



CONSTITUENCY INNOVATION HUBS AGREEMENT

----- **CONSTITUENCY**

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THIS AGREEMENT IS MADE THIS day of two thousand and seventeen between the **Ministry of Information, Communications and Technology** of Post Office Box 30025-00100 Nairobi in the Republic of **Kenya** (hereinafter referred to as the “**Ministry**”) and the Constituency Development Fund Committee for **Constituency** of Post Office Box Number Nairobi, In the said Republic both (herein after referred to as the (hereinafter referred to as the “**Committee**”) (which expression shall where the context so admits includes its successors in title and assigns) of the one part and **Telkom Kenya Limited** of Post Office Box Number 30301-00100 in the Republic of Kenya herein after referred to as the “**Company**” (which expression shall where the context so admits include it’s successors in title and assigns) of the other part individually referred to as the “**Party**” and collectively as the “**Parties**”.

WHEREAS the Ministry is mandated to ensure that Kenya progresses to a knowledge based economy through the deployment and utilization of an appropriate and robust ICT infrastructure;

AND WHEREAS the Committee has the mandate of facilitating project development in the Constituencies through allocation of the necessary resources;

AND WHEREAS the Company has been in the business of providing ICT solutions to both the Public and Private Sector.

AND WHEREAS the parties are desirous of collaborating and partnering in the delivery of ICT solutions in the 290 constituencies countrywide, through constituency innovation hubs (hereinafter referred to as the “project”).

THIS AGREEMENT WITNESSES AS FOLLOWS:

1. SCOPE

- 1.1 The company shall supply, install, test and commission internet access equipment in 290 constituencies countrywide at four sites each (hereinafter referred to as the “Equipment”) in accordance with Annex 1 hereto.
- 1.2 The Company shall configure and operationalize internet access bandwidth in 290 Constituencies at four sites each countrywide, (hereinafter referred to as “the Service) in accordance with Annex II hereto.

2. RESPONSIBILITIES OF THE PARTIES

2.1 The Ministry shall be responsible for;

- a. Payments of all the recurring monthly charges incurred in the utilization of internet bandwidth in up to four sites in the 290 constituencies.
- b. Offering any other Information, Communication and Technology assistance or policy guidance and/or support to ensure efficient delivery of the services in the Project.

2.2 The Committee shall be responsible for:

- a. Undertaking necessary consultations with the respective Constituencies in the supply, installation, testing and commissioning of the equipment and the overall Project implementation.
- b. Provision of the necessary funds for the supply, installation, testing and commissioning of Equipment.
- c. Maintain liaison, as may be necessary with other Constituencies in the implementation of the Project.
- d. Facilitating the execution of the resulting framework contracts between the respective Committee and the Company in the Supply, Installation, Testing and Commissioning of the Equipment.
- e. Full time staff to man the place, have secure place to store the devices and have a framework and policies of operationalization of the hub

2.3 The Company shall be responsible for-

- a. Ensuring that the equipment supplied, installed, tested and commissioned is fully integrated/compatible with the services.
- b. Submitting the necessary invoices on the utilization of the internet for settlement by the Ministry.

3. PRICE AND PAYMENT TERMS

3.1 The total price for the four (4) sites for the supply, installation, testing and commissioning of the Equipment in Annex 1 hereto is at a total cost of **Kshs. 4,677,027.20 (Four million six hundred and seventy seven thousand and twenty seven, cents twenty only), VAT inclusive.**

3.2 The total price for the provision configuration and operationalization of the Service in the Annex II hereto is at a total cost of **Kshs. 562,368.00 (Five hundred and sixty two thousand three hundred and sixty eight only), VAT inclusive.**

3.3 The payment terms for the equipment shall be as follows-

4. TAXES

All equipment and services costs are inclusive of duties and taxes as may be levied in Kenya.

5. PACKING AND DELIVERY

5.1 The Company shall provide such packing of the Equipment as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.

5.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the framework contract between the Company and respective Committee.

5.3 Delivery of the equipment shall be made by the Company in accordance with the terms specified in the framework contract as per clause 5.2 hereinabove.

5. INSURANCE

The Equipment supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner provided under clause 5 herein.

