



**Jasco Carrier Solutions (Pty) Ltd**  
**trading as Jasco Hi-Sites**

# **MASTER LEASE AGREEMENT**

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## 1. PARTIES

The Parties to this Agreement are:

- 1.1 Jasco Carrier Solutions (Pty) Ltd, a private company duly registered in South Africa with company registration number 2000/021545/07, and trading as Jasco Hi-Sites (the "**Lessor**"); and
- 1.2 the "**Lessee**" who's details are set out in an Execution Schedule.

## 2. RECORDAL

- 2.1 The Lessor owns and/or leases numerous Sites. The Lessee wishes to lease space on certain Sites from the Lessor and to install such equipment on each Location as it requires in order to provide communications services, and the Lessor is prepared to lease such space to it.
- 2.2 Further to the foregoing, the Parties agree that the Lessee shall be allowed to lease space on certain of the Lessor's Sites subject to the terms and conditions contained in this Agreement.

## 3. INTERPRETATION AND DEFINITIONS

- 3.1 In this Agreement unless the context indicates a contrary intention
  - 3.1.1 clause headings are for convenience only and shall not be used in its interpretation;
  - 3.1.2 an expression which denotes any gender includes the other genders and a natural person includes a juristic person and vice versa; and
  - 3.1.3 the singular includes the plural and vice versa.
- 3.2 Where in this Agreement any number of days is prescribed, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or official public holiday, in which case the last day shall be the succeeding day which is not a Saturday, Sunday or public holiday.
- 3.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation clause.
- 3.4 This Agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa as amended from time to time.

- 3.5 If amounts or figures are specified in numerals and in words and if there is any discrepancy between the numerals and the words, then the words shall apply. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular.
- 3.6 The rules of construction that this Agreement shall be interpreted against the party responsible for the drafting of this Agreement shall not apply.
- 3.7 In this Agreement and any appendices hereto, unless inconsistent with or otherwise indicated by the context
- 3.7.1 "**Agreement**" means this agreement together with all appendices and schedules hereto;
- 3.7.2 "**Business Day**" means any day other than a Saturday, Sunday or official public holiday;
- 3.7.3 "**COID Act**" means the Compensation for Occupational Injury and Diseases Act No. 130 of 1993;
- 3.7.4 "**Commencement Date**" means the commencement date as per the Execution Schedule;
- 3.7.5 "**Container**" means a container, hut or other structure to be utilized by the Lessee at or on a Location for the housing of its equipment;
- 3.7.6 "**Contractor**" means all persons who perform services for or on behalf of a party in whatever capacity, including as contractor, sub-contractor, agent or employee;
- 3.7.7 "**CPI**" means the Consumer Price Index (for all urban areas), or closest replacement, calculated as the annual average over the 12 (twelve) months most recently published by Statistics South Africa;
- 3.7.8 "**Data**" shall mean any personal data about either Party, either Party's customers, either Party's suppliers or employees that may be used to identify an individual and that falls within the definition of "personal information" in the Protection of Personal Information Act 4 of 2013, including MSISDN numbers, call data records, traffic data, location data, billing information, financial information;
- 3.7.9 "**Dedicated Equipment**" means the Lessee's equipment at a Location that is dedicated to the Lessee as specified in a Location Lease, and which Location Lease and/or an appendix to a Location Lease may be extended or curtailed as agreed in writing between the Parties;
- 3.7.10 "**Effective Date**" means the date as specified in the Lease Schedule for a Location

Lease;

