



# **ORDER FORM & AGREEMENT**

FOR

## **PROVISION OF INTERNET ACCESS AND ASSOCIATED SERVICES FOR CONSTITUENCY INNOVATION HUBS**

PROVIDED BY

**MINISTRY OF INFORMATION,  
COMMUNICATIONS AND TECHNOLOGY**

----- **CONSTITUENCY**

## Site and Contact Information

CONSTITUENCY NAME	
WARD NAME	
CENTRE NAME	
BUILDING NAME	
BUILDING GPS COORDINATES	
NAME OF OVERALL PERSON IN-CHARGE	
PRIMARY TELEPHONE NO	
SECONDARY TELEPHONE NO	
PRIMARY EMAIL:ADDRESS	
SECONDARY EMAIL ADDRESS	

### ADDITIONAL CONTACT INFORMATION

NAME OF TECHNICAL PERSON IN-CHARGE	
PRIMARY TELEPHONE NO	
SECONDARY TELEPHONE NO	
PRIMARY EMAIL:ADDRESS	
SECONDARY EMAIL ADDRESS	

### ADDITIONAL CONTACT INFORMATION

NAME OF FINANCE PERSON IN-CHARGE	
PRIMARY TELEPHONE NO	
SECONDARY TELEPHONE NO	
PRIMARY EMAIL:ADDRESS	
SECONDARY EMAIL ADDRESS	

**THE MINISTRY OF INFORMATION, COMMUNICATIONS AND TECHNOLOGY** of Post Office Box Number 30025-00100 Nairobi with offices at Telposta Towers, 10<sup>th</sup> Floor, Kenyatta Avenue, Nairobi (hereafter referred to as "the Service Provider" which expression shall include its successors and permitted assigns) on the one part;

**AND**

----- Constituency represented by HON ----- Member of Parliament (hereinafter referred to as "the Services Recipient" which expression shall include its successors and permitted assigns) on the other part.

**WHEREAS**

- (A)** The Services Provider is the Government Ministry mandated with the development and management of Information and Communications Technologies in and for the Republic of Kenya and will at its cost pay the monthly recurring charges for the services that will be provided by the installed equipment to 290 Constituencies in Kenya to support Internet Access to Constituency based Innovation Hubs;
- (B)** The Services Recipient has accepted to pay for and to receive the equipment that will be installed for the services.

**NOW THEREFORE the Parties hereto hereby agree as follows:**

**1. Basic Definitions and Interpretation**

In this Agreement the following expressions shall mean:-

- 1.1. **"Agreement"**: means this Internet Access and Associated Services Agreement including the Appendices attached hereto.
- 1.2. **"The Commencement Date"**: means the date upon which this Agreement is executed by both parties.
- 1.3. **"The Drawings"**: means the drawings, sketches and plans attached hereto as **Appendix 2** showing the agreed locations of the Service Provider's or Services Recipient's Equipment to be installed on the Site.
- 1.4. **"the Equipment"**: means either (as the case may be) the Service Provider's or the Services Recipient's installed and erected or to be installed, erected, commissioned, operated and or maintained on the Site including the transmission devices and all related cables and wiring power conduits electric ducts and all other ancillary equipment.

- 1.5. **“The Installation”**: means the installation of the Service Provider's or the Services Recipient's Equipment by the Service Provider's or the Services Recipient's (or its servants agents or contractors) on the Site and all other works carried out pursuant to this Agreement whether by the Service Provider's or the Services Recipient's .
- 1.6. **“Charges & Fees”**: means the fee payable for the services as specified in **Appendix 4. (Charges and Price schedule)**
- 1.7. **“Period”**: means the duration when the paid for services are made available to the Services Recipient.
- 1.8. **“Party”**: means either the Service Provider or the Services Recipient and **“Parties”** shall mean both of them.
- 1.9. **“The Plan”**: means the plan of the Premises and the Site as attached at **Appendix 2**
- 1.10. **“The Premises”**: means the land *(and buildings)* where the Service Provider installs and maintains the Equipment described in **Appendix 3**
- 1.11. **“The Site”**: means that part of the Premises being the area where the Service Provider installs and maintains the Equipment and more particularly described in the **Appendix 1**.
- 1.12. **“Special Works”**: shall include all works related to the erection, installation, operation and maintenance of the Contractor's Equipment where such works necessitate a modification in the type, structure or height of the Equipment or any other structure or building on the Site or where such works would result in the interruption of the normal working or operation of the Equipment on the Site.
- 1.13. **“Working Days”**: means Monday to Friday (inclusive) but excluding Saturdays and Sundays and all gazetted public holidays.
- 1.14. The time limits and other matters described in this Agreement are included for the benefit of the Parties and may from time to time be amended or extended upon the mutual written consent of both Parties.

