

# NEW TELCO SOUTH AFRICA (PTY) LTD

## COLOCATION SERVICES TERMS & CONDITIONS

### 1. DEFINITIONS

In these terms and conditions:

- 1.1 “*Agreement*” means these terms and conditions read with *New Telco’s quotation* and any annexures to these terms and conditions.
- 1.2 “*Colocation services*” means the physical colocation services and interconnection services, the support engineering services, and the local and/or global meet-me room services to be provided by *New Telco* to the *Customer* as specified in *New Telco’s quotation*. Such services will be provided at *New Telco’s “colocation facility premises”* (situated at Cnr Alexandra Avenue/Second Road, Halfway House, Midrand).
- 1.3 “*Commencement date*” means the date when services commence as specified in *New Telco’s quotation*, or 1<sup>st</sup> of the month in which the services commences, whichever is the earlier, provided that the *Customer’s* acceptance of *New Telco’s quotation* is communicated to *New Telco* in writing not less than sixty (60) days prior to such date.
- 1.4 “*Customer*” means the *Customer* identified in *New Telco’s quotation*.
- 1.5 “*New Telco*” means New Telco South Africa (Pty) Ltd, a private company duly registered and incorporated in the Republic of South Africa under registration number 1998/018999/07.
- 1.6 “*New Telco’s quotation*” means *New Telco’s* written quotation signed by the *Customer* specifying the *colocation services* to be provided by *New Telco* to the *Customer*.
- 1.7 “*Party(ies)*” means *New Telco* and/or the *Customer*, as the case may be.
- 1.8 “*Products*” means the telecommunications equipment sold or rented by *New Telco* to the *Customer* (in terms of *New Telco’s* standard conditions of sale or standard rental

agreement, as the case may be) for installation in the footprint(s) and/or rack(s) and/or room(s) specified in *New Telco's quotation* ("*Customer's footprint(s) and/or rack(s) and/or room/s*").

## 2. COMMENCEMENT AND TERM

The *colocation services* will be provided to the *Customer* for a period of 12 (twelve) months from the *commencement date* and will continue to be provided for successive 12 (twelve) month periods unless cancelled by either *party* on not less than 30 (thirty) days written notice prior to the expiry of the relevant 12 (twelve) month period or in terms of clause 11.

## 3. PRICES

3.1 *New Telco's* prices for the *colocation services* for the first 12 (twelve) month term of this *agreement*, will be those specified in *New Telco's quotation no.....*

3.2 *New Telco's* quoted prices are exclusive of Value Added Tax and any other rates, taxes, duties, charges or imposts ("taxes") which may be payable. Should any taxes be payable, they will be reflected in *New Telco's* invoices and will be payable by the *Customer* unless the *Customer* is able to supply the relevant exemption documentation.

3.3 *New Telco* will be entitled to increase its prices annually on each anniversary of the *commencement date* provided that the *Customer* will be entitled, within 10 (ten) days of being provided with a price increase notice (which must be given to the *Customer* by no later than 40 (forty) days prior to the relevant anniversary, to either:

3.3.1 negotiate alternate prices; or

3.3.2 terminate this Agreement on 30 (thirty) days written notice to *New Telco*, provided further that if the *Customer* fails to timeously act in accordance with clause 3.2.1 or clause 3.2.2, the *Customer* will be deemed to have accepted *New Telco's* increased prices.

#### 4. PAYMENT

4.1 All amounts invoiced by *New Telco* to the *Customer* will be payable within 30 (thirty) days of the date of issue of *New Telco's* invoices. Set up costs will be invoiced on receipt of credit application forms together with the first month's services. Services will be provisioned and completed after receipt of the set up charges and the first month's services. Afterwards, monthly services will be invoiced monthly in advance.

4.2 If any amount due to *New Telco* is not paid on its due date, the *Customer* will be liable to pay interest on the overdue amount at the rate of 2% (two percent) above the fluctuating prime bank overdraft lending rate of First National Bank of South Africa from time to time, calculated from the due date of payment to the final date of payment, both days inclusive.

