regulation or subordinate legislation as modified or re-enacted or both from time to time whether before or after the Effective Date;
 - 1.2.4 a person includes a reference to a body corporate, association or partnership;
 - 1.2.5 a person includes a reference to that person's legal personal representatives, successors and lawful assigns;
 - 1.2.6 a Clause or Schedule, unless the context otherwise requires, is a reference to a clause of or schedule to these Terms and Conditions; and
 - 1.2.7 a document is a reference to that document as from time to time supplemented or varied.
- 1.3 The headings in these Terms and Conditions do not affect its interpretation.
- 1.4 All provisions of these Terms and Conditions are subject to the Regulations.

2. SCOPE

These Terms and Conditions as read with (as the case may be) the Enterprise Agreement, the SOF and the SLA) establishes the terms in accordance with which the Customer shall lease the high capacity links from Telkom Kenya.

3. CHARGES FOR SERVICES, BILLING AND PAYMENT

- 3.1 In consideration of Telkom Kenya's provision of the Services to the Customer pursuant to the Agreement, the Customer shall pay the charges set out in the relevant Service Order Form (SOF).
- 3.2 All charges due to Telkom Kenya under the Agreement are exclusive of any Taxes, Withholding Taxes, Value Added Tax ("VAT"), which shall be charged thereon in accordance with any relevant regulations in force in Kenya at the time of making the taxable supply and, subject to an appropriate Tax invoice, shall be paid by the Customer.
- 3.3 All charges due to Telkom shall be paid exclusive of any taxes, duties, levies, and withholding taxes of whatever nature that may be levied relating to the Agreement.
- 3.4 The Customer shall pay to the Kenya Revenue Authority any tax payable on the charges at such rate as may be prescribed by the Kenyan taxation law from time to time. Subject to Clause 3.5 and unless stated otherwise in the Agreement, all charges due to Telkom Kenya under the Agreement shall be payable by the Customer in the currency mentioned in the SOF and on the Due Date. Payment of all charges due may be done by The Customer to the bank account notified from time to time by Telkom Kenya or such other method as may be agreed from time to time.
- 3.5 Where the Customer *bona fide* disputes that an amount is due, it shall pay the undisputed portion in accordance with Clause 3.4 within fifteen (15) Working Days. Thereafter, The Customer shall give Telkom Kenya a written statement of the reasons why the amount is in dispute, including supporting evidence. The Parties then have ten (10) Working Days to resolve the billing dispute. If the billing dispute is not resolved within the ten (10) Working Days, then the billing dispute will be resolved in accordance with Clause 24.
- 3.6 Any payment not made by the Due Date shall bear interest in favour of the Party to whom the payment is due at a rate equal subject as hereinafter provided in this Clause to 2% per annum above the numerical average of the Kenya Commercial Bank Limited, Standard Chartered Bank Kenya Limited and Barclays Bank of Kenya Limited Kenyan shillings base lending

rates as from time to time published by them, from the Due Date until the date of payment. Amounts remitted pursuant to this Clause are for services rendered and shall be determined in good faith and in accordance with such practices as are generally recognized by telecommunication operators internationally to be consistent with sound international business practice.

- 3.7 Notwithstanding any dispute between the Parties as to any payment, the Parties through the term of the Agreement remain obliged to observe and perform their respective obligations under the Agreement.

4. QUALITY OF SERVICE

- 4.1 Telkom Kenya shall ensure it adheres to such technical and service standards and use its best endeavours as necessary to ensure a high quality of service delivery including but not limited to those set out in the relevant SLA in relation to the Services provided to the Customer. However, neither Party shall act in such a manner as to place the other Party in breach of its respective license or the Regulations.

- 4.2 Telkom Kenya reserves the right to modify, change, add to or replace the Telkom Kenya network, or any apparatus comprised therein provided that it shall inform the Customer in writing as soon as reasonably practicable and not less than 30 days before any such modification, change, addition or replacement provided always that any such modification, change, addition or replacement shall be carried out at Telkom Kenya's own expense and will not materially detract from, reduce or impair the performance or operation of Services in accordance with the SLA, or require any material alteration to the physical interface or protocol used by the Customer in using the Services.

5. SERVICE CREDITS

- 5.1 In each individual event when Telkom Kenya fails to restore a fault of service within the fault restoration period in accordance with the SLA Telkom Kenya shall provide the Customer with Service Credits as specified in the SLA. Such Service Credits shall be settled in the course of invoicing the Customer in accordance with Clause 3.