- 3.7.11 "**Execution Schedule**" means the document setting out details of the Lessee and the Lessor and once signed by the Lessee, constitutes the Lessee's acceptance of this Agreement, the form of which is attached to this Agreement as Schedule 1;
- 3.7.12 "**Expiry Date**" means, subject to the terms of the applicable Head Lease and of the terms of this Agreement as applicable to Head Leases related to the termination of Location Leases, the expiry of the Term;
- 3.7.13 "**Head Lease**" means a lease agreement entered into between the Lessor and a Landlord in terms of which the Lessor leases a Site;
- 3.7.14 "**Landlord**" means the third party from whom the Lessor has leased a Site;
- 3.7.15 "**Law Enforcement Authority**" means a law enforcement authority, governmental agency and other authority responsible for safeguarding national security, defence or the prevention, investigation, detection and prosecution of crimes;
- 3.7.16 "**Lease Schedule**" means a document describing the specific particulars of a Location(s) and the terms under which the Lessor lets the Location(s) to the Lessee, the form of which is attached to this Agreement as Schedule 2;
- 3.7.17 "**Location**" means that portion of the Site and the Shared Infrastructure where the Lessee's Dedicated Equipment is installed; and
- 3.7.18 "**Location Lease**" means the particulars of Location, Dedicated Equipment and Effective Date as included in a Lease Schedule which is duly completed and signed by both Parties.
- 3.7.19 "**OH&S Act**" means the Occupational Health and Safety Act No. 85 of 1993;
- 3.7.20 "**Privacy Authority**" means the relevant regulatory authority with responsibility for privacy or data protection;
- 3.7.21 "**Site**" means the portion of land, building or other structure upon which a Location is situated, and as described more fully in a Head Lease;
- 3.7.22 "**Shared Infrastructure**" means all the equipment and infrastructure at a Site, that is provided and owned by the Lessor, and that is to be shared by the Lessee and other lessees located at the Site, as generally to the extent required under the

terms of this Agreement;

3.7.23 “**Term**” means the term as set out in the Execution Schedule;

#### **4. Precedence of Terms**

4.1 Subject to clause 4.2 below, if there is a conflict between any provision of a Lease Schedule or Execution Schedule and this Agreement: then the following order of priority will govern:

4.1.1 first, this Agreement;

4.1.2 second, the Execution Schedule; and

4.1.3 third, the Lease Schedule.

4.2 Notwithstanding clause 4.1, in the event of a conflict, the provisions, if any, set out in the section of the Execution Schedule and/or Lease Schedule titled “Special Conditions” shall take precedence and govern over any other provision of this Agreement.

#### **5. COMMENCEMENT AND DURATION**

5.1 This Agreement shall commence and be effective from the Commencement Date.

5.2 Subject to any contrary provisions contained herein, the duration of this Agreement shall be indefinite, subject to the right of either Party to terminate it on six (6) months’ written notice to the other Party.

5.3 Either Party shall be entitled to, with a notice of at least 30 (thirty) calendar days, give the other Party written notice of its intention to terminate any Location Lease, failing which, the Location Lease will continue indefinitely.

#### **6. LETTING AND SHARING**

6.1 Upon the conclusion of a Lease Schedule, the Lessor lets the relevant Location(s) to the Lessee, who rents same from the Lessor, subject to the terms and conditions of this Agreement, the Execution Schedule and such Lease Schedule.

6.2 Each Location Lease shall commence on the Effective Date, subject to the terms and conditions of this Agreement.

6.3 Each Location Lease shall stand on its own and shall be severable from the rest of the other Location Leases.

6.4 Each Location Lease shall at all times be subject to the applicable terms and conditions of the Head Lease relating to the Site, and this Agreement. Subject to clause 6.5 in the event that a Head Lease or the Lessor’s right to sub-lease or otherwise share a Site with

the Lessee is terminated for any reason whatsoever, the associated Location Lease(s) shall terminate with effect from the date of termination of the Head Lease or the Lessor's right. The Lessor shall notify the Lessee in writing immediately upon becoming aware of any such termination and shall provide it with as much prior notice as possible in this regard.

- 6.5 Should a Location Lease expire due to the termination of a Head Lease and the Lessor succeeds in securing a new Head Lease in respect of the same Site, the Lessee shall conclude a further Location Lease in respect of the new Location.
- 6.6 The Lessee shall be entitled, at any time, by reasonable notice in writing to the Lessor, to request amendments to the Location Lease, which request shall not be unreasonably refused by the Lessor. It is recorded that such amendments may be subject to additional rental and/or other consideration payable as provided in the Lease Schedule.
- 6.7 Should the Lessee install any Dedicated Equipment at any of the Sites or Location that are not specifically included in a Location Lease, the Lessee agrees to pay an amount equivalent to the value of six (6) month's rental upon discovery of such Dedicated Equipment and consents to the implicit amendment of the Lease Schedule to include this equipment.

