

**Reference Infrastructure
Sharing Offer**

from

Provider

Version 1.1

DATE

1. Preface

1.1 Reference Offer

This Reference Infrastructure Sharing Offer, which is presented in the form of a standard contract, deals with fiber and duct infrastructure sharing services which *Provider* offers to other licensed telecom Operators and Service *Providers*. The charges being made available in this Reference Offer will be applied to all Operators on a non-discriminatory basis. In the event that an agreement is reached with any single Operator on new rates for any service covered by this Reference Infrastructure Sharing Offer, then those rates will be made available to all licensed Operators.

1.2 The Reference Infrastructure Sharing Offer only applies to:
Organizations that are licensed to provide telecommunications services in Rwanda .

Provider will not be responsible for the content of traffic and services conveyed through its Infrastructure Sharing Services.

1.3 This Reference Offer takes effect from [*insert day / month / year*] and shall continue in effect until superseded by a revised Reference Offer.

1.4 *Provider* reserves the right to review and to revise this Reference Offer on a regular basis but in any event, not more frequently than quarterly per annum. Further, *Provider* shall review and revise this Reference Offer when required to do so by the Authority acting in exercise of the powers conferred on it by the Law.

1.5 Any revision of the terms of this Reference Offer shall be subject to the approval of the Authority. Once approved by the Authority, the Revised Offer shall replace or amend this Reference Offer..

**STANDARD FIBER AND DUCT
INFRASTRUCTURE SHARING
AGREEMENT**

DATED

Between

Infrastructure Seeker Name

and

Provider Name

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Annex E Non Disclosure Agreement

Annex F Service Level Agreement *[to be expanded by Infrastructure Provider]*

To be developed by Infrastructure Provider:

Annex G Technical Manuals

Annex H Operations and Maintenance (O&M) Manuals

Annex J List of *Provider* Sites and Network Routes with Service Availability

THIS AGREEMENT is made on [Date]

Between

[*Infrastructure Seeker*] having its registered office at [*Infrastructure Seeker's Address*]
(hereinafter referred to as "*Infrastructure Seeker*" or "*Seeker*")

and

[*Provider*] having its registered office at [*Infrastructure Provider's Address*],
(hereinafter referred to as "*Provider*")

1. Introduction

Whereas

- (a) The *Infrastructure Seeker* is in possession of either a valid Telecommunications Licence, to provide telecommunications services pursuant to the provisions of the Telecommunications Law.
- (b) *Provider* has been requested to provide and share access to its infrastructure and is in possession of a Telecommunications Licence pursuant to the provisions of the Telecommunications Law.
- (c) *Provider* has agreed to provide Infrastructure Sharing to its networks, in accordance with the Guidelines [RURA/ICT InfraDev/ XXX], as amended or superseded from time to time and to the supply of services and facilities on the terms and conditions as provided for in this Agreement.
- (d) Subject to the Regulations, the Parties agree that the Infrastructure Sharing Agreement shall govern the terms and conditions of infrastructure sharing of dark fiber and duct installations, through which the *Infrastructure Seeker* can request Physical Co-location from *Provider* in respect of the *Provider's* Points-of-Presence.

In consideration of the mutual covenant and obligations contained in this Agreement, the Parties HEREBY AGREE AS FOLLOWS:

2. Definitions and Interpretations

- 2.1 In this Infrastructure Sharing Agreement, except if the context requires otherwise, words and expressions are as defined in Annex A.
- 2.2 Terms defined in relevant legislation of Rwanda (which, for the avoidance of doubt includes directions and/or decisions published by the Authority) shall, where used in this Agreement, have the meanings ascribed to them in such legislation.
- 2.3 The following documents form part of this Infrastructure Sharing Agreement and, in the event of any inconsistencies between them, the order of precedence shall (unless expressly stated to the contrary) be as follows:

Main Body Document

Annex A Definitions

Annex B Billing and Payments

Annex C Service Descriptions *[to be updated by Infrastructure Provider]*

Annex D Service Pricing *[to be developed by Infrastructure Provider]*

Annex E Non Disclosure Agreement

Annex F Service Level Agreement *[to be updated by Infrastructure Provider]*

To be developed by Infrastructure Provider:

Annex G Technical Manuals

Annex H Operations and Maintenance (O&M) Manuals

Annex J List of *Provider* Sites and Network Routes

3. Commencement and Duration

3.1 This Agreement takes effect on *[insert date here]* and shall continue until terminated in accordance with this Agreement as set out in section 16 of this Agreement

4. Infrastructure Sharing

4.1 Infrastructure Sharing enables the *Infrastructure Seeker* to use services for its own operations or to provide services to its customers through the direct access to *Provider's* Infrastructure facilities. Infrastructure Sharing consists of a series of individual services and service components, each Infrastructure Sharing Service offered as part of the Agreement is described in Annex C to this Agreement and these shall be referred to collectively in this Agreement as Services.

5. Services

5.1 The service descriptions attached to this document at Annex C detail the Services which the *Provider* provides under this Agreement.

5.2 The Service Level Agreement attached to this document at Annex F provides details on the level of service which *Provider* provides under this Agreement.

6. Charging for Services

6.1 The charges payable for Infrastructure Sharing fall into certain categories; these are explained in Annex B to this Agreement.

6.2 The charging structure for each Service is set out in the Services Schedules attached at Annex C. The specific charges for each Service are set out clearly in Annex D.

6.3 The *Infrastructure Seeker* agrees to pay the charges as set out in this Agreement and is liable for payment of charges relevant to all services ordered or used by the *Infrastructure Seeker*.

6.4 Charges paid under this agreement are non-refundable

6.5 The process for reviewing and amending charges for Services covered by this Agreement is described in clause 19 of this Agreement.

7. Billing and Payment

7.1 *Provider* shall issue invoices for Services taken by the *Infrastructure Seeker* under this Agreement. Such invoices shall be provided in a timely manner and accurately reflect the charges set out in Annex D of this Agreement.

7.2 The *Infrastructure Seeker* shall be liable for all charges levied by *Provider* in relation to provision of Services pursuant to this Agreement.

7.3 Details of billing and payment obligations are set out in Annex B.

8. Provision of Information

8.1 *Provider* will provide to the *Infrastructure Seeker* as soon as reasonably practicable, data regarding the *Provider* network. The data is provided for the sole purpose of enabling the *Infrastructure Seeker* to consider whether to request Services from *Provider* pursuant to this Agreement. A list of *Provider* network sites and routes is provided in Annex J of this Agreement.

8.2 The *Provider* network data shall comprise the following information:

- the location of *Provider* Sites;
- the routing of dark fiber and duct installations;
- where available, information on the availability of co-location, including a list of *Provider* Sites where co-location facilities are:
 - likely to be provided,
 - may be provided subject to further detailed survey, and
 - cannot be provided;

8.3 *Provider* shall ensure that such information is kept up to date and as accurate as reasonably possible and shall provide the *Infrastructure Seeker* with reasonable notice of any significant changes to the information.

8.4 *Infrastructure Seeker* shall maintain an audit trail of personnel who have access to such information. The audit trail information shall be made available to *Provider* on request.

8.5 Upon termination of this Agreement the *Infrastructure Seeker* shall destroy any copies of the data in the *Infrastructure Seeker's* possession and shall certify to *Provider* that this has been done.

8.6 Except as otherwise agreed, each Party shall provide free of charge one copy of the information reasonably required from time to time by the other Party for the provision of Service pursuant to this Agreement.

8.7 Notwithstanding any provision of this Agreement a Party shall not be obliged to provide information which is subject to a confidentiality obligation to a Third Party unless such Third Party consents to such disclosure.

- 8.8 The Disclosing Party will use reasonable endeavours to ensure that information disclosed is correct to the best of its knowledge at the time of provision of such information.
- 8.9 If a Disclosing Party provides information to a Receiving Party, the Disclosing Party shall have obtained all appropriate Third Party consents.
- 8.10 The Receiving Party shall indemnify the Disclosing Party and keep it indemnified against all liabilities, claims, demands, damages, costs and expenses arising as a consequence of any failure by the Receiving Party to comply with the conditions reasonably imposed and identified at the time when the information was provided.
- 8.11 Nothing in this Agreement shall require a Party to do anything in breach of any statutory or regulatory obligation of confidentiality, including without prejudice to the generality of the foregoing, any obligation pursuant to the applicable data protection legislation or any code of practice on the confidentiality of customer information.