## **2. Services Recipient Obligations**

The Services Recipient agrees

- 2.1. To provide suitable and secure premises and space that shall be adequate for the installation.
- 2.2. To provide a suitable and voltage stabilised power source for the installation.
- 2.3. To undertake all ICT service readiness activities at the installation premises that are/will be identified including but not limited to structured cabling, workstations, room partitioning etc.
- 2.4. To allow the Service Provider to install and maintain its Equipment on the Site, in, on or around the building(s) (if any)

- 2.5. To allow the Service Provider access to the Premises and the Equipment at all times (24 hours per day, 365 days per year) for the purposes of carrying out the installation of the Equipment and repairing, maintaining and replacing the same.
- 2.6. Not to permit and to take all necessary steps to prevent its servants, agents or licensees or any other person(s) under its direct or indirect control from tampering with or interfering in any way with the installed Equipment.
- 2.7. To give immediate notice in writing to the Service Provider in the event of fire, flood, or other such emergency or accident at the Site which the Service Recipient becomes aware of and which is likely to affect the Service Provider's Equipment.
- 2.8. 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

### **3. Service Provider's Obligations**

- 3.1. Ensure that its Equipment causes no adverse interference or and use of the Site.
- 3.2. Comply at all times with all Laws, Statutes, Regulations and By-Laws in force or applicable to the Service Recipient's business, Equipment or Site during the term of this Agreement and to comply with all orders and or requirements of such laws.
- 3.3. To pay for the subscription charges and fees in respect of Bandwidth capacity that will be provided pursuant to this Agreement.

### **4. Variation of Terms**

Subject to clause 6 hereunder (termination), in the event that there is a substantial variation by any applicable legislation or statutory regulations, the Parties shall meet to decide whether it is economically viable and mutually beneficial for the Parties to continue with this Agreement and in such event shall agree to written modifications to this Agreement.

### **5. Limitation of Liability**

Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other for indirect or consequential loss including but not limited to damages for loss of revenues or profits, loss of goodwill or any incidental, consequential, indirect or special damages in connection with the performance or non-performance of this Agreement, whether or not that Party was advised of the possibility of such damage.

### **6. Termination**

- 6.1. In the event of a breach of this Agreement by either Party, the Party claiming the breach shall be entitled to serve on the other written notice specifying the breach and requiring that Party to remedy the breach:

- a. Immediately if stated to be in the opinion of the Party claiming the breach to be a material breach; or
  - b. Within Three (3) months for any other type of breach;
  - c. If after the expiry of such notice period (if any) the Party in breach has failed or refused to remedy the breach, the Party claiming breach shall be entitled to terminate this Agreement by written notice forthwith but subject to the terms and conditions contained herein.
- 6.2. Either Party may terminate this Agreement at any time by giving to the other at least Three (3) calendar months written notice to that effect.
  - 6.3. The Service Provider may terminate this Agreement in the public interest.
  - 6.4. Any termination shall be without prejudice to any antecedent rights or liabilities of either of the Parties.

## **7. Consequences of Termination**

The Service Provider shall at its own cost and expense remove all its Equipment, effects and such additions or alterations as shall reasonably be directed by the Service Recipient and shall make good all damage, to the reasonable satisfaction of the Service Recipient, and where applicable the Government or other authority in compliance with this Agreement.

## **8. Force Majeure**

- 8.1. Neither Party shall be held liable for any breach of any of its obligations under this Agreement if such a breach results from an event of force majeure which for the purposes of this Agreement shall mean any event or circumstance which materially affects either Party in a manner which prevents that Party from performing or fulfilling some or all of its obligations in this Agreement and where such event or circumstances is not within the reasonable control (directly or indirectly) of the Party affected, and such event or circumstance or its effects cannot be prevented, avoided or removed by such Party acting in accordance with prudent practice.
- 8.2. Force Majeure shall include, but not limited to floods, earthquakes, natural phenomena, war, decisions of the Government; any Regulator; or County Government.
- 8.3. The Party unable to perform its obligations under this Agreement by reason of such an event must immediately and in any case within five (5) days notify the other Party of the occurrence of such event and the likely duration of the resulting non-performance.
- 8.4. The Parties shall meet as quickly as possible and in any event in no more than Forty-eight (48) Hours to examine the measure to be taken to minimize the consequences of the said event. The performance of the Agreement shall then be suspended in whole or in part until the event in question comes to an end. Nevertheless, if the said event continues in

existence for more than Three (3) months, this Agreement may be terminated forthwith by written notice by the other Party.

8.5. Such termination shall be without prejudice to the existing rights and obligations of the Party under this Agreement.

