

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_...**BETWEEN:**

- (1) \_\_\_\_\_ of Post Office Box Number \_\_\_\_\_ Nairobi the Republic of Kenya (hereinafter referred to as "\_\_\_\_\_") which expression shall where the context so admits include its successors and assigns) of the one part; **AND**
- (2) \_\_\_\_\_ **LIMITED** a limited liability company incorporated in the said Republic of Post Office Box Number \_\_\_\_\_ aforesaid (hereinafter referred to as "\_\_\_\_\_") which expression shall where the context so admits include its successors and assigns) of the other part.

**WHEREAS:**

\_\_\_\_\_ carries on the business of providing, installing and maintaining Very Small Aperture Terminal ("VSAT") Hub equipment, products and services.

\_\_\_\_\_ is a telecommunications company and is in the business of providing telecommunications and other related services in Kenya.

\_\_\_\_\_ has requested and \_\_\_\_\_ has agreed to host \_\_\_\_\_ on the \_\_\_\_\_ VSAT Hub (hereinafter referred to as the "Services") for optimisation of \_\_\_\_\_'s network on the terms and conditions agreed by the parties herein.

\_\_\_\_\_ shall deliver to \_\_\_\_\_ certain electronic equipment, details of which are more particularly defined in the Schedule hereto, (hereinafter referred to as the "Equipment") for the purpose of the supply of the Services to \_\_\_\_\_ by \_\_\_\_\_ and which Equipment belongs entirely to Posta and over which \_\_\_\_\_ has no rights whatsoever and which Equipment \_\_\_\_\_ shall host for connection to its VSAT Hub for the said optimisation of \_\_\_\_\_'s network.

**Operative provisions:**

**Interpretation**

In this Agreement:

"**Confidential Information**" belonging to a party means all information (whether written, oral or in electronic form) concerning the business and affairs of that party that the other party obtains or receives as a result of the discussions leading up to or the entering into or the performance of this Agreement;

"**Effective Date**" means the \_\_\_\_\_ day of \_\_\_\_\_

"**Data**" means all data, information, text, drawings, diagrams, images or sound embodied in any electronic or tangible medium, and which are supplied or in respect of which access is granted to \_\_\_\_\_ by \_\_\_\_\_ pursuant to this Agreement, or which ASNK is required to generate under this Agreement;

"**Rights**" means patents, trade marks, service marks, trade names, design rights, copyright, database rights, rights in know-how and other intellectual property rights of whatever nature arising anywhere in the world, whether registered or unregistered and including applications for the grant of any such rights;

References to any statute, enactment, order, regulation or other similar instrument shall be construed as references to the statute, enactment, order, regulation or instrument as amended by any subsequent statute,

enactment, order, regulation or instrument or as contained in any subsequent re-enactment, modification or statutory extension of any of the above.

Except where the context requires otherwise the singular includes the plural and vice versa.

Headings are included in this Agreement for ease of reference only and shall not affect interpretation or construction.

References to clauses and schedules are, unless otherwise provided, references to clauses and schedules of this Agreement.

Any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done.

### **Term and renewal**

This Agreement shall take effect on the Effective Date and shall continue thereafter until terminated by either party giving \_\_\_\_\_ weeks written notice to the other or this Agreement is otherwise terminated in accordance with its terms.

### **Charges**

In consideration of and subject to the supply of the Services in accordance with the terms of this Agreement, Posta shall pay to ..... a monthly charge of Kenya Shillings \_\_\_\_\_ (KShs \_\_\_\_\_), inclusive of Value Added Tax at the rate and in the manner prescribed by law from time to time, within \_\_\_\_\_ days of receipt by Posta of a valid invoice from ASNK.

..... may at its sole discretion vary the monthly charge payable at any time **PROVIDED THAT** ..... shall inform Posta of its intention to amend the monthly fee by one month's notice in writing;

### **The Services**

..... agrees to supply the Services, in consideration of the payment of such monthly charges, as provided in clause 3 herein, by ....., and upon the terms and conditions of this Agreement.

The Services shall commence on the Effective Date and shall continue during the term of this Agreement, subject to termination as provided below.

Without prejudice to clause 6, ..... undertakes to perform, at any time during the term of the Agreement, any additional services, **PROVIDED THAT** the parties will agree in writing to the additional services and monthly charges, in accordance with and subject to the terms and conditions of this Agreement.