9. Compliance

- 9.1 The *Infrastructure Seeker* shall ensure that the *Infrastructure Seeker's* Compliant Equipment to be connected to the Optical Distribution Frame (ODF) or other *Provider* installations is in compliance with national and international standards.
- 9.2 The *Infrastructure Seeker* shall not connect or knowingly permit the connection to the ODF or other *Provider* installations of anything which is not Compliant Equipment or which is not necessary for the provision of telecommunications services by means of the relevant Infrastructure at the relevant *Provider* Site. The *Infrastructure Seeker* shall ensure that such Compliant Equipment remains compliant with any relevant standards including, without limitation, Electromagnetic compatibility (EMC) requirements and electrical safety. The *Infrastructure Seeker* shall comply with *Provider's* reasonable instructions on floor loading, heat output, or other relevant health, safety and security procedures before and during installation of any Compliant Equipment at a *Provider* Site.
- 9.3 *Provider* shall not be obliged to provide to the *Infrastructure Seeker* an ODF before the *Infrastructure Seeker* has confirmed to *Provider* in writing that the equipment that the *Infrastructure Seeker* proposes to attach to the ODF is and will remain Compliant Equipment and will operate within the limits of the power feeding voltages and currents specified in the ODF specification.
- 9.4 If the *Infrastructure Seeker* wishes to install equipment in Co-location facilities provided to the *Infrastructure Seeker* by *Provider*, or the *Infrastructure Seeker* shall prior to the commencement of such installation or connection demonstrate to *Provider*:
- 9.4.1 that such equipment is compliant with those standards for equipment to be installed in such areas as *Provider* may publish from time to time; and
- 9.4.2 that the *Infrastructure Seeker* and its employees and contractors are compliant with the standards published by *Provider* from time to time in

relation to access requirements and working practices to be employed. Such standards are included in Annex G to this Agreement.

9.5 *Provider* shall accept, reject or request additional information in response to the *Infrastructure Seeker's* communication within 5 Working Days of receipt.

9.6 *Provider* shall ensure that any *Provider* equipment installed at *Provider* Sites shall be and shall continue to be compliant and will operate within the limits of any relevant standards.

10. Interference with Others' Services

10.1 When *Provider* has reasonable grounds to believe that the *Infrastructure Seeker* is using equipment which is not Compliant Equipment or is otherwise causing interference to other services (including Third Party Operators' services) *Provider* may:

10.1.1 notify the *Infrastructure Seeker* of its reasonable grounds for believing that there is use of equipment which is not Compliant Equipment or interference taking place; and

10.1.2 give the *Infrastructure Seeker* a reasonable opportunity to demonstrate that this is not the case or to remedy the situation; and

10.1.3 if the *Infrastructure Seeker* fails to do so within a reasonable period suspend or cease service to the ODF concerned or if it is not possible to identify the ODF which is causing interference, service to the smallest number of ODFs that can reasonably be identified as being necessary to suspend in order to cease or prevent the interference.

10.2 If the *Infrastructure Seeker's* equipment adversely affects the normal operation of *Provider's* or any Third Party Operators' services, or is a threat to any person's safety, in an emergency *Provider* may suspend, to the extent necessary, such of its obligations hereunder, and for such period as may be reasonable, to ensure the normal operation of the *Provider* System or any Third Party Operator's system or reduce the threat to safety.

10.4 If *Provider* reasonably considers the equipment used by the *Infrastructure Seeker* is not Compliant Equipment, the *Infrastructure Seeker* shall on request from *Provider* to disconnect all necessary equipment in order to permit *Provider* to test the characteristics of that ODF.

10.5 The relevant equipment or ODF shall be reconnected as soon as practicable when the situation has been remedied.

11. Network Safety and Protection

11.1 Each Party is responsible for the safe operation of its Network and shall take all reasonable and necessary steps in its operation and implementation of this Agreement and use and provision of Services to ensure that it does not:

- Endanger the safety or health of employees, contractors, agents or customers of the other Party; or
- Damage, interfere with or cause the deterioration of the other Party's Network.

12. Service Levels

- 12.1 The Parties will both observe the service levels set out in Annex F to this Agreement and as changed by mutual agreement from time to time.

13. Network Alteration and Modifications

- 13.1 *Provider* shall give the *Infrastructure Seeker* reasonable notice of any anticipated Network Alteration and Network Modifications. *Provider* shall provide to the *Infrastructure Seeker* such information as the *Infrastructure Seeker* may reasonably request including, to the extent reasonably practicable, the potential impact of the change on the service of the *Infrastructure Seeker*.

14. Provisioning, Operation and Maintenance

- 14.1 The procedures for the installation and testing of any equipment in respect of a Service as well as for the operation and maintenance thereof shall be governed by the provisions of the Technical Manuals (Annex G) and the Operations and Maintenance Manuals (Annex H).

15. Resolution of Disputes

- 15.1 Each Party shall use its best endeavours to resolve any Disputes between them concerning the implementation, application or interpretation of this Infrastructure Sharing Agreement, in the first instance through negotiation between the parties through the normal contacts, hereinafter referred to as Level 1.
- 15.2 Disputes relative to billing and payment of charges under this Agreement shall be covered by the provisions of this Clause 15 and in addition, the following provisions will apply:

If, the *Infrastructure Seeker* shall have notified *Provider* of a dispute relating to an invoice issued pursuant to this Agreement and such dispute shall not have been resolved before the Due Date, and if the amount in dispute represents:

- 15.2.1 less than 5 per cent of the total amount of the relevant invoice, the total amount invoiced shall be due and payable on the Due Date; or
- 15.2.2 5 per cent or more of the total amount of the relevant invoice, the amount in dispute may be withheld until the dispute is resolved and the balance shall be due and payable on the Due Date.
- 15.3 Notwithstanding notification of a dispute, if the *Infrastructure Seeker* fails to pay on the Due Date any amount due under this Agreement the *Infrastructure Seeker*

shall pay interest from the due date at the Default Interest Rate, in respect of any such amount outstanding.

- 15.4 In the event of the Parties failing to resolve the dispute at Level 1 within one month, either Party may upon service of notice to the other escalate the dispute to the determination by the Authority. The Party serving the notice (the Disputing Party) shall include with such notice all relevant details including the nature and extent of the Dispute.
- 15.5 The name of each Party's liaison contact and representative at each level of consultation shall be as specified in clause 24 of this Agreement. No change to a liaison contact or representative shall be effective until it has been notified to the other Party.
- 15.6 The time limits specified at paragraphs 15.4 above may be extended by mutual agreement between the Parties.
- 15.7 The above procedures are without prejudice to any rights and remedies that may be available to the Parties in respect of any breach of any provision of this Infrastructure Sharing Agreement.
- 15.8 Nothing herein contained shall prevent a Party from seeking (including obtaining or implementing) interlocutory or other immediate or equivalent relief;

16. Breach, Suspension and Termination

- 16.1 In the event that either Party's licence to provide all or a material part of its Network is suspended by the Authority, the Party whose entitlement is not so suspended may terminate the Agreement (or such part thereof as may be reasonable in the circumstances) without advance notice.
- 16.2 A Party may terminate this Agreement by giving at any time to the other not less than 24 months' written notice to terminate.
- 16.3 After a notice has been given pursuant to paragraph 16.2 a Party may request the other Party to carry on good faith negotiations with a view to entering into a new agreement.
- 16.4 Following a request pursuant to paragraph 16.3, if, on termination of this Agreement either Party would be obliged under a condition to enter into a new agreement with the other Party then the Parties shall carry on good faith negotiations with a view to entering into a new agreement within a reasonable period.
- 16.5 If one Party's Network adversely affects the normal operation of the other Party's Network, or is a threat to any person's safety, the other Party may suspend, to the extent necessary, such of its obligations hereunder, and for such period as it may consider reasonable to ensure the normal operation of its Network or to reduce the threat to safety.

16.6 If a Party is in material breach of this Infrastructure Sharing Agreement (including failure to pay an undisputed sum due hereunder), the other Party may serve a written notice (the “breach notice”) on the Party in breach specifying the breach and requiring it to be remedied within:

16.6.1 thirty (30) calendar days from the date of receipt of such breach notice;
or

16.6.2 in case of emergency (excluding financial obligations) within such shorter period as the Party not in breach may reasonably specify.

16.7 If the Party in breach fails to remedy the breach within such period as may be specified by the Party not in breach pursuant to clause 16.8 the Party not in breach may, until such breach is remedied, suspend performance of such of its obligations under this Infrastructure Sharing Agreement as is reasonable in the circumstances.

16.8 If the Party in breach fails to remedy the breach within the period stated in the breach notice, the Party not in breach may terminate this Infrastructure Sharing Agreement on three (3) months' written notice provided always that if the Party in breach remedies the breach within such three (3) months' notice period, this Infrastructure Sharing Agreement shall not terminate as a result of such notice.