**9. Notices**

Any notice or other written communication required to be given or served under this Agreement may be delivered or sent by registered mail or facsimile to the recipient at the address, and marked for the attention of the person specified below or such other address or person from time to time designated by notice to the other in accordance with this clause and any such notice or communication shall be deemed to be received upon delivery or Seven (7) days after posting, or when sent by facsimile upon confirmation of uninterrupted transmission by a transmission report provided that any notice given by facsimile shall be confirmed by a letter sent by hand or post, but without prejudice to the original facsimile notice if received in accordance with this clause.

**For the Service Recipient:**

Office of the Member of Parliament  
----- Constituency  
Tel: .....  
For the Attention of: .....

**For the Service Provider:**

The principal Secretary  
Ministry of Information, Communications and Technology  
P.O Box 30025 - 00100 GPO  
Kenya  
Tel: .....  
For the Attention of: .....

**10. Dispute Resolution**

The parties shall use their best efforts to settle amicably any dispute arising from or in connection with this Agreement or the interpretation thereof. Each Party shall select its representatives to carry out such amicable discussions

**11. Arbitration**

11.1. If the dispute has not been settled amicably within fourteen (14) days or such longer period as may be agreed upon between the parties from when the discussions were commenced, any party may elect to commence arbitration. Such arbitration shall be referred to arbitration by a single arbitrator to be appointed by agreement between the Parties or

in default of such agreement within fourteen (14) days of the notification of a dispute, upon the application of either Party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators of the United Kingdom ("the institute") who shall appoint an arbitrator.

- 11.2. Such arbitration shall be conducted in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995 (Act No. 4 of 1995) or any other statutory modification or re-enactment thereof or such other Act or Acts for the time being in force in Kenya in relation to arbitration and the rules of Arbitration of the Institute.
- 11.3. To the extent permissible by Law, the determination of the arbitrator shall be final and binding upon the parties.  
Any arbitration proceedings shall take place in Nairobi.

## **12. Governing Law**

This Agreement shall be governed in accordance with the laws of Kenya.

## **13. Miscellaneous**

- 13.1. The terms and conditions contained herein supersede all prior oral or written understandings between the parties and constitute the entire agreement between them concerning the subject matter of this Agreement.
- 13.2. This Agreement shall not be modified or amended except in writing signed by authorized representatives of the parties.
- 13.3. This Agreement may be executed in any number of counterparts (including facsimile copies), and it will become an enforceable agreement once both parties have delivered a signed counterpart to the other. In proving this Agreement, it will not be necessary to produce or account for the original counterpart signed by the party against whom the proof is being presented.



**APPENDIX 1**

**The Premises:** shall comprise of initially one Centre in each of the 290 constituencies. Subsequent installations up to 4(four) shall be supported.

Constituency Name -----

Ward Name -----

Site name -----

GPS Coordinates -----

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**APPENDIX 2**

The Plan, sketches and the Drawings

To be provided for each Site/Premises and shall form an integral part of this agreement

### APPENDIX 3

#### The Equipment

Internet Access	Product	Quantity
Vsat	1.2M ,3W, iDirect X1	1
	Vsat Mount	1
	Vsat Cable & Connectors	1
WiFi	Airmax Omnidirectional 2.4GHz 13dbi antenna	2
	Unifi AP	2
	Mikrotik Router RB2011-UiAS-RM	1
	Mikrotik Basebox 2	1
	RPSMA Cable (Female to Female) 1m long	2
WiFi Consumables	Trunking (2x2) -3m	2
	12U Wall mount Rack	1
	Cable Clip 6mm (box)	1
	Cat 6 Cable (Roll)	150m
	Power Extension - 6 way	2
	RJ45 connectors	50
WiFi Mounts	WiFi Mount + Lightning Arrestor Accessories	1
Solar	Solar Kit - Optional	1

Digital Classroom		
KIO Kit	"digital classroom in a box" 40 tablets in a box	1

**APPENDIX 4**

**Charges, Fees and Price Schedule**

Annex 1

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

S/N	ITEM	UNIT PRICE KES
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.	Add 16%VAT	161,276.80
7.	EQPT TOTAL PER SITE (ONE TIME CHARGE)	1,169,256.80

**All Charges and Fees for equipment are Payable to Telkom Kenya Limited**

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

<p><b>FOR THE SERVICES PROVIDER</b> Signed on Behalf of the <b>Ministry of Information, Communications and Technology</b></p> <p>Signature: .....</p> <p>Name: .....</p> <p>Designation: .....</p> <p>Date: .....</p> <p><b>Witness:</b></p> <p>Signature: .....</p> <p>Name: .....</p> <p>Designation: .....</p> <p>Date: .....</p>	<p><b>FOR THE SERVICES RECIPIENT</b> Signed on Behalf of ----- CONSTITUENCY</p> <p>Signature: .....</p> <p>Name: .....</p> <p>Designation: .....</p> <p>Date: .....</p> <p><b>Witness:</b></p> <p>Signature: .....</p> <p>Name: .....</p> <p>Designation: .....</p> <p>Date: .....</p>
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