- 5.2 Telkom Kenya shall continue (without prejudice to the Customer's other rights) in its efforts to deliver the Services and Service Credits shall continue to accrue for each day of delay until the Service have been provided successfully by Telkom Kenya or the Customer exercises the option to terminate the order in line with the SLA.

- 5.3 The payment of the aforesaid Service Credits are considered to be fair and reasonable by both Parties, as a reasonable pre-estimate of fair compensation for the losses that may be reasonably anticipated from such failure by Telkom Kenya to perform its obligations under the Agreement and is not a penalty.
- 5.4 Payment of the aforesaid Service Credits will not relieve Telkom Kenya from its obligation to perform the Services or from any of its other obligations and liabilities under the Agreement.
- 5.5 Service Credits due to the Customer under this clause shall be deducted from the charges billed monthly as defined in the SLA.
- 5.6 In the event of:
- 5.6.1 an act of force majeure as defined in Clause 16 (Force Majeure), of the Agreement; or
- 5.6.2 any proven act or omission of the Customer, its servants or agents,
- being such as fairly to entitle Telkom Kenya to an extension of time for completion of the installation and commissioning of the Services and the works, or any section or part thereof, the Customer shall determine the period of such extension and shall notify Telkom Kenya accordingly.
- 5.7 The Customer will however not be under an obligation to make any determination under Clause 5.6 unless Telkom Kenya has within seven (7) Working Days after such event has first arisen notified the Customer indicating detailed particulars as to why an extension of time is required.
- 5.8 Without prejudice to the Customer's rights set out in the Agreement upon receipt of Telkom Kenya's notification and detailed particulars the Customer shall without undue delay make a determination within ten (10) Working Days if an extension of time is to be accorded to Telkom Kenya and shall notify Telkom Kenya accordingly.
- 5.9 Notwithstanding the grant of an extension of time under any clause of the Agreement, time shall continue to be treated as of the essence in the Agreement on the part of Telkom Kenya.

6. SYSTEMS PROTECTION AND SAFETY

- 6.1 Each Party is responsible for the safe operation of its System and equipment within its network on its side of any point of interconnection and shall take all reasonable and necessary

steps to ensure that its System and equipment within its network on its side of the point of interconnection does not:

- 6.1.1 endanger the health or safety of employees, contractors, agents or customers of the other Party or members of the public, generally; or
 - 6.1.2 damage or interfere with or cause any material deterioration to the normal operation of the other Party's System.
- 6.2 In the event that either Party causes an Impairment of Service, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing or permitting or suffering the Impairment of Service (the "Impairing Party") of the nature and location of the problem and that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to resolve promptly the Impairment of Service. If the Impairing Party is unable to remedy promptly the Impairment of Service, then the Impaired Party may discontinue the use of the affected circuit, facility or equipment until such time as there is no Impairment of Service. In the event that Telkom Kenya causes an Impairment of Service, the provisions of the SLA shall apply.

7. STANDARDS

- 7.1 Telkom Kenya shall ensure that systems provided by it pursuant to the Agreement, including its apparatus used to provide the service, shall conform with national standards and operating guidelines which shall conform with relevant international standards, including but not limited to those of the International Telecommunication Union ("ITU").
- 7.2 Any additional standards which might be required for the purposes of the Agreement shall be agreed upon between the Parties.
- 7.3 Telkom Kenya shall not connect or knowingly permit the connection to its Telecommunication System of any equipment which does not meet the requirements specified in Clauses 7.1 and 7.1 or which shall degrade the quality of the Customer's network.

8. FRAUD

The Parties shall co-operate with one another to investigate, minimise, and take corrective action in cases of fraud.

9. REVIEW

- 9.1 A Party may seek to amend the Agreement by serving on the other Party a Review Notice not later than the expiration of a one year period commencing on which the event giving rise to the review occurred, if:
- 9.1.1 either Party's licence is materially modified (whether by modification or replacement);
 - 9.1.2 the Parties agree in writing that there should be a review;
 - 9.1.3 a material change occurs in the law or Regulations (including codes of practice whether or not having the force of law) governing telecommunications in Kenya; or
 - 9.1.4 a material change (including enforcement action by the Authority) occurs which affects or reasonably could be expected to affect the commercial or technical basis of the Agreement.
- 9.2 The Parties shall negotiate in good faith the matters to be resolved with a view to agreeing any relevant amendments sought to the Agreement by either Party.
- 9.3 For the avoidance of doubt, the Parties agree that notwithstanding service of a Review Notice the Agreement shall remain in full force and effect.