16.9 This Infrastructure Sharing Agreement may be terminated by either Party by written notice forthwith (or on the termination of such other period as such notice may specify) if the other Party:

16.9.1 is unable to pay its debts within the meaning of the companies law (Law No 07/2009 of 24/04/2009 relating to companies)

16.9.2 has a Receiver or Examiner appointed or has been subject to an application for the appointment of a receiver or an Examiner in relation to all or any of its assets or an encumbrancer has taken possession of all or a material part of its assets; or

16.9.3 has an order made or a resolution passed for its winding up (other than for the purpose of amalgamation or reconstruction); or

16.9.4 enters into a voluntary arrangement with creditors under the Companies law or

16.9.5 ceases to carry on business.

17. Confidentiality

17.1 The Parties agree to treat all confidential information defined as such in Annex E hereof as confidential in accordance with the terms and conditions outlined in Annex E hereof.

17.2 The contents of this Infrastructure Sharing Agreement, either in one or more parts or in its entirety, may not be divulged to any Third Party, with the exception of the Authority, without the written consent of both Parties.

18. Intellectual property rights

18.1 Except as expressly otherwise provided in this Infrastructure Sharing Agreement, intellectual property rights shall remain the property of the Party creating or owning the same and nothing in this Infrastructure Sharing Agreement shall be deemed to confer any assignment or right or title whatsoever or licence of the intellectual property rights of one Party to the other Party, and nothing in this Agreement shall be deemed to restrict the rights of any Party to own, use, enjoy, licence, assign or transfer its own Intellectual Property.

19. Review

19.1 A Party may seek to amend this Infrastructure Sharing Agreement by serving on the other a review notice if:

19.1.1 either Party's licence is materially modified (whether by amendment or replacement); or

19.1.2 a material change occurs in the law or regulations (including codes of practice whether or not having the force of law, but issued by a regulatory authority or an equivalent body) governing telecommunications in Rwanda; or

19.1.3 *Provider's* Reference Infrastructure Sharing Offer is changed.

19.2 This Infrastructure Sharing Agreement makes express provision for a review or the Parties agree in writing that there shall be a review; or

19.2.1 a material change occurs, including enforcement action by any regulatory authority, which affects or reasonably could be expected to affect the commercial or technical basis of this Infrastructure Sharing Agreement; or

19.2.2 this Infrastructure Sharing Agreement is assigned or transferred by the other Party except if prior written consent to the assignment or transfer is not required under clause 23 hereof; or

19.2.3 there is a general review pursuant to clause 19.4 hereof.

19.3 A review notice shall set out in reasonable detail the issues to be discussed between the Parties.

19.4 Either Party may initiate a general review of this Infrastructure Sharing Agreement by serving a review notice during the period of three (3) months commencing on 1st [*insert month*] in any year.

19.5 The charges for Infrastructure Sharing Services set out in the attached Services Schedules at Annex C and the charges contained in Annex D shall, in any case, be reviewed on an annual basis.

19.6 On service of a review notice, the Parties shall forthwith negotiate in good faith the matters to be resolved with a view to agreeing the relevant amendments to this Infrastructure Sharing Agreement.

- 19.7 For the avoidance of doubt, the Parties agree that notwithstanding service of a review notice this Infrastructure Sharing Agreement shall remain in full force and effect.
- 19.8 If the Parties fail to reach agreement on the subject matter of a review notice within three (3) calendar months (the relevant period) in each case from the date of service of such review notice, either Party may, not later than one calendar month after the expiration of the relevant period, request in writing for the Authority to determine:
- i. the matters upon which the Parties have failed to agree;
 - ii. whether this Infrastructure Sharing Agreement should be modified to take account of such matters; and, if so
 - iii. the amendment or amendments to be made.
- 19.9 The Parties shall enter into an agreement to modify or replace this Infrastructure Sharing Agreement in accordance with what is agreed between the Parties to conform with the Authority's determination.
- 19.10 The Parties may, at any time, agree in writing a variation to the time periods specified above in relation to a particular review notice.

20. Force Majeure

- 20.1 Neither Party shall be liable for any breach of this Infrastructure Sharing Agreement caused by acts of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, compliance with any statutory, regulatory or legal obligation, industrial disputes of any kind (other than a strike or lockout induced by the party so incapacitated), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, acts or omissions of persons for whom neither Party is responsible or any other cause whether similar or dissimilar outside its reasonable control and any such event or circumstance is a force majeure.
- 20.2 The Party initially affected by a force majeure shall promptly notify the other of the estimated extent and duration of its inability to perform or delay in performing its obligations ("force majeure notification").
- 20.3 Upon cessation of the service effects of the force majeure the Party initially affected by a force majeure shall promptly notify the other of such cessation.
- 20.4 If as a result of a force majeure, the performance by the Party, initially affected, of its obligations under this Infrastructure Sharing Agreement is affected, such Party shall, subject to the provisions of clause 20.6, perform those of its obligations not affected by a force majeure. In performing those of its obligations not affected by a force majeure, the Party initially affected by a force majeure shall deploy its resources such that (when taken together with other obligations to its customers and Third Parties) there is no undue discrimination against the other Party.
- 20.5 To the extent that a Party is prevented as a result of a force majeure from providing all of the services or facilities to be provided under this Infrastructure Sharing Agreement, the other Party shall be released to the equivalent extent

from its obligations to make payment for such services or facilities or complying with its obligations in relation thereto.

20.6 Following a force majeure notification and if the effects of such force majeure continue for:

20.6.1 a continuous period of not more than six (6) months from the date of the force majeure notification (whether or not notice of cessation has been given pursuant to clause 20.3) any obligation outstanding shall be fulfilled by the Party initially affected by the force majeure as soon as reasonably possible after the effects of the force majeure have ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party;

20.6.2 a continuous period of six (6) months or more from the date of the force majeure notification (and notice of cessation has not been given pursuant to clause 23.3), the Party receiving the force majeure notification shall be entitled (but not obliged) to terminate this Infrastructure Sharing Agreement by giving not less than thirty (30) working days written notice to the other Party, provided that such notice shall be deemed not to have been given if notice of cessation is received by the Party receiving the force majeure notification prior to the expiry of the thirty (30) working days notice. If this Infrastructure Sharing Agreement is not terminated in accordance with the provisions of this clause 20.6.2, any obligations outstanding shall be fulfilled by the Party initially affected by the force majeure as soon as reasonably possible after the effects of the force majeure have ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party.

21. Credit Assessment and Credit Risk Management

21.1 It is a condition precedent to this Agreement that the *Infrastructure Seeker* shall provide to *Provider* such financial security (whether by way of deposit, guarantee or otherwise) as *Provider* in its reasonable and fair opinion considers appropriate as proportionate security against the *Infrastructure Seeker's* non-compliance with or non-observance of any of the provisions hereof (including without limitation the failure to pay charges), unless otherwise agreed by *Provider* in writing.

21.2 *Provider* may, at any time, require the *Infrastructure Seeker* to enter into bank or other guarantees or to provide some other form of financial security, (for example a deposit) which in the reasonable and fair opinion of *Provider* is/are appropriate as proportionate security against *Infrastructure Seeker's* non-compliance with or non-observance of any of the provisions hereof (including failure to pay charges due). *Provider* reserves the right to treat refusal to provide such security or failure to provide such security within thirty (30) days (or such longer period as *Provider* may reasonably allow) of the date of *Provider's* request for the security as a breach of this Agreement by *Infrastructure Seeker*.

22. Limitation of Liability

22.1 Neither Party has an obligation of any kind to the other Party beyond an obligation to exercise the reasonable skill and care of a competent

telecommunications operator in performing its obligations under this Infrastructure Sharing Agreement.

- 22.2 Subject to clause 22.3, if a Party is in breach of any of its obligations under this Infrastructure Sharing Agreement to the other Party (excluding obligations arising under this Infrastructure Sharing Agreement to pay moneys in the ordinary course of business), or otherwise (including liability for negligence or breach of statutory duty) such Party's liability to the other shall be limited to [*insert the amount*].
- 22.3 Neither Party shall be liable to the other in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings, wasted expenditure or for any indirect or other consequential loss whatsoever arising in connection with the operation of this Infrastructure Sharing Agreement, howsoever caused.
- 22.4 Each provision of this clause 22 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

23. Assignment of Rights and Obligations

- 23.1 Unless otherwise agreed in writing, and subject to clause 23.2, no rights, benefits or obligations under this Infrastructure Sharing Agreement may be assigned or transferred, in whole or in part, by a Party without the prior written consent of the other Party.
- 23.2 No consent is required under clause 23.1 for an assignment of rights, benefits or obligations under this Infrastructure Sharing Agreement (in whole or in part) to a successor to all or substantially all of the assigning Party's Network to an associated company provided that such successor or Associated Company shall have had a licence granted to it to run the Network of the assigning Party.
- 23.3 The assigning Party shall promptly give notice to the other Party of any assignment permitted to be made without the other Party's consent. No assignment shall be valid unless the assignee/successor agrees in writing to be bound by the provisions of this Infrastructure Sharing Agreement.