4.3 All payments must be made to *New Telco* in South African currency (unless payment in another currency is specified in *New Telco's quotation*) and free of exchange, deduction or set-off, to such bank account as *New Telco* from time to time directs in its invoices.

4.4 A certificate signed by *New Telco's* financial director, financial manager or credit manager, specifying the amount owing by the *Customer* to *New Telco*, will be prima facie proof of the amount of the *Customer's* indebtedness to *New Telco*.

#### 5. PRODUCTS

Unless otherwise specified in *New Telco's quotation*, *New Telco's* terms and conditions applying to the sale or rental of *products* to be installed in the *Customer's rack(s) and/or footprint(s) and/or room(s)* will be those contained in *New Telco's* standard conditions of sale or standard conditions of rental, as the case may be.

#### 6. TROUBLE SHOOTING PROCEDURES

- 6.1 *New Telco* and the *Customer* will keep each other advised of each other's contact personnel details for the purposes of co-ordinating and implementing *New Telco's* trouble shooting procedures and to ensure the continuous availability of colocation services.
- 6.2 The trouble shooting procedures to be followed by *New Telco* and the *Customer* (including severities, priority and fault logging procedures) and the response times within which all faults logged by the *Customer* with *New Telco* will be dealt with, will be those set out in annexure "A" to this *agreement*.
- 6.3 To ensure that *New Telco's* designated personnel are able to carry out *New Telco's* trouble shooting procedures, the *Customer* will ensure that *New Telco's* designated personnel have complete and unhindered access to the *Customer's footprint(s) and/or rack(s) and/or room(s)* and the *products* and will provide *New Telco* with remote dial-in access.
- 6.4 Once a fault logged by the *Customer* has been diagnosed, *New Telco* will notify the *Customer* of the measures to be carried out to eliminate the fault and the costs associated therewith and, if the *Customer* in writing approves such measures and costs, carry them out.
- 6.5 Where during the course of implementing its trouble shooting procedures or carrying out preventative maintenance inspections, *New Telco* believes it to be reasonably necessary for the preservation, protection or safe or efficient operation of the *colocation services* or the *products*, to carry out any measures and that any delay in obtaining authorisation from the *Customer* may be potentially harmful or prejudicial to the *Customer*, or may result in loss, damage or injury to the *Customer*, *New Telco* may carry out the necessary measures and will be entitled to payment therefore at *New Telco's* prevailing prices at the time unless otherwise agreed between the *parties* in writing.

## 7. HOURS OF COVERAGE

The services will be provided according to the conditions in our quotations.

8. LIMITATION OF LIABILITY

8.1 *New Telco's* liability to the *Customer* in respect of the unavailability of the *colocation services* due to *New Telco's* negligence or fault will be limited, in any 12 (twelve) month period, to 10% of the monthly revenue in which the incident occurred, if the service is not restored within 4 hours of each incident, i.e. fully restoring *colocation services* to a 99% (ninety nine percent) availability as a temporary or permanent fix. Fault statistics will be reported monthly and not carried over to the next month. Reports will be available to the *Customer* on request.

8.2 Except as set out in clause 8.1, *New Telco* will not be liable to the *Customer* for any losses or damages however they may have arisen and regardless of the cause thereof.

9. HOUSE RULES

The house rules which will apply to the *Customer* when physically visiting *New Telco's colocation facility* will be those set out in annexure "B" to this *agreement*.

10. CONFIDENTIAL INFORMATION

10.1 The *Customer* acknowledges that all *New Telco* information (regardless of the form in which it is contained) which may come into the *Customer's* possession in pursuance of or in connection with this *agreement*, except information which is readily available to the public, is *New Telco's* confidential and proprietary information ("*proprietary information*") which if disclosed to third parties may be damaging to *New Telco*. Accordingly the *Customer* undertakes:

10.1.1 to hold all *proprietary information* in the strictest confidence, not to make use thereof other than in the performance of its obligations in terms of this *agreement* and not to release or disclose it to any other party without *New Telco's* prior written consent;

10.1.2 not to use *New Telco's* name or any of its trade marks or logos in publicity releases or advertising or for other promotional purposes, without *New Telco's* prior written consent.