Interruptions to the Services shall only be made with the prior agreement of ..... when in .....’s reasonable opinion they are necessary to improve or maintain the Services.

If at any time after the Effective Date the Services are not supplied in accordance with this Agreement, ..... shall, without prejudice to .....’s other rights and remedies:

arrange all additional resources necessary to perform the Services as soon as possible and at no additional charge to .....; and

use its best endeavours to promptly remedy and remove the cause of non-performance; and

promptly remedy any default or re-perform any non-conforming Services at the request of ..... at no additional charge.

If at any time after the Effective Date the Services are not supplied in accordance with this Agreement and either:

such failure is not remediable; or

such failure is remediable but is not remedied within thirty (30) days;

Posta shall be entitled to terminate this Agreement in accordance with clause 10.

### **The Equipment**

The Equipment shall at all times remain the property of ..... and .....shall not do or permit or cause to be done any matter or thing whereby the rights of Posta in respect of the Equipment are or may be affected.

..... will advise ..... on a regular basis on the need to upgrade or replace any of the Equipment and ..... shall have the right itself to repair and service or have repaired and serviced any Equipment.

..... will immediately report any Equipment failure to ..... ..... shall replace any parts of the Equipment and ensure that all such replacement or additional assets are of a standard which is at least that which meets good industry practice and is fit for the purpose of providing the Services from time to time.

.....will throughout the continuance in force of this Agreement keep the Equipment (including any substitute Equipment provided under clause 5.3 above) insured with an insurance company of good repute against loss or damage from all risks and Posta shall notify its insurers that the Equipment are for the duration of this Agreement in the possession of .....

..... maintains the right to re-possess any or all of the Equipment at any time provided that at least \_\_\_ days notice shall have been given to .....

The Equipment belonging entirely to ....., the parties hereby agree that .....shall not be liable for any use thereof or theft or damage to or in any manner whatsoever relating to the Equipment and to the use of the Equipment.

### **Change of Services**

If at any time either party sees a need to change the Services, whether by adding to, reducing or amending the nature of the Services, that party may request or recommend such change to the other party and neither party shall unreasonably withhold its agreement to any change.

Until such time as a change is made, ..... shall, unless otherwise agreed in writing, continue to supply the Services as if the request or recommendation had not been made.

Any discussions which may take place between ..... and ..... in connection with a request or recommendation before the authorisation of a resultant change to the Services shall be without prejudice to the rights of either party.

Where a written request for an amendment to the Services is made and approved, such change can only be incorporated into this Agreement by a written instrument signed by both parties.

## **Covenants**

Posta hereby warrants and represents to ..... that:

it will co-operate with ..... and provide ..... with such information and assistance as ..... may reasonably require in order to enable or facilitate .....duly and punctually to comply with its obligations under this Agreement;

to the best of its knowledge and belief all personnel involved in relation to the Services will be suitably skilled and technically competent for the task(s) assigned to them;

it shall be solely responsible for and hold ..... and .....’s officers, employees, sub-contractors, agents and licensees fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses which may be brought against or incurred by ..... for any matter relating to the Equipment during the term of this Agreement.

Posta further warrants and represents ..... to that:

it has the full capacity and authority and all necessary licences, permits and consents to enter into and to procure the provision of the Services under this Agreement by ASNK;

the provision of the Services and .....’s use thereof shall not infringe any Rights of any third party;

the provision of the Services by ..... shall not contravene any applicable laws, enactments, orders, regulations, and other similar instruments (including but not limited to all applicable health and safety legislation);

all components and equipment supplied and/or used in the course of the provision of the Services by ..... shall be operated (where required) in accordance with their technical specifications;

it shall obtain all the necessary licenses and consents (if any) in order for .....to provide for the Services.

Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose and suitability) are hereby excluded to the extent permitted by law.

## **Liability**

The parties agree that in no event shall ..... be liable to ..... for:

any loss of profits (whether direct or indirect), business, revenue, goodwill or anticipated savings; and/or

any indirect or consequential loss or damage.

## **Confidentiality**

Each of ..... and ..... hereby undertakes to the other to:

keep confidential all Confidential Information belonging to the other;

treat Confidential Information belonging to the other with the same degree of care that it uses for its own confidential information;

not, without the prior written consent of the other, disclose Confidential Information belonging to the other in whole or in part to any other person save those of its employees, agents and sub-contractors involved in the provision or receipt of the Services and who need to know the Confidential Information in question;

use the Confidential Information belonging to the other solely in connection with the provision or receipt of the Services and not for its own benefit or the benefit of any third party.