24. Notices

A notice shall be duly served if:

- delivered by hand, at the time of actual delivery; or
- sent by facsimile, upon its receipt being confirmed; or
- sent by registered delivery post,

- 24.1 Except if otherwise specifically provided all notices and other communications relating to this Infrastructure Sharing Agreement (Level 1) shall be in writing and shall be sent as follows:

If to *the Infrastructure Seeker*:
Contact *Telephone*

Contact *Facsimile*
Address

If to *Provider* :
Contact *Telephone*
Contact *Facsimile*
Address

or to such other addresses as the Parties may notify from time to time pursuant to this clause 24.

25. Entire Agreement

25.1 This Infrastructure Sharing Agreement represents the entire understanding of and agreement between the Parties in relation to the subject matter of this Infrastructure Sharing Agreement, and, unless otherwise agreed in writing, supersedes all previous understandings, commitments, agreements relative to Infrastructure Sharing or representations whatsoever, whether oral or written.

26. Waiver

26.1 The waiver of any breach of, or failure to enforce, any term or condition of this Infrastructure Sharing Agreement shall not be construed as a waiver of any other term or condition of this Infrastructure Sharing Agreement. No waiver shall be valid unless it is in writing and signed on behalf of the Party making the waiver.

27. Severability

27.1 The invalidity, unenforceability of any provision of this Infrastructure Sharing Agreement shall not affect the validity or enforceability of the remaining provisions of this Infrastructure Sharing Agreement.

28. Amendments

28.1 Amendments and supplements to this Infrastructure Sharing Agreement, including its Annexes and Service Schedules shall in order for them to be valid, have been drawn up in writing, dated and signed by both Parties. Such amendment and supplements shall not affect the validity or enforceability of any of the remaining provisions of this Infrastructure Sharing Agreement.

29. Relationship of Parties

29.1 The relationship between the Parties is that of independent contractors. Nothing in this Infrastructure Sharing Agreement shall be construed to make either Party hereto an agent, joint venturer or partner of or with the other. Neither Party is granted any right of authority or agency, expressly or implicitly, on behalf of, or in the name, of the other nor any right to legally bind the other in any manner whatsoever. Neither Party shall become liable through any representation, act or

omission of the other which is contrary to or unauthorised by the provisions of this Infrastructure Sharing Agreement.

30. Governing Law

30.1 The interpretation, validity and performance of this Infrastructure Sharing Agreement shall be governed in all respects by the laws of Rwanda and the Parties submit to the exclusive jurisdiction of the courts of Rwanda.

IN WITNESS WHEREOF THIS AGREEMENT WAS ENTERED INTO THE DAY AND YEAR FIRST ABOVE WRITTEN.

SIGNED for and on behalf of

the Infrastructure Seeker.

[SIGNATURE]

[NAME (BLOCK CAPITALS)]

[POSITION]

SIGNED for and on behalf of

Provider :

[SIGNATURE]

[NAME (BLOCK CAPITALS)]

[POSITION].

Provider

Reference Infrastructure Sharing Offer

Annex A

Definitions

In this Agreement, words and expressions have the following meanings:

“Agreement”: this agreement, including all Annexes and Schedules thereto.

“Annex”: An Annex to this Agreement

“Appendix”: An Appendix to an Annex of this Agreement

“Associated Company” is a Subsidiary and Holding Company of such Party, the terms Subsidiary and Holding Company having the meanings described thereto in

“Authority”: Rwanda Utilities Regulatory Agency (RURA) as established by the law no. 39/2001.

“Billing Information”: That information which must be provided in support of invoices issued under this Agreement to enable the validation of an invoice.

“Central Earth Point”: A point provided in all *Provider* Sites where the electrical earth of all equipment is terminated.

“Commencement date”: The date of this Agreement.

“Compliant Equipment”: apparatus directly or indirectly connected to the ODF or on *Provider* site which is required for the purposes of providing a telecommunications service.

“Contractor”: An authorized person (corporate or individual) undertaking works for which he has been contracted by either *Provider* or the *Infrastructure Seeker* as the context may require.

“Dark fiber”: An optical fiber, which is not connected to any active equipment. See service description in Annex C

“Default Interest Rate”: interest rate charged in case of delayed payment of invoices

“Disclosing Party”: A Party disclosing information covered by this Agreement.

“Dispute”: Any disagreement between the Parties under this Agreement.

“Duct”: Part of the *Provider’s* Network allowing exclusively the installation of fiber optic cables as described in Annex C

“Due Date”: A date which is thirty (30) calendar days after the date of an invoice.

“Escorted Access”: the direct physical supervision by a person nominated for that purpose by *Provider* of another person entering a *Provider* Site.

“External Patch Cable”: a link by means of an external (optical) cable that connects the *Infrastructure Seeker’s* ODF at its site to an ODF at a *Provider* Site.

“Footprint”: The floor space *Provider* equipment or *Infrastructure Seeker* equipment.

“*Provider Licence*”: The Licence to operate a telecommunications network and offer telecommunications services as held by *Provider*.

“*Provider Network*”: The total infrastructure operated by *Provider* to provide telecommunications services.

“*Provider System*”: the Network provided by *Provider* for connection to the *Infrastructure Seeker* System pursuant to this Agreement.

“*HDF*”: Handover Distribution Frame – a point in a *Provider* or *Infrastructure Seeker* site where fiber cables are cross-connected.

“*Holding Company*”: A Company that holds shares either directly or through a nominee in a subsidiary Company or in two or more Subsidiary Companies as per the Companies Law

“*Internal Patch Cable*”: a link by means of an optical cable contained within a *Provider* Site that connects an ODF to a HDF in a Specified Floor Space.

“*Intellectual Property*”: Any patent, copyright, design, trade name, trademark, service mark or other intellectual property right (whether registered or not) including without limitation ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, tracings, diagrams, models and other information relating to any such intellectual property.

“*ITU*”: International Telecommunications Union.

“*Infrastructure Sharing Agreement*”: The agreement between *Provider* and the *Infrastructure Seeker* for the purposes of Infrastructure Sharing which shall include the main body of this Infrastructure Sharing Agreement, the Annexes, Schedules, and Appendices thereto.

“*Infrastructure Sharing Services*”: The services described in Annex C of this Agreement and collectively known as the Services.

“*ODF*”: Optical Distribution Frame – a *Provider* main distribution frame which is a point in a *Provider* building where cables from outside can be connected to the *Provider's* equipment.

“*Provider Site*”: the site of an operational building of *Provider* housing an ODF and other *Provider* equipment.

“*Network*”: The *Provider* Network or the *Infrastructure Seeker* Network as the case may be.

“*Network Alteration*”: A physical change within one Party's Network which is necessitated, to ensure continued efficient operation of the Services, by a change made by the other Party to this Agreement without bi-lateral agreement.

“*Network Modification*”: A software change within one Party's Network which is necessitated, to ensure continued efficient operation of the Services, by a change made by another Party to this Agreement without bi-lateral agreement.

“*Infrastructure Seeker*”: The Party entering into this Agreement with *Provider*.

“*Infrastructure Seeker Network*”: The total infrastructure operated by the *Infrastructure Seeker* to provide telecommunications services.

“*Infrastructure Seeker System*”: The Network provided by the *Infrastructure Seeker* for connection to the *Provider System* pursuant to this Agreement.

“*Order*”: A binding request for Service from the *Infrastructure Seeker* to *Provider*, submitted in accordance with the processes documented in this Agreement and in the Operations and Maintenance Manual.

“*Party*”: A party to this Agreement.

“*Physical Co-Location*”: an arrangement under which the *Infrastructure Seeker’s Compliant Equipment* is located at a *Provider’s Site*.

“*Physical Co-Location Facility*”: The location at which Physical Co-Location is provided.

“*PSTN*”: Public Switched Telecommunications Network

“*Ready for Service Date*”: The date by which an ordered Service or other activity requested by the *Infrastructure Seeker* is requested to be available.

“*Receiving Party*”: A Party who received any information from the other Party in relation to this Agreement.

“*Service(s)*”: the services described in the Service Schedules at Annex C to this Agreement as amended from time to time.