10.2 The provisions of this clause 10 will apply, *mutatis mutandis*, in respect of any *proprietary information* disclosed by the *Customer* to *New Telco*.

10.3 The provisions of this clause 10, will survive the termination of this agreement regardless of the reason.

## 11. INTELLECTUAL PROPERTY RIGHTS

11.1 Any intellectual property rights which may exist in connection with the *colocation services* ("*intellectual property rights*") will vest in *New Telco*.

11.2 If the *intellectual property rights* are found to be registerable or patentable, *New Telco* will be entitled to file applications for such registrations in its or its nominee's name in whichever country it chooses and the *Customer* will, if and when required by *New Telco*, and at *New Telco's* expense, apply for or join in applying for a patent or such other registerable protection as may be appropriate and will execute all documents and do all things necessary for vesting the protection and all rights, title and interest in the *intellectual property rights* in *New Telco* or its nominee absolutely and as sole beneficial owner.

## 12. INDEMNITY

The *Customer* hereby indemnifies *New Telco* and holds *New Telco* harmless against all claims, damages or losses suffered and all expenses and costs incurred (including costs on the attorney and client scale) arising out of any infringement of a patent, design or copyright which takes place as a result of *New Telco* following any instructions given to it by the *Customer*.

## 13. BREACH

Should either *party* (the “*defaulting party*”) commit a breach of any material provision of this *agreement* which cannot be remedied by the payment of monetary compensation and fail to remedy such breach within 20 (twenty) days of receiving written notice from the other *party* (the “*aggrieved party*”) requiring it to do so, then the *aggrieved party* will be entitled, without prejudice and in addition to its other rights and remedies in terms of this *agreement* or at law, to forthwith cancel this *agreement* on written notice to such effect to the *defaulting party*.

#### 14. NOTICES

All written notices to be given to the *parties* will be delivered either in person, by fax or by e-mail. Notices must be addressed as follows:

To: *New Telco*

Address: Jasco Park  
Cnr Alexandra Avenue & Second Road  
Halfway House  
Midrand

For attention: Mr.Eckart Zollner

Telefax: + 27 86 666 3460

E-mail: ezollner@za.spescom.com

To: the *Customer*

Address: as indicated in *New Telco's quotation*

For attention: as indicated in *New Telco's quotation*

Telefax: as indicated in *New Telco's quotation*

E-mail: as indicated in *New Telco's quotation*

or at such other place and/or at such other telefax number and/or such other E-mail address as may be designated by a *party* from time to time in writing.

#### 15. MISCELLANEOUS PROVISIONS

- 15.1 This *agreement* will be exclusively governed and interpreted according to the laws of the Republic of South Africa.
- 15.2 Any dispute arising from or in connection with this *agreement*, its breach, termination or cancellation will, in the absence of the *parties* resolving the dispute amicably (which the *parties* undertake to do in good faith), be mediated by the *parties'* respective legal representatives and should such mediation be unsuccessful, be finally resolved (except where the dispute relates to the *Customer's* indebtedness to *New Telco* in which case *New Telco* may, at its election institute proceedings out of a Court of competent jurisdiction) in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by such Foundation. Such arbitration will take place in Sandton, South Africa. None of the provisions of this clause will preclude either *party* from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator or arbitrators.
- 15.3 This *agreement* supercedes any previous agreement between the *parties* concerning its subject matter and constitutes the entire agreement between them concerning such subject matter. The terms and conditions of this *agreement* will prevail should there be any variance with the terms and conditions of any order submitted by the *Customer* and will not be modified or amended except in writing signed by the *parties*. Neither *party* may rely on any representation or warranty not recorded herein.
- 15.4 *New Telco* will have the right to assign all or a portion of this *agreement* to a third party.
- 15.5 Regardless of any provision contained in this *agreement* to the contrary, neither *party* will be liable for its failure to perform any of its obligations hereunder if such failure is due to any cause beyond its reasonable control including, but not limited to, strikes, fires, floods, lightning, storms, accidents, acts or restraints of

Government imposition, restrictions of or embargoes on imports and exports, acts of public enemies, or acts of God.