10. PROVISION OF INFORMATION AND OPERATIONAL LIAISON

- 10.1 Subject to any undertakings on confidentiality or to Clause 17, each Party shall provide appropriate information including, but not limited to, information regarding network control and management, as is reasonably required by the other Party for provision of telecommunication services and facilities.
- 10.2 The Parties shall consult together on a timely basis relating to the operation of the Agreement and apply their best endeavours to resolve any problems revealed during such consultation or otherwise encountered in relation to the Agreement.
- 10.3 Without prejudice to the provisions of Clause 10.2 each of the Parties may appoint a representative who shall together oversee the organisation of the day-to-day practical implementation of the Agreement and each of them shall liaise with the other and report to the Party appointing him on any problem which has not proved capable of resolution. On receipt of such report the Parties shall consult with a view to achieving a mutually acceptable solution to such a problem.
- 10.4 The Parties may establish working committees as needed, which shall consist of individuals representing each of the Parties.

10.5 The frame and composition of these working committees shall be mutually agreed upon by the Parties, from time to time.

11. LIMITATION OF LIABILITY

11.1 Save where the Agreement requires, neither Party has an obligation of any kind to the other Party beyond the obligation to exercise reasonable skill and care in operating according to the provisions of the Agreement.

11.2 Subject to Clause 11.3, if a Party is liable to the other Party for the breach of any of its obligations under the Agreement (excluding the liability to settle any charges incurred pursuant to Clause 3 of these Terms and

11.3 Conditions, or any fines imposed by the Authority on one Party where that Party's default was caused by the other Party) or otherwise, such Party's liability to the other Party shall be limited to Kenya Shillings 50 Million for any one event or series of connected events and Kenya Shillings 100 Million for all events, whether connected or not, in any period of twelve calendar months.

11.4 Subject to Clause 11.2, neither Party shall be liable to the other Party under the Agreement for any indirect or consequential loss suffered, including, without limitation, loss of profit, goodwill, business opportunity or anticipated savings.

11.5 Neither Party excludes or restricts in any way liability for death or personal injury resulting from negligence.

11.6 Telkom Kenya shall implement reasonable precautions to prevent any unauthorised access by third parties to any part of the Telkom Kenya network and Telkom Kenya shall not be liable for any loss or damage sustained by the Customer in the event of any unauthorised access in spite of Telkom Kenya's reasonable precautions.

12. INDEMNITY & INSURANCE

12.1 Subject to Clause 11 and Clause 13.2 Telkom Kenya hereby agrees to indemnify and hold harmless the Customer, from and against all claims, liabilities, losses, damages, and expenses incurred (including any legal costs or penalties and liabilities awarded or imposed by a court or expenses properly incurred) by the Customer pursuant to any breach or non-observance by Telkom Kenya of any of its obligations or representations under the Agreement.

- 12.2 Telkom Kenya shall not, however, be liable under the foregoing indemnity to the extent that any such losses are determined to have resulted directly from the proven negligence or wilful misconduct of the Customer.
- 12.3 Telkom Kenya acknowledges and agrees that its obligations hereunder shall be in addition to any rights that the Customer may have at law or otherwise.
- 12.4 Where the Customer is entitled to claim any indemnity under the Agreement, the Customer shall have the right to off set the value of such indemnity against any other amounts owing to Telkom Kenya from the Customer under the Agreement.
- 12.5 Telkom Kenya shall, at its own expense, obtain and maintain with an insurance company acceptable to the Customer an insurance policy. At a minimum the insurance policy will cover the following:
- 12.5.1 all liability which Telkom Kenya and/or the Customer may incur in respect of any workmen's compensation, personal injury, death, loss or damage to property, Telkom Kenya's plant, materials and equipment howsoever caused or arising out of or in the course of performance of the works hereunder;
- 12.5.2 Telkom Kenya's plant and equipment while on site; and
- 12.5.3 all usual public and private risks associated with the conduct of the works.
- 12.6 Telkom Kenya shall upon request by the Customer at any time produce to the Customer every such policy of insurance and the receipt for the current year's premium.
- 12.7 Should Telkom Kenya fail to insure as provided in this Clause, then the Customer may, proceed to insure against the risks in respect of which Telkom Kenya has failed to insure and may deduct a sum equivalent to the amount paid by it in respect of premiums from any money due or to become due to Telkom Kenya or terminate the Agreement forthwith by giving written notice to that effect.