“*Service Schedules*”: The Schedules attached at Annex C which describe the Services.

“*Specification*”: any of the specifications in this Agreement together with any other relevant specifications for the provision of Infrastructure Sharing services.

“*Specified Floor Area*”: a floor area or areas within a *Provider Site* occupied by the *Infrastructure Seeker* where the *Infrastructure Seeker’s Compliant Equipment* is installed, specified against the *Provider Site*

“*Subsidiary*”: a Company in the case of which the conditions ascribed to it in the Companies Law are met.

“*System Alteration*”: a change to the *Provider System*, not including a change to an interface, which may materially affect service(s) of an *Infrastructure Seeker*.

“*System*”: The *Provider System* or, as the context requires, the *Infrastructure Seeker System*.

“*Technical Manual*”: A document describing technical aspects of the Services provided under this Agreement

“Third Party”: Any Party other than the Parties to this Agreement.

“Working Day”: Any day other than Saturdays, Sundays, public or bank holidays in Rwanda.

Provider

Reference Infrastructure Sharing Offer

Annex B

Billing and Payment

This Annex B is effective from the date of signature of this Agreement and shall remain in effect until amended following agreement of the Parties to such amendment.

1 Definitions

In this Annex, a reference to a clause or Appendix unless stated otherwise, is to a clause or Appendix of this Annex. Words and expressions have the meaning given in Annex A.

2 Billing and Payment Conditions

1. The *Infrastructure Seeker* shall be liable to pay *Provider* for the charges set out in the Price List in Annex D of this Agreement.
2. The Charges payable under this Agreement fall into two categories
 - Set-up charges (e.g. for connection setup or for co-location preparation)
 - Monthly charges (e.g. for ongoing service provision or infrastructure rentals)
3. Where possible, the Charges payable under this Agreement have been determined in advance and are based on the costs incurred in preparing, delivering and maintaining the Services. In some instances, charges will vary on a case-by-case basis and in these instances charges will be quoted on a case by case basis.
4. Invoices will be issued under two scenarios:
 - One-off (set-up) charges – for these charges, invoices will be issued in response to specific requests for Services from the *Infrastructure Seeker* and have to be paid in advance of the service provision
 - Monthly charges – for these charges, invoices will be issued monthly or quarterly in advance.
5. All Invoices will be issued in electronic and paper format. Date of Invoice will be the date of despatch of the invoice
6. All invoices will be payable within 30 days of invoice date. Payments not received within the due date will be subject to a default interest rate at [*insert amount*]% calculated on a daily basis.
7. Set-up charges must be received by *Provider* before the relevant activities will be commenced by *Provider*
8. *Provider* will provide information within the invoices to enable the *Infrastructure Seeker* to process the invoice.
9. Any Disputes which arise pursuant to invoices issued in relation to the charges, shall be subject to the provisions of clause 15 of this Agreement

Provider

Reference Infrastructure Sharing Offer

Annex C1

Service Description: Dark Fiber Service

[*Infrastructure Provider* may modify this Service Description to assure consistency with Technical and Operation & Maintenance Manuals, subject to approval by the Authority]

1. Introduction

This Annex defines the Dark Fiber Service.

The processes and technical information to support the implementation of this service are described in the Operations & Maintenance Manual (Annex H of this Agreement) and Technical Manual (Annex G of this Agreement).

All equipment and plant that is deployed as part of the implementation of this Service shall comply with the relevant national and international standards, as appropriate and as defined within this Agreement.

All installation procedures used must comply with standard industry practices and national and international standards, where appropriate and as defined within this Agreement.

2. Service Description

The Dark Fiber Service will be provided on a dedicated point-to-point connection terminating at an ODF that provides physical connectivity between the ODF of the *Provider* and the *Infrastructure Seeker's* ODF.

Physical connectivity to the co-location facility will be provided by means of an Internal Patch Cable or External Patch Cable.

The Dark Fiber Service allows the *Infrastructure Seeker* to connect appropriate optical transmission technologies to the fiber so allowing the *Infrastructure Seeker* to deliver its own transmission services.

The Dark Fiber Service can only be offered on fibers, which are terminated at an ODF at the *Provider's* site.

3. Geographic Restrictions

The Dark Fiber Service will be offered at locations and routes, which are listed in Annex J of this Agreement.

The *Infrastructure Seeker* requesting the Dark Fiber Service must have physical access to the *Provider* ODF by means of a co-location Service under the terms and conditions of this Agreement.

The Dark Fiber Service will be provided subject to the *Infrastructure Seeker* agreeing to observe the operational limitations and national and international standards when connecting its own equipment to the dark fiber.

The implementation of the Dark Fiber Service will be subject to physical and/or technical limitations and unforeseen costs highlighted during the implementation of this Service.

4. Chargeable Service Activities

The applicable charges for the Services described in this Annex are contained in the Price List contained at Annex D.

4.1. Provision of Dark Fiber Service

Subject to availability, dark fiber service will be provided at location(s) and route(s) listed in Annex J.

4.2. Removal of Dark Fiber Service

Removal of Dark Fiber Service takes place when an *Infrastructure Seeker* using a Dark Fiber Service requests a discontinuation of that Dark Fiber Service.

The removal of the Dark Fiber Service involves the disconnection of the *Infrastructure Seeker's* equipment from the ODF terminating the dark fiber.

4.3. Fiber Testing Resulting in "Fault not Found"

If a fault is reported by an *Infrastructure Seeker* regarding a Dark Fiber Service and when that Fiber is tested by *Provider* and the Fiber is found to meet, or exceed, the Fiber specifications (detailed in Annex G), a "Fault Not Found" would be deemed as the result. In that case, the *Provider* can charge the *Infrastructure Seeker* for the Fiber test according to Price List at Annex D.

4.4. Cancellation of an Application for Dark Fiber Service

If at any stage in the process to provide a Dark Fiber Service, an *Infrastructure Seeker* withdraws its application for such Service, the *Infrastructure Seeker* will be charged the full installation charge for the Service originally requested and/or additionally approved by the *Infrastructure Seeker* later during the provisioning process, as indicated in the Price List Annex at Annex D of this Agreement.

4.5. Optical Fiber

Unless otherwise agreed, the Fiber provided by *Provider* shall be single mode Fiber, installed and operating in conformity with generally accepted standards utilized by *Provider* for its own Network.

5. Interference

Any equipment installed by the *Infrastructure Seeker* must not interfere with equipment of the *Provider* or any other party operating equipment at the *Provider's* site.

It is the responsibility of the *Infrastructure Seeker* to comply with the specifications for associated telecommunications equipment and cables that are specified in the Dark Fiber Service Technical Description in Annex G of this Agreement.

6. Operational Requirements

Processes covering provisioning and maintenance of the interfaces between *Provider* and the *Infrastructure Seeker* are contained in the Dark Fiber Service Operations & Maintenance Manual at Annex H of this Agreement.

7. Technical Description

A technical description of the Dark Fiber Service is contained in Annex G of this Agreement.

8. Billing

The billing arrangements for this Service are set out in Annex B of this Agreement.

Provider

Reference Infrastructure Sharing Offer

Annex C2

Service Description: Duct Service

[*Infrastructure Provider* may modify this Service Description to assure consistency with Technical and Operation & Maintenance Manuals, subject to approval by the Authority]

1. Introduction

This Annex defines the Duct Service.

The processes and technical information to support the implementation of this service are described in the Operations & Maintenance Manual (Annex H of this Agreement) and Technical Manual (Annex G of this Agreement).

All equipment and plant that is deployed as part of the implementation of this Service shall comply with the relevant national and international standards, as appropriate and as defined within this Agreement.

All installation procedures used must comply with standard industry practices and national and international standards, where appropriate and as defined within this Agreement.

2. Service Description

The Duct Service will be provided as a dedicated point-to-point connection tube beginning and terminating at *Provider* sites or manholes along the *Provider's* routes.,*Provider* sites and routes are listed in Annex J of this Agreement.

The Duct Service allows the *Infrastructure Seeker* to install its own fiber-optic cables using appropriate equipment and procedures, which need to be approved by the *Provider*. All ducts are exclusively used for fiber-optic cable installations.

The Duct Service can only be offered where spare capacity is available.

3. Geographic Restrictions

The Duct Service will be offered at locations and routes, which are listed in Annex J of this Agreement.

The *Infrastructure Seeker* requesting the Duct Service must have physical access to the *Provider* site(s) by means of a co-location Service under the terms and conditions of this Agreement.

The Duct Service will be provided subject to the *Infrastructure Seeker* agreeing to observe the operational limitations and national and international standards when installing its own fiber cable(s) in the Duct.