The provisions of clause 9.1 shall not apply to any information which:

is or becomes public knowledge other than by breach of this clause 9;

is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;

is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

is independently developed without access to any Confidential Information belonging to the other.

For the purpose of .....’s undertaking under clause 9.1 above, the Confidential Information shall be deemed to include all ..... Data.

Nothing in this clause 9 shall prevent ..... from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information belonging to the other.

## **Termination**

This Agreement shall remain in force from the Effective Date until determined by either party giving thirty (30) days’ written notice of their intention to terminate the Agreement.

## **Consequences of termination**

Upon termination of this Agreement:

any outstanding charges shall remain due and payable by ..... to ..... in accordance with the terms of this Agreement;

without limitation to the foregoing ..... shall render reasonable assistance to ....., if requested, to the extent necessary to effect an orderly hand-over of the Equipment back to .....

..... shall return to ..... all Confidential Information and other ..... Data belonging to ..... (if any).

..... **Data**

..... acknowledges that ..... Data and all rights of whatever nature in and/or in relation to it shall at all times be and remain the sole property of ..... and ..... hereby reserves all Rights which may subsist in ..... Data.

## **Personnel**

..... shall direct such of its personnel as it shall in its sole discretion determine in order to carry out the Services hereunder, without any interference from .....

## **Transfer**

..... shall not assign, novate, sub-contract or otherwise dispose of this Agreement or any part thereof without obtaining prior consent in writing from ..... which consent ..... shall not unreasonably withhold.

Posta shall be entitled to assign, novate, sub-contract or otherwise dispose of any or all of its rights and/or obligations under this Agreement to any of its affiliates or to any person purchasing substantially the whole of the business to which the Services relate.

## **General**

### **Entire agreement**

This Agreement constitutes the whole of the terms agreed between the parties hereto in respect of the subject matter of this Agreement.

### **Variation**

This Agreement shall only be varied by a written instrument signed by a duly authorised officer or other representative of each of the parties.

### **Severability**

This Agreement is severable and if any provision is determined to be illegal or unenforceable by any court of competent jurisdiction such provision shall be deemed to have been deleted without affecting the remaining provisions of this Agreement.

### **No partnership**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, agency or joint venture between the parties hereto or constitute or be deemed to constitute either party the agent of the other for any purpose whatsoever and neither party shall have any authority or power to bind the other or to contract in the name of or create a liability against the other.

### **Waiver**

Unless otherwise agreed in writing, no failure by either party to exercise any right or remedy available to it hereunder nor any delay so to exercise any such right to remedy shall operate as a waiver of it nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

### **Notices**

Any notice to be given hereunder by either party to the other shall be in writing and delivered personally or sent by registered post to the addressee at the addressee's registered office for the time being or by fax and shall be deemed to be received if delivered personally at the time of receipt, if sent by post five (5) days after the date of posting (having been correctly addressed and a post office receipt being proof of such posting) whether or not received, or if by fax twenty-four (24) hours after dispatch to the correct

fax number of the addressee.

**Governing law and jurisdiction**

This Agreement and its performance shall be governed by and construed in all respects in accordance with the laws of Kenya.

**Arbitration**

Any dispute arising out of or in connection with this Agreement 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 Chartered Institute of Arbitrators (Kenya Branch). 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 or any modifications or substitutes thereof. To the extent permissible by law, the determination of the Arbitrator shall be final and binding upon the parties.

**THE SCHEDULE**

**THE EQUIPMENT**

<b>Equipment</b>	<b>Description</b>	<b>Serial Number</b>
Computer		
Computer	Hub Equipment	V DVB RouterHub Equipment 2 Sun
Server Microsystem with Rack		Hub Equipment Hub Chain Server

**IN WITNESS WHEREOF** the duly authorised representatives of the parties have set their respective hands hereto on the day and year first hereinbefore written.

**SIGNED** by \_\_\_\_\_ )  
for and on behalf of ..... )  
presence of: )  
)  
)  
)  
)  
)

**SIGNED** by \_\_\_\_\_ )  
for and on behalf of .....in the presence of: )  
)  
)  
)  
)  
)  
)

**Drawn By:**