13. INTELLECTUAL PROPERTY

- 13.1 Nothing in these Terms and Conditions shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other Party for any purpose whatsoever.
- 13.2 Neither Party shall have any obligation to defend, indemnify or hold harmless, or to acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the

other Party based on or arising from any claim, demand or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under the Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.

14. TERM

14.1 The Agreement shall take effect on the Effective Date and shall continue in force until expiration of the last SOF duration. If, upon the expiration of the term specified in an SOF, Telkom Kenya continues to provide services to the Customer, the SOF shall be automatically renewed for further periods of twelve (12) months (or such other period as may be agreed by the Parties) until terminated in accordance with the terms of the Agreement.

14.2 A Party (the "Initiating Party") may give written notice to the other Party (the "Breaching Party") to terminate the agreement with immediate effect on or at any time after the occurrence of the following events in relation to the Breaching Party:

14.2.1 with immediate effect if either Party ceases to hold a licence granted to it by the Authority pursuant to the Act;

14.2.2 with immediate effect following service of notice as referred to Clause 16.2.

14.2.3 the Breaching Party being in breach of a material obligation under the Agreement and, if the breach is capable of remedy, failing to remedy the breach within not less than thirty days starting on the day after receipt of written notice from the Initiating Party giving full details of the breach and requiring the Breaching Party to remedy the breach and stating that a failure to remedy the breach may give rise to termination under this Clause 14.2.3;

14.2.4 the Breaching Party passing a resolution for its winding up or a court of competent jurisdiction making an order for the Breaching Party's winding up or dissolution;

14.2.5 the making of an administration order in relation to the Breaching Party or the appointment of a receiver over, or an encumbrance taking possession of or selling a significant asset of the Breaching Party;

14.2.6 the Breaching Party making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally.

15. CONSEQUENCES OF TERMINATION

- 15.1 Each Party's further rights and obligations cease immediately on termination except that Clauses 3 and 14, together with those clauses the survival of which is necessary for the termination or enforcement of the Agreement, or those which are stated to survive (for example Clause 17), shall survive termination of the Agreement. Termination of the Agreement shall not be deemed a waiver of a breach of any term of these Terms and Conditions and shall be without prejudice to a Party's rights, liabilities and obligations that have accrued prior to the date of termination.
- 15.2 Upon termination, the Parties shall co-operate with each other to ensure that such steps are taken as are necessary for recovery by each Party of telecommunication apparatus (if any) supplied by the other Party (including where that apparatus is on the premises of the other Party).
- 15.3 If 30 days after the termination of the Agreement, a Party fails to recover telecommunication apparatus in good condition, taking into account fair wear and tear, because of the acts or omissions of the other Party, the first Party may demand reasonable compensation from the other Party which shall be paid by the other Party within 10 days of the date of the demand.
- 15.4 Without prejudice to this Clause, the Parties shall use their best endeavours to enter into a new Enterprise Agreement pursuant to the obligation to provide to the other Party services in accordance with any license granted under the Act.
- 15.5 In the event of early termination, the Customer shall pay Telkom Kenya monthly recurring charges that would have become due for each month of the un-expired portion (if any) of the current service term.

16. FORCE MAJEURE

- 16.1 If a Party (the "Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under the Agreement (other than a payment obligation) by a Force Majeure Event:
- 16.1.1 the Affected Party's obligations under the Agreement are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;
- 16.1.2 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 the Agreement;

16.1.3 if the affected Party does not comply with Clause 16.1.2 it forfeits its rights under Clause 16.1.1;

16.1.4 the Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under the Agreement; and

16.1.5 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 the Agreement.

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

16.3 In this Clause, "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.

17. CONFIDENTIALITY

17.1 In this Clause 17, "Confidential Information" means the contents of the Agreement and all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a Party (the "Disclosing Party") to the other Party (the "Receiving Party") whether before or after the date of the Agreement including, without limitation, information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.