The implementation of the Duct Service will be subject to physical and/or technical limitations and unforeseen costs highlighted during the implementation of this Service.

4. Chargeable Service Activities

The applicable charges for the Services described in this Annex are contained in the Price List contained at Annex D.

4.1. Provision of Duct Service

Subject to availability, Duct service will be provided at location(s) and route(s) listed in Annex J.

4.2. Removal of Duct Service

The duct service has a minimum service duration of 10 years. Removal of Duct Service takes place when an *Infrastructure Seeker* using a Duct Service requests a discontinuation of that Duct Service.

It is the full responsibility of the *Infrastructure Seeker* to remove all his installations from the Duct adhering to standards and procedures to be approved by the *Infrastructure Provider*.

4.3. Cancellation of an Application for Duct Service

If at any stage in the process to provide a Duct Service, an *Infrastructure Seeker* withdraws its application for such Service, the *Infrastructure Seeker* will be charged with a proportion of the full installation charge for the Service originally requested, as indicated in the Price List Annex at Annex J of this Agreement.

5. Interference

Any equipment installed by the *Infrastructure Seeker* must not interfere with equipment of the *Provider* or any other party operating equipment at the *Provider's* site.

It is the responsibility of the *Infrastructure Seeker* to comply with the specifications for associated telecommunications equipment and cables that are specified in the Duct Service Technical Description in Annex G of this Agreement.

6. Operational Requirements

Processes covering provisioning and maintenance of the interfaces between *Provider* and the *Infrastructure Seeker* are contained in the Duct Service Operations & Maintenance Manual at Annex H of this Agreement.

7. Technical Description

A technical description of the Duct Service is contained in Annex G of this Agreement.

8. Billing

The billing arrangements for this Service are set out in Annex B of this Agreement.

Provider

Reference Infrastructure Sharing Offer

Annex C3

Service Description: Co-location Service

[*Infrastructure Provider* may modify this Service Description to assure consistency with Technical and Operation & Maintenance Manuals, subject to approval by the Authority]

1. Introduction

This Annex provides the service description for Physical Co-Location Service.

The processes and technical information to support the implementation of this service are described in the Co-Location Operations & Maintenance Manual (Annex H of this Agreement) and Technical Manual (Annex G of this Agreement).

All equipment and plant that is deployed as part of the implementation of this service shall comply with the relevant national and international standards, as appropriate and as defined within this Agreement.

All installation procedures used must comply with standard industry practices and national and international standards, where appropriate and as defined within this Agreement.

The various product elements and their relationships are described in more detail in the Technical Manual for Co-Location, Annex G of this Agreement.

2. Service Description

The Physical Co-Location Service is a Service provided by *Provider* offering, where available, equipment space within a *Provider* Site by means of the construction of a dedicated Co-Location Space.

The Physical Co-Location space will provide equipment space which has been confirmed as being suitable for hosting transmission or other adequate ICT equipment owned by the *Infrastructure Seeker* for the purpose of installing fiber optic transmission or other ICT services.

The Physical Co-Location Facility will be provided in a custom built area within a *Provider* Site where co-location services have been requested, subject to space availability. The Physical Co-Location Facility will provide secure accommodation suitable for the installation, operation and maintenance of the *Infrastructure Seeker's* equipment by the *Infrastructure Seeker's* own personnel or a suitably authorized contractor.

The *Infrastructure Seeker's* equipment will connect to the ODF of the *Provider* via Internal or External Patch Cable(s).

The Physical Co-Location product contains a number of product modules. These are described in more detail in section 4 of this Annex.

3. Geographic Restrictions

Physical Co-Location will be offered at sites covered by the *Provider's* co-location offer. These sites are listed in Annex D of this Agreement.

The implementation of the Physical Co-Location will be subject to physical and/or technical limitations and unforeseen costs highlighted during the Service Implementation Process and described in Annex H of this Agreement.

Implementation is also subject to the availability of the supporting products described in this Agreement.

4. Physical Co-Location Service – Product Modules

The Physical Co-Location is provided through a number of product modules. These product modules are described in more detail in the following sections. Charges where applicable are included in Annex D.

4.1. Optical Distribution Frame (ODF)

Subject to availability the *Infrastructure Seeker's* equipment will be connected to the *Provider's* ODF.

Any requirements specified in the appropriate product descriptions will also apply.

4.2. Surveys

Physical Co-Location Service Initial Survey.

An initial desktop survey carried out by *Provider* will involve the examination of paper and software records to determine whether floor Space is available at the *Provider* Site that has the potential to house a Physical Co-Location Facility.

Physical Co-Location Service Detailed Survey

If the initial survey indicates the existence of suitable floor space in a *Provider* Site then a detailed physical survey will be carried out. The detailed survey will consist of two sections. The first section will be carried out by a civil engineer to establish whether the identified floor space is capable of being converted into a Physical Co-Location Facility and to produce an estimate of the work and costs involved. The second section will be carried out by *Provider* resource management staff to assess the capabilities of existing building facilities such as power, climate control, fire suppression (where available), fire alarms, to support the requirements of the *Infrastructure Seeker* for the Physical Co-Location Facility.

4.3. Cable Runways

On agreement with *Provider* the *Infrastructure Seeker* can utilize existing cable trays and cable baskets, where available, whether overhead or under the floor. These will be segregated for telecom/signaling and electrical power cables.

Where cable runways are not available, new cable trays will be designed and provided by *Provider* under the site preparation charges.

All installation procedures must conform to industry best practice.

4.4. Equipment Footprint Size

The equipment rack footprint to be provided by *Provider* has the following dimensions:

Depth: 300mm
Width: 600mm
Height: 2200mm

Where suitable space is available dual footprints might be provided by back-to-back installation of the racks i.e. the depth of the footprint will become 600mm.

4.5. AC Power

Each *Infrastructure Seeker* will be provided with access to a 32 Amp fused AC electric supply. This AC power supply is provided with a meter in order to record electricity usage.

The *Infrastructure Seeker* will be responsible for the provision, installation and maintenance of all power and earth cabling and ancillary equipment, excluding installation of cable trays, from the supply point to their equipment.

An isolation switch will be provided which will enable the distribution to be electrically isolated in the event of an emergency or accident.

4.6. Lighting

All lighting will conform to a minimum of 500 lux when measured at working level.

4.7. Rack Fixing

All fixing of the racks must conform to existing standards within each of the buildings.

4.8. Installation of *Infrastructure Seeker* equipment and associated cabling

The equipment will conform to the relevant ITU or other appropriate standards and specifications.

The installation and maintenance of the installed equipment should be undertaken in accordance with industry best practice.

4.9. Air Conditioning

Adequate air conditioning is generally provided by *Provider* at each of the Sites.

However, the ability to provide air conditioning for a particular *Infrastructure Seeker's* installation at any location will be dependent on the *Infrastructure Seeker* providing details of its equipment's heat dissipation rating, as new air conditioning facilities might have to be provided.

4.10. Security

The *Infrastructure Seeker* will conform to all on-site security requirements, as reasonably requested by *Provider's* managers and where specified in this Agreement.

4.11. Health & Safety

The *Infrastructure Seeker* will conform to all health and safety aspects as directed by *Provider's* health and safety policy and the general health & safety requirements.

4.12. Earthing

A Central Earth Point (CEP) is provided in all *Provider* Sites for telecommunications equipment. It will be the responsibility of the *Infrastructure Seeker* to ensure that all of their equipment is earthed within the Co-location Site and conforms to the practice deployed within the particular Site.

If it is necessary to undertake changes to the Common Earth Point due to the installation of the *Infrastructure Seeker's* equipment, its associated cables and any new cable runways, the *Infrastructure Seeker* will be advised of this, following the detailed survey.

4.13. Floor Loading

Where a false floor is provided the floor will be capable of a loading of up to a maximum of 20 kN/sq m.

The final determination of the floor loading will be subject to the specific site conditions.

4.14. Fire & Smoke Detection

Fire and smoke detection as well as fire suppression equipment will be provided, where appropriate, in accordance with current *Provider* policy.

4.15. Heat Dissipation

The individual heat dissipation per footprint must not exceed 2 kW. Heat dissipation in excess of this may affect the operation of other equipment and reduce the effect of the air conditioning plant.

The *Infrastructure Seeker's* equipment racks must have their own fans to draw in cool air once heat dissipation exceeds 1kW per footprint.

The *Infrastructure Seeker* must advise *Provider* of the heat dissipation per footprint. Physical Co-Location could be refused if the heat dissipated per footprint is considered excessive (i.e. greater than 2kW per footprint) by *Provider* and therefore likely to affect *Provider* or other *Infrastructure Seeker's* equipment.