6. INSPECTION AND TESTS

6.1 The Committee shall have the right to inspect and/or to test the equipment to confirm their conformity to the Contract specifications. The Committee shall notify the Company in writing in a timely manner, of the identity of any representatives retained for these purposes.

6.2 The inspections and tests may be conducted in the premises of the Company or its subcontractor(s), at point of delivery, and/or at the Equipment final destination if conducted on the premises of the Company or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Committee.

6.3 Should any inspected or tested Equipment fail to conform to the specifications, the procuring entity may reject the equipment, and the Company shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Committee.

6.4 The procuring entity's right to inspect, test and where necessary, reject the goods after the goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Committee or its representative prior to the equipment delivery.

7. PERFORMANCE SECURITY

The Company is required to submit to the Ministry and the Committee a performance security from a reputable bank or insurance company in Kenya in the amount of the total tender price awarded.

8. WARRANTY

8.1 The Equipment supplied under this Contract shall conform to the standards mentioned in the technical specifications

8.2 The Company warrants that the Project shall be executed in the highest possible standards of reasonable workmanship.

9. TERMINATION

9.1 The Ministry/Committee may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Company, terminate this Contract in whole or in part

9.1.1 if the Company fails to deliver any or all of the Equipment within the period(s) Specified in the Contract, or within any extension thereof granted by the Ministry/Committee.

9.1.2 if the Company fails to perform any other obligation(s) under the Contract

9.1.3 if the Company, in the judgment of the Ministry/Committee has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

9.2. In the event the Ministry/Committee terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, equipment similar to those undelivered, and the Company shall be liable to the Ministry/Committee and service for any excess costs for such similar goods.

10. DISPUTE RESOLUTION

10.1 The Ministry/Committee and the Company shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.

10.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration in accordance with Arbitration Act, 1995.

11. APPLICABLE LANGUAGE AND LAW

The language of the contract and the law governing the contract shall be the English language and the Laws of Kenya respectively unless otherwise stated.

12. FORCE MAJEURE

The Company shall not be liable for forfeiture of its performance security or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

13. AMENDMENT

This contract may be amended in writing on agreement by both parties.

14. NOTICE

If a party is dissatisfied with the decision of the adjudicator or if no decision is given within the time set out in the Rules, the Party may give notice of dissatisfaction referring to this Sub-Clause within 28 days of receipt of the decision or the expiry of the time for the decision. No notice shall be binding on the Parties who shall give effect to it without delay unless and until the decision of the adjudicator is revised by an arbitrator.

15. ASSIGNMENT

The Company shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Ministry/Committee prior written consent

Now the parties hereto have set their hands onto this Agreement on the day herein before written

FOR THE MINISTRY:

Signed on Behalf of the Ministry of Information, Communications and Technology

NAME Signature

Designation Date

FOR THE COMMITTEE OF THE Constituency

Signed on Behalf of the Committee

Name Signature

Designation Date

FOR THE COMPANY:- Telkom Kenya Limited

Signed on Behalf of the Company

Name Signature

Designation Date

Annex 1

Schedule of equipment and unit prices (One time charge) per constituency

S/N	ITEM	UNIT PRICE
1.	VSAT	224,725.00
2.	ROUTER	18,000.00
3.	DIGITAL ACCESS KIT	505,000.00
4.	WIFI	260,255.00
5.	EQPT SUB TOTAL/SITE (ONE TIME CHARGE)	1,007,980.00
6.	EQPT SUB TOTAL 4 SITES (ONE TIME CHARGE)	4,031,920.00
7.	Add 16%VAT	645,107.20
8.	EQPT TOTAL FOR 4 SITES (ONE TIME CHARGE)	4,677,027.20

Annex II

Schedule of Bandwidth unit prices (Monthly recurring charge) per constituency

S/N	ITEM	UNIT PRICE
1.	BANDWIDTH/SITE/MONTH (RECURRING)	10,100.00
2.	BANDWIDTH 4 SITES/YEAR (RECURRING)	484,800.00
3.	Add 16%VAT	77,568.00
4.	BANDWIDTH TOTAL SUM FOR 4 SITES/YEAR (RECURRING)	562,368.00