17.2 During the term of the Agreement and after termination or expiration of the Agreement for any reason, the Receiving Party:

17.2.1 may not use Confidential Information for a purpose other than the performance of its obligations under the Agreement;

17.2.2 may not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or in accordance with Clauses 17.3 and 17.4 and

- 17.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.
- 17.3 During the term of the Agreement the Receiving Party may disclose Confidential Information to any of its directors, other officers or employees, (a "Recipient") to the extent that disclosure is reasonably necessary for the purposes of the Agreement.
- 17.4 The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under the Agreement as if the Recipient was a Party to the Agreement.
- 17.5 Clauses 17.1 to 17.4 do not apply to Confidential Information which:
- 17.5.1 is at the date of the Agreement, or at any time after that date becomes, publicly known other than by the Receiving Party's or Recipient's breach of the Agreement; or
 - 17.5.2 can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party; or
 - 17.5.3 is required to be disclosed by law or the Regulations or by a Party's licence or under international stock exchange rules or other applicable legislation.
- 17.6 This Clause 17 shall survive termination of the Agreement.

18. COSTS

Except where the Agreement provides otherwise, each Party shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of the Agreement and of each document referred to in it.

19. FURTHER ASSURANCE

Each Party shall (at its own cost) do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably within its power to implement the Agreement.

20. NON-EXCLUSIVE

- 20.1 The Parties may enter into agreements for similar services with any other telecommunication operator in Kenya according to the terms and conditions set out in their respective licenses. Neither Party shall require the other to provide or receive the services on an exclusive basis.

20.2 Nothing herein contained shall be deemed to constitute a partnership, agency or joint venture between the parties.

21. GENERAL

21.1 The Agreement and any document referred to in the Agreement constitute the entire agreement, and supersede any previous agreements, between the Parties relating to the subject matter of the Agreement.

21.2 Telkom Kenya may change these Terms and Conditions at any time and will give notice of the changes, modifications/variations to the Services or charges, any promotions and other information through advertisement in a daily newspaper or Telkom Kenya's website www.telkom.co.ke. The Customer shall be deemed to have been bound by such variation by continuing to use the Services.

21.3 Failure to exercise or delay in exercising a right or remedy provided by the Agreement 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 the Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

21.4 Except where the Agreement provides otherwise, the rights and remedies contained in the Agreement are cumulative and not exclusive of rights or remedies provided by law.

21.5 Each date, time or period referred to in the Agreement is of the essence. If the Parties agree in writing to vary a date, time or period, the varied date, time or period is of the essence.

21.6 The invalidity, illegality or unenforceability of any provision of the Agreement shall not affect the validity, legality or enforceability of the remaining provisions of the Agreement.

21.7 No provision of these Terms and Conditions creates a partnership between the Parties or makes a Party the agent of the other Party for any purpose. A Party has no authority or power to bind, to contract in the name of, or to create a liability in the name of the other Party for the other Party in any way or for any purpose.

22. ASSIGNMENT AND SUBCONTRACTING

22.1 The Customer may not assign or transfer or purport to assign or transfer the Agreement without having first obtained Telkom Kenya's written consent. Telkom Kenya 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 Telkom Kenya ensures all the rights and obligations undertaken by the

provider under the Agreement with respect to the Customer are taken over. Telkom Kenya will be released from its obligations on the effective date of the transfer, which will be notified to the Customer by Telkom Kenya within a reasonable timeframe which may not be less than 30 days.

- 22.2 A Party may not subcontract the performance of any of its obligations under the Agreement without having first obtained the other party's written consent.

23. NOTICES

- 23.1 A notice or other communication under or in connection with the Agreement shall be in writing in the English language and shall be delivered personally or sent by pre-paid recorded delivery (and air mail if overseas) or by telex or by fax, as follows:

23.1.1 if to the Customer, at the address set out in the Service Order Form.

23.1.2 if to Telkom Kenya, to:

Telkom Kenya Plaza
Ralph Bunche Road
P. O. Box 30301
00100-Nairobi
Kenya
Fax: 020 343399

Marked for the attention of: "The Chief Executive Officer:" or

23.1.3 to another person's address specified by a Party by written notice to the other.

- 23.2 In the absence of evidence of earlier receipt, a notice or other communication is deemed given on a working day in Kenya;

23.2.1 if delivered personally, when left at the address referred to in Clause 23.1 on a working day;

23.2.2 if sent by post except air mail, two working days after posting it;

23.2.3 if sent by air mail, six working days after posting it; and

23.2.4 if sent by fax, on successful completion of its transmission on a working day in Kenya.

- 23.3 Either party may provide changes in the above addresses in writing given to the other part as aforesaid.