5. Service Availability

If this service cannot be provided on the grounds of feasibility or the need to maintain network integrity or lack of capacity because of the unavailability or unsuitability of the Site floor space, the service will not be available.

At no time should this service be considered as available at all of *Provider's* Sites. The availability of this service is dependent on the individual characteristics of each Site and the availability of space.

An up to date list of sites where Co-Location can be considered available by *Provider* is included in Annex J of this Agreement.

6. Service Responsibilities

The appropriate responsibilities of each party are as outlined in the Technical Manual (Annex G) and Operations & Maintenance Manual (Annex H). At all times *Provider* will be responsible for the building. The *Infrastructure Seeker* will specify the relevant equipment to be installed.

The *Infrastructure Seeker* will be responsible for identifying any faults that may occur on its own equipment or service and localizing any faults into the *Provider* network in line with the fault repair process as outlined in the Operations & Maintenance Manual in Annex H of this Agreement.

If the *Infrastructure Seeker* purchases equipment that cannot be installed utilizing the facilities provided by *Provider*, the responsibility for the purchase is the *Infrastructure Seeker's*.

7. Service Management

7.1. Ordering

The interface between the *Infrastructure Seeker* and *Provider* for the submission of orders is as per the Operations & Maintenance Manual (Annex H).

7.2. Provisioning

Service provisioning will be as per the Operations & Maintenance Manual (Annex H) and Technical Manual (Annex G).

7.3. Network Operations and Maintenance

Network Operations and Maintenance process will be as per the Operations & Maintenance Manual (Annex H) and Technical Manuals (Annex G).

7.4. Fault Repair

Fault repair will be as per the Operations & Maintenance Manual (Annex H) and Technical Manual (Annex G).

7.5. Service Level Agreements

Service Level Agreements are included in Annex F to this Agreement.

8. Charging

The *Infrastructure Seeker* will pay *Provider* a charge as calculated using the charges specified in the Price List Annex D to this Agreement.

9. Billing

The billing arrangements for this Service are set out in Annex B of this Agreement.

Provider

Reference Infrastructure Sharing Offer

Annex D

Service Pricing

To be determined by *PROVIDER*.

Provider

Reference Infrastructure Sharing Offer

Annex E

Non-Disclosure Agreement

[*Infrastructure Provider* may replace this NDA by his own, subject to approval by the Authority]

THIS AGREEMENT is made the day of

BETWEEN:-

(1) *Infrastructure Provider* (hereinafter referred to as "*Provider*") a Company registered in ... at

(2) *Infrastructure Seeker* with its registered office at ... (hereinafter referred to as " ").

WHEREAS:

Infrastructure Seeker wish to enter into a relationship with *Infrastructure Provider* that has and will continue to entail the provision of information by *Infrastructure Provider* to of a technical and/or commercial nature with a view to contracting with *Infrastructure Provider* under the terms of its extant Reference Infrastructure Sharing Offer [the "Business Purpose"].

1. In this Agreement the following terms shall have the following meanings:

"Confidential Information" means all financial, commercial, technical, operational, staff, management and other information, data and know-how regarding, respectively, *Infrastructure Provider* and members of their respective groups including their respective products, assets, data-networks, customers, suppliers, and employees which may be supplied orally or in writing by *Infrastructure Provider* or by their respective agents, advisers, employees or directors.

"Information" means information, knowledge, know- how, communications, data or other material, in any form, including but not limited to, oral, written, graphic or electromagnetic form.

2. Confidential Information disclosed by one party (the "Disclosing Party") to any other party (the "Receiving Party") shall be treated as confidential and safeguarded hereunder by the Receiving Party for a period of five years from the date of disclosure. The Parties further agree that unless otherwise agreed in writing each of them will keep confidential and not disclose to any third party the contents of any Confidential Information made available to them or of any information relating to the terms, conditions, timing or other commercially sensitive facts.

3. The Receiving Party agrees that:

(a) any Confidential Information disclosed hereunder shall be used by the Receiving Party solely for the purpose set out in the Business Purpose;

(b) any Confidential Information disclosed hereunder shall remain at all times the property of the Disclosing Party;

- (c) except as may be required by applicable law or regulation or the rules or requirements of any relevant stock exchange or relevant regulatory authority (in which case it will give the Disclosing Party prompt written notice of such requirement and use reasonable endeavors to cooperate in enabling the Disclosing Party to seek suitable protective orders against disclosure), it will not distribute, disclose, or disseminate such Confidential Information to anyone, except employees or professional advisers who have a need to know such Confidential Information for the Business Purpose for which it is disclosed;
 - (d) it will not copy the Confidential Information except as is necessary for the purposes set out in the Business Purpose and provided that the Disclosing Party is informed at the time of what Confidential Information has been copied and to whom; and
 - (e) upon the written request of the Disclosing Party all Confidential Information in writing and all copies thereof in the possession of the Receiving Party shall be returned to the Disclosing Party or destroyed at the option and instructions of the Disclosing Party.
4. The obligations set out in paragraphs 2 and 3 above shall cease to apply to Confidential Information which:
- (a) is or becomes generally available to the public other than as a result of a breach of this Agreement; or
 - (b) comes into the possession of the Receiving Party or any Associated Company of the Receiving Party or its or their employees or advisers from a third party who is free lawfully to disclose the same.
5. The Receiving Party warrants that it applies reasonable safeguards against the unauthorized disclosure of confidential and proprietary information and agrees that it shall protect the Confidential Information of the Disclosing Party in the same manner and to the same degree that it protects its own Confidential Information and proprietary information.
6. In relation to disclosure to employees and professional advisers the Receiving Party further agrees to advise all of its employees and professional advisers having access to Confidential Information of its obligations hereunder and to procure that such companies, employees and advisers comply with all such obligations.
7. The Receiving Party agrees that monetary damages would not be a sufficient remedy for any breach of this Agreement and that the Disclosing Party shall be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement by the Receiving Party or any of its employees or advisers. Such remedy shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity.
8. No failure or delay by any party in exercising any right or power shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any other right or power hereunder.

9. Any Confidential Information supplied to the Receiving Party by the Disclosing Party prior to the execution of this Agreement shall be considered in the same manner and be subject to the same treatment as the Confidential Information made available after the execution of this Agreement.
10. The obligations of confidentiality and non-disclosure under this Agreement shall remain in effect for the period of time specified in paragraph 2 above, without regard to the extent or duration of the business relationship between or among any of the parties.
11. It is understood that this Agreement is not intended to, and does not, obligate *Infrastructure Provider* to enter into any agreement relating to the Business Purpose.
12. Nothing contained in the Agreement shall be construed as granting or conferring title or rights by license or otherwise in any Confidential Information disclosed to the Receiving Party.
13. Any amendment to this Agreement must be in writing and signed by an authorized officer of each party.
14. This Agreement shall be governed by and construed in accordance with the Laws of Rwanda and all parties agree to submit to the non-exclusive jurisdiction of the Rwanda Courts.
15. This Agreement supersedes any prior agreement between the parties as to the subject matter hereof.
16. This Agreement may be executed in counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute one and the same document. The parties confirm that any facsimile copy of another party's executed counterpart of this Agreement (or its signature page thereof) will be deemed to be an executed original thereof.
17. All notices, demands or other communications under this agreement must be given or made in writing, and must be delivered personally, or sent by fax to:

Disclosing Party

Fax: _____

Attention: _____

Receiving Party

Fax: _____

Attention: _____

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

SIGNED by

for and on behalf of
Provider in the presence of

dated:

SIGNED by

for and on behalf of
Infrastructure Seeker in the presence of

dated:

Provider

Reference Infrastructure Sharing Offer

Annex F

Service Level Agreement

[Infrastructure Provider may replace this SLA by his own version(s), subject to approval by the Authority]

1. Introduction

This Annex details the service levels to which *Provider* commits with regard to the provision and repair of Services covered by this Agreement. Services are at all times provided subject to the terms and conditions as set out in this Agreement.

The Services described in the SLA are subject to the Technical Manual and Operations & Maintenance Manuals which define the detailed operational processes associated with the provision of the Services.

2. Service Provisioning

If *Provider* does not meet or does not expect to meet any planned delivery timescales specified as a milestone within this schedule, the Operations & Maintenance Manual or an associated delivery plan, *Provider* shall confirm to the *Infrastructure Seeker* as soon as the delay has been identified. *Provider* will include the reasons for the delay and the expected duration of the delay.