## **7. RENTAL AND OTHER CONSIDERATIONS PAYABLE**

- 7.1 A Lease Schedule lists the Location Leases and corresponding rental and other considerations payable.
- 7.2 Rental in respect of a particular Location Lease shall become payable with effect from the Effective Date of the relevant Location Lease. Should such date be prior to or on the fifteenth (15th) of a month, the full monthly rental for that month shall be due. Should such date be subsequent to the fifteenth (15th) of a month, no rental shall be payable for that month and the payment of rental shall commence with effect from the first (1st) day of the following month.
- 7.3 All rental and other amounts payable to the Lessor shall be paid:
- 7.3.1 monthly in advance; and
- 7.3.2 free of bank exchange and without deduction or set-off, into the Lessor's or other nominated bank account, the details of which are set out in the Execution Schedule, by way of direct deposits or electronic funds transfers.
- 7.4 All amounts applicable and payable, in terms of a Lease Schedule shall escalate annually on the first (1<sup>st</sup>) day of March of each year. Rental and all charges with the exception of electricity charges will increase with CPI. Electricity charges will escalate in relation

to increases in energy input cost. Where rental pricing is specified to be inclusive of electricity a combined rate will apply.

- 7.5 Any amount due, owing and payable by the Lessee which is not paid on the date that such amount is due shall accrue interest at the prime overdraft rate charged by Standard Bank Limited plus 2% (two percent) calculated from the date that such amount became due until the date that payment is effected in full.
- 7.6 Electricity shall be billed and payable in accordance with clause 10.2 below.
- 7.7 All amounts referred to in this Agreement shall be exclusive of Value Added Tax levied in terms of the Value-Added Tax Act, 89 of 1991.

## **8. LEASING PROVISIONS**

- 8.1 The Lessor undertakes to procure that the Lessee shall have access, beneficial use and occupation of the Locations under the Lease Schedule from the Effective Date for the purposes as set out in clause 8.2 and throughout the Term.
- 8.2 Unless otherwise agreed in writing between the Parties, a Location shall only be used by the Lessee for the purpose of installing, commissioning, operating and maintaining the Dedicated Equipment detailed in the applicable Location Lease.
- 8.3 The Lessor shall make the applicable Shared Infrastructure available to the Lessee at the Location concerned.
- 8.4 Without limiting the generality of the foregoing, the Lessee shall at any time during the validity of this Agreement be entitled to, at its own risk, cost and expense, install, operate and maintain only items of Dedicated Equipment as detailed in the applicable Lease Schedule.
- 8.5 If the Lessor wishes to upgrade, modify and/or replace or procure an upgrade, modification and/or replacement of any item of Shared Infrastructure at a Site, then the Lessor shall provide the Lessee with notice in writing of its intentions, which notice shall detail the proposed modification, upgrade and/or replacement. The Parties shall thereafter meet with one another as soon as is reasonably practicable and endeavour in good faith to reach agreement in writing as to the procedure, anticipated timing and all other terms and conditions which shall govern the proposed upgrade, modification and/or replacement.
- 8.6 Save as otherwise provided for herein, and/or save for the security granted under a landlords tacit hypothec, ownership of any equipment or materials of any nature whatsoever, installed at, brought onto or affixed at or to a Location by the Lessee, shall



vest in and remain vested in the Lessee and the Parties agree that all such equipment and materials shall at all times be deemed to be movable property.