24. GOVERNING LAW, JURISDICTION AND LANGUAGE

- 24.1 These Terms and Conditions are governed by, and shall be construed in accordance with the laws of Kenya.
- 24.2 It is understood and agreed that the Parties shall carry out the Agreement in the spirit of mutual co-operation and good faith and shall seek to resolve amicably any disputes arising between them.
- 24.3 During any period of dispute, before or until resolution in accordance with Clause, a Party shall not disrupt services being provided to the other Party, change any level of service being provided to that Party or take any other actions which might materially and adversely affect that Party's service.
- 24.4 The above procedures shall be without prejudice to any other rights or remedies a Party may have under the Agreement which may only be finally determined by the Courts of Kenya.
- 24.5 Any dispute or difference between the Parties relating to the rights or obligations of the Parties under the Agreement shall be referred to and finally determined by arbitration in Nairobi. Following the service of notice of a dispute in the manner referred to in Clause 24.6 by one Party on another, that a matter be referred to arbitration, the Parties shall agree on an arbitrator. If the Parties cannot agree on an arbitrator within 21 (twenty one) days of such notice being served, either Party may apply in writing (with a copy to the other Party) to the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch to appoint an arbitrator. Both parties shall be given the opportunity to make representations to the arbitrator. In all cases the arbitrator shall be instructed to respond with his/her written decision sent to both parties at the same time, as soon as reasonably practicable and in any event, within 30 (thirty) days of the referral. The arbitration shall be conducted in English Language. No arbitrator shall be related or employed by or have any material business relationship with either Party. This Clause 24.5 shall not preclude the making of any application to court for injunctive relief or for the enforcement of such award of the arbitrator.
- 24.6 The process by which any proceedings are begun pursuant to the Agreement shall be served on either Party by being delivered in accordance with Clause 23. Nothing contained in this Clause 24.6 affects the right to serve process in another manner permitted by law or the requirements of any Regulations to serve notice on the Authority.
- 24.7 These Terms and Conditions are drawn up in the English language. If the Terms and Conditions are translated into another language, the English language text shall prevail.

Customer Declaration: We understand that the services from Telkom Kenya are subject to these Terms and Conditions and we agree to be bound by them.

SCHEDULE 1: CODE OF PRACTICE

1. GENERAL

1.1. This Schedule on “Codes of Practice” covers the procedures and processes in the operations and maintenance of t services between Telkom Kenya and the Customer.

2. SAFETY AT WORK

2.1. Each Party shall ensure that the equipment installed to work with the other Party’s system conforms to ITU and other national and internationally accepted Standards.

2.2. Safety at work practices shall be maintained at all times and periodic inspections to ensure the same shall be carried out by each Party. Such safety at work practices shall include:

2.2.1. Clean work environment- tools and jigs kept well;

2.2.2. Ensuring acceptable radiation levels in accordance with national regulations and internationally recognised standards;

2.2.3. Provision of safety headgears;

2.2.4. “Danger” signs on High Voltage bus-bars;

2.2.5. Safety circuit breakers to isolate power supply to equipment;

2.2.6. Availability of adequate fire extinguishers;

2.2.7. Notices on safety clearly displayed e.g. actions in the event of fire, fire exits, etc.

2.2.8. Each Party shall ensure that all civil structures such as towers and buildings installed at each other's site(s) or leased or hired for use by another Party meet the National Safety regulations and internationally recognised standards. The towers are to be subjected to the approval of the Directorate of Civil Aviation and must meet international safety standards at all times.

2.3. It is the responsibility of each Party to ensure that all National Health, Safety & Environment Regulations are met at each Party’s site.

2.4. Each Party shall be responsible for the applicable Workmen’s Compensation and insurance thereof in respect of their own staff and contractors while working at each other's site.

3. NETWORK FRAUDS AND FRAUDULENT PRACTICES

3.1. Either Party shall use their best endeavours to prevent any network frauds or fraudulent practice originating from the Party’s network to the other Party’s network. In the event a network fraud or fraudulent practice is noted or implied from data derived by either Party, then the Party concerned shall initiate action with the other Party for the setting-up of a joint technical team to investigate and identify the nature of fraud and/or fraudulent practice for joint corrective action by the two Parties.

4. KENYA INFORMATION AND COMMUNICATIONS ACT AND KENYA COMMUNICATIONS REGULATIONS

4.1.1. It shall be the responsibility of each Party to ensure that their telecommunications systems and sub-systems are in compliance with the Act, or any Regulations in force as required by the Authority.

4.1.2. Each Party shall ensure that the civil structures such as towers and buildings installed at each other’s sites have the necessary regulatory approvals and meet the required standards at all times.