Provider will endeavour to keep the delay as short as possible. Both Parties shall agree upon a new date for the delayed milestone. Consequently, any previously agreed Ready for Service Date will be cancelled and replaced by a new Ready for Service Date, the new Ready for Service Date being automatically derived using the normal milestone schedule as per the Operations & Maintenance Manual, unless there is a material reason why *Provider* may need to further delay the Ready for Service (RFS) date. For the avoidance of doubt, for the purpose of the calculation of penalties, the original Ready for Service Date shall apply, unless otherwise agreed by the Parties.

The following table defines the penalties to be applied, in case *Provider* is the cause for delay of RFS date:

Delay of RFS date (due to <i>Provider</i> delays):	Compensation for each working day of delay
For the first 10 working days (until 10th working day)	0.5% on one-time installation fee
For the following 10 working days (until 20th working day)	1.25% on one-time installation fee
For each working day after the 20th working day.	2% on one-time installation fee Maximum compensation to be applied (in total): 50% on the upfront fee)

3. Repair

3.1. Repair Provision applicable to all Services

Both Parties are required to provide a point of contact for reporting and handling of Faults 24-hours a day, every day of the year. The designated Point of Contacts must ensure that they may be contacted by telephone. Designated Points of Contact will be listed in the Operations & Maintenance Manual.

A fault will be deemed to be 'started' when one of the Parties accepts ownership of the fault. When the fault is reported by the *Infrastructure Seeker* Provider shall not delay its acceptance of ownership of the fault.

A fault will be deemed to be 'ended' when *Provider* informs the *Infrastructure Seeker* that the fault has been repaired.

Information on the progress of a fault rectification will be given on a case by case basis as agreed between the Parties.

Registration of the fault, analysis of the fault and any necessary dispatching of technicians will start as soon as possible after the fault has been reported and responsibility has been accepted.

The *Infrastructure Seeker* will be asked to confirm acceptance of the fault clearance and if considered necessary to perform a re-test. The fault will be considered closed when the *Infrastructure Seeker* either accepts the fault clearance information or confirms a successful re-test (e.g. Service has been restored).

If confirmation of a successful re-test or a rejection is not received *Provider* will close the fault.

If both Parties cannot agree that the fault is cleared, the fault shall not be closed until escalation and/or investigation has been satisfactorily carried out, using appropriate mechanisms previously agreed between both Parties (see paragraph 4 below).

3.2. Specific Provisions applicable to Dark Fiber Service

The target available time for the Dark Fibers provided by *Infrastructure Provider* to the *Infrastructure Seeker* is equal to 99.9% of the time in a calendar year. Availability is calculated by dividing the measured available time by the total time in a calendar year, expressed as a percentage.

The measured available time is the total time in a calendar year less the measured unavailable time. Subject to any other terms in this SLA, the Dark Fibers are deemed to be unavailable to the *Infrastructure Seeker* when the Dark Fibers (or any of them) are fully interrupted, or fail to meet designated specifications as contemplated in this SLA, such that the Dark Fibers cannot be accessed or used by the *Infrastructure Seeker* (an "Outage"), but excluding any such circumstances arising as the result of any event contemplated in other sections of this Agreement.

The Measured Unavailable Time starts upon notification of an Outage by the *Infrastructure Seeker* to the *Infrastructure Provider Infrastructure Seeker Care Centre* by telephone and the release of the affected Service by the *Infrastructure Seeker* to *Infrastructure Provider* for testing and repair. The measured unavailable time ends when the affected Service is restored.

Infrastructure Provider will notify the *Infrastructure Seeker* by telephone and the *Infrastructure Seeker* will confirm that the affected Service has been restored. Additional time taken by the *Infrastructure Seeker* to perform confirmation testing is not included in the measured unavailable time if the Service is in fact restored. The *Infrastructure Seeker* acknowledges that *Infrastructure Provider* does not monitor use of the Dark Fibers and that the *Infrastructure Seeker* is responsible to notify *Infrastructure Provider* of any Outages or other service issues.

Mean Time to Repair (“MTTR”) is defined as the total network outage time for the *Infrastructure Seeker’s* trouble tickets in a measured year divided by the number of tickets. The target MTTR is eight (8) hours following receipt of a Service Call from the *Infrastructure Seeker*.

If an Outage occurs for any of the Dark Fibers then the *Infrastructure Seeker* shall be entitled to the following credit in respect of the affected Dark Fibers only:

Measured Unavailable Time Following Receipt of a Service Call from the <i>Infrastructure Seeker</i>	Credit
0 minutes to 8 hours	No credit
>8 hours to 24 hours	1 day credit
>24 hours to 48 hours	1 week credit
>48 hours	1 month credit

In order to receive the foregoing credit, the *Infrastructure Seeker* must notify *Infrastructure Provider* of its claim for a credit within thirty (30) days of the Outage for which a credit is claimed.

Service Level Exemptions for Dark Fiber Service

Degradation in the performance of the Dark Fibers and unavailable time shall not be included for the purposes of determining whether the Dark Fibers meet the Minimum Service Level, or for calculating measured unavailable time if such degradation or unavailable time arises from:

- (i) Scheduled Maintenance or other service interruptions agreed to by the *Infrastructure Seeker* for the purpose of allowing *Infrastructure Provider* to upgrade, change, implement an order, maintain, or repair the Dark Fibers;
- (ii) directly or indirectly as the result of the acts or omissions of the *Infrastructure Seeker*, any person for whom the *Infrastructure Seeker* is legally responsible, or any person using the Dark Fibers;
- (iii) failure of equipment or systems not provided, or under the control or direction of *Infrastructure Provider* including equipment or systems *Infrastructure Provider* may obtain or contract for at the request of the *Infrastructure Seeker* (and, in the event of a degradation in the Dark Fibers below the Minimum Service Level or an Outage occurring as the result of such circumstances *Infrastructure Provider* will co-ordinate with the *Provider* to remedy such failure as quickly as possible);
- (iv) any failure by the *Infrastructure Seeker* to afford access to any location for which the *Infrastructure Seeker* is responsible, or to any facilities of *Infrastructure Provider* for the purpose of investigating and correcting a degradation in the Dark Fibers or an Outage; and
- (v) any event that falls under the category of force majeure.

3.3. Specific Provisions applicable to Duct Service

[*Infrastructure Provider* may determine specific provisions for this service, subject to approval by the Authority]

3.4. Specific Provisions applicable to Co-location Service

[*Infrastructure Provider* may determine specific provisions for this service, subject to approval by the Authority]

4. Fault Escalation Process

When the Parties cannot agree on one of the following:

- Acceptance of fault ownership;
- fault status; or
- fault clearance procedure and time-scale,

The Parties may refer to the escalation processes as set out in the Main Document of this Agreement and as detailed in the Operations & Maintenance Manual (Annex H).

5. Scheduled and Unscheduled Maintenance

Scheduled Maintenance means any maintenance activities performed on the *Infrastructure Provider* network to which *Infrastructure Seeker's* facilities are connected provided that *Infrastructure Seeker* shall be given at least 15 week days' advance notice of such maintenance activities. Such activities are typically performed during the standard maintenance window on Sundays 00:01 and 6:00 am local time.

Notice of scheduled maintenance shall be given to *Infrastructure Seeker's* designated Point of Contact, by a method elected by *Infrastructure Provider* (telephone, e-mail, fax). The *Infrastructure Seeker* may change its Point of Contact upon reasonable advance written notice to *Infrastructure Provider*.

Unscheduled maintenance means any maintenance activities performed on the *Infrastructure Provider* network to which *Infrastructure Seeker's* facilities are connected as a result of a Threat or an Emergency. A Threat is defined as a situation or condition that would not normally cause an outage to a *Infrastructure Seeker* but introduces a very low risk to services or may lead to a brief service interruption.

Examples include optical cable splicing, contractor working near *Infrastructure Provider* fiber cables and digging within three meters of an *Infrastructure Provider* fiber cable. In the case of a Threat *Infrastructure Provider* will strive to provide *Infrastructure Seekers* with three business days' advance notice. In the event of an Emergency (defined as unplanned critical repairs, acts of vandalism and/or nature that has caused or could cause a degradation or interruption of service) *Infrastructure Provider* will make best efforts to provide *Infrastructure Seekers* with short-term notice and an estimated time to repair.

Provider

Reference Infrastructure Sharing Offer

Annex G

Technical Manual(s)

To be developed by *PROVIDER*.

Provider

Reference Infrastructure Sharing Offer

Annex H

Operation and Maintenance (O&M) Manual(s)

To be developed by *PROVIDER*.

Provider

Reference Infrastructure Sharing Offer

Annex J

List of Sites and Network Routes

To be developed by *PROVIDER*.