- 8.7 The Lessee shall be solely responsible for and shall bear the cost of arranging any and all additional transmission links which may be required by it at the Location.
- 8.8 With respect to each Site, the Lessor warrants, at its own cost and expense:
- 8.8.1 to maintain the Site and Shared Infrastructure in a safe condition and in accordance with any rules or guidelines that may be issued by any relevant authority;
- 8.8.2 to use best endeavours not to violate or breach any condition of the Head Lease that would give the Landlord the right, with the passage of time and/or giving of notice, to terminate the Head Lease; and
- 8.8.3 to provide the Lessee with copies of every notice of default, non-renewal or non-conformance pertaining to the Lessee that is received from Landlord, immediately upon receipt thereof by the Lessor.
- 8.9 Each Party shall be solely responsible, at their own cost and expense, for operating servicing, maintaining and repairing its own equipment located at a Site.
- 8.10 The Lessor undertakes that it shall not tamper with the Dedicated Equipment or enter into the Lessee's Container at a Location.
- 8.11 Neither Party, nor their contractors shall make any attachment to or tamper or interfere in any way with the electricity supply system of the other, or any other party located on a Site or at a Location.
- 8.12 Should a Location be partially damaged or destroyed by fire, flood or through any other cause which makes for such Location to become untenable, and, subject to clause 15, the Lessor is unable to reinstate the Location to a tenable state within a period of 90 (ninety) days from being notified in writing, either Party shall be entitled by notice in writing to the other, to forthwith terminate the Location Lease relating thereto.
- 8.13 Both Parties shall use their best endeavours to ensure that the exercise by them of their rights herein shall not breach any undertaking or liability to any third party and that they shall not do or omit to do anything which shall infringe, detract from or prejudice the rights of the other hereunder at any time during the validity of this Agreement.
- 8.14 The Lessee undertakes not to do or omit to do anything which shall jeopardise, prejudice or undermine the rights of the Lessor under the Head Lease or cause the Lessor to be in breach of any of its obligations to the Landlord under the Head Lease; provided that the Lessor has provided the Lessee with such information as it may require to enable it to comply with this undertaking.

- 8.15 In the event that the Lessor is obliged to decommission a Site, for whatever reason, it shall use its best endeavours to provide the Lessee with at least two (2) months written notice of its intention to do so. Upon the Lessee vacating the Location, the relevant Location Lease shall terminate and all relevant provisions as set out herein relating to the termination of a Location Lease shall apply mutatis mutandis (as may be applicable in the circumstances). The Lessee shall at its own cost and expense, remove all its equipment, materials and signage from the Location and/or Site and restore the Location to the good order and condition in which it was prior to the commencement of the Location Lease, fair wear and tear excepted. A failure by the Lessee to restore the Location/Site as contemplated in this clause shall entitle the Lessor to do so, and take ownership of all the Lessee's Dedicated Equipment, retain the deposit (if any), and invoice the Lessee for the costs incurred to restore the Location.
- 8.16 If the operation of the Lessee's equipment at a Site interferes with that of the Lessor and/or any third party, such reason being determined by the Parties in conjunction with one another, the Lessee shall be required to eliminate such interference within fourteen (14) days of the date of the aforesaid determination. If the operation of the equipment of a third party at a Site interferes with that of the Lessee, such reason being determined by the Parties in conjunction with one another, the Lessor shall ensure that the matter is addressed by such third party and that such interference is eliminated within fourteen (14) days of the date of the aforesaid determination.

## 9. APPROVALS

- 9.1 The Lessor shall, at its own cost and expense, be responsible for obtaining and thereafter for maintaining whatever
- 9.1.1 regulatory approvals it requires under any applicable Laws for the installation and operation of the Shared Infrastructure;
- 9.1.2 municipal, environmental and other regulatory consents may be or may become necessary in order for the Lessee to use, occupy and have access to the Location for the purposes envisaged in this Agreement; and
- 9.1.3 Landlord's consents required to let the Location to the Lessee.
- 9.2 Should any of the necessary consents referred to in clause 9.1 not be obtained by the Lessor or should any such consent or approval, having been granted, be suspended or revoked by the relevant authority, the Lessee shall not be liable to pay any rental for such period that the Lessee is prevented from operating its Dedicated Equipment and shall be entitled to terminate the relevant Location Lease.

- 9.3 The Lessee shall be responsible at its own cost for ensuring that it has and will have all regulatory, statutory and other permissions and consents necessary for the installation and operation of its Dedicated Equipment on or at the Location and warrants that it will in fact have such permissions and consents throughout the Agreement. Should the Lessor's cooperation or approval be required in support of any such applications, the Lessor undertakes to provide reasonable support to the Lessee.
- 9.4 The Lessee shall always comply with all laws, by-laws, ordinances