- 15.6 No indulgence of any nature or any relaxation of any of the terms or conditions of this *agreement* granted by either *party* (the "*grantor*") to the other will in any way constitute a waiver or a novation of the *grantor's* rights to strictly enforce the terms hereof, nor operate as an estoppel.
- 15.7 The provisions of this *agreement* are intended to be and will be deemed severable. Accordingly if any of the provisions of this *agreement* are held invalid, such invalidity will not affect the other provisions to which effect can be given without the invalid provision(s).
- 15.8 Where any of the provisions of this *agreement*:
- 15.8.1 conflict with or differ from any provisions contained in *New Telco's quotation*, the provisions of *New Telco's* quotation will prevail.
- 15.8.2 conflict with or differ from any provisions contained in any annexures hereto, the provisions of this *agreement* will prevail.
- 15.9 The *parties* will not, during the term of this *agreement* and for a period of 12 (twelve) months after its termination, directly or indirectly entice, persuade or attempt to persuade each other employees to leave their employment to work for each other, whether as employees, consultants or in any other capacity whatsoever.
- 15.10 The *parties* are independent contractors and nothing contained in this *agreement* will be construed as giving either of them any rights as employer, agent, representative, partner or joint venture participant in the business of the other or entitle either of them at any time during the term of this *agreement* to control, bind, or obligate the other in any manner at all.

## SEVERITIES & PRIORITIES AND FAULT LOGGING PROCEDURES

### 1.1. Definitions of Severities

#### 1.1.1. Severity one/Red

Customer suffers catastrophic failure, revenues and services are severely impacted.

#### 1.1.2. Severity two/Blue

Customer suffers major failure and equipment fails impacting revenues for the Customer.

#### 1.1.3. Severity three/Green

Fault does not result in revenue impact for the Customer.

#### 1.1.4. Severity four/Black

This is typically a request for information, quotation, additions, moves or changes .

### 1.2. Fault Logging Procedure:

To log Fault Calls with the New Telco Help-Desk by telephone, the following procedure has to be followed:

For Help:	Phone the Help Desk : 086 010 0453, or + 27 78 720 0964 or + 27 76 482 5485 within South Africa; Email: <a href="mailto:tshito@za.spescom.com">tshito@za.spescom.com</a> or: <a href="mailto:smtshali@za.spescom.com">smtshali@za.spescom.com</a>
The Help Desk attempts to resolve:	Any problem, service request or general user query.
When is it available?	Between 07:00 and 18:00, Mondays to Fridays, excluding public holidays. After Hours service is available to the cellphone of the Services Manager + 27 79 699 1285.
Your will be asked for:	Your name, contact telephone number, company name, type of colocation service and detailed description of the problem.
You should:	Record the time and log number allocated by the Help-Desk.
To query progress:	Call or email the Help-Desk, quote the log number and request a progress report.
Severity :	The severity of the call will be determined based on the answers to a number of questions asked during the call logging process.

### HOUSE RULES

The following rules will apply to the *Customer* when physically visiting *New Telco's colocation facility*:

1. No wedges or similar objects may be placed under doors to prevent them from closing.
2. Physical access by the *Customer* must always be accompanied (by NewTelco personnel).
3. No smoking is permitted.
4. Windows must be kept closed at all times.
5. No food or drinks are permitted.
6. The loss of access keys and key cards must be reported immediately to *New Telco's* security personnel.
7. No filming or photographing is permitted without *New Telco's* prior written approval.
8. No works, other than by *New Telco*, in connection with *products* may be carried out without *New Telco's* prior written consent.
9. In the event of a fire emergency or if an ambulance is required, the *Customer* must contact +27 79 699 1285 or + 27 82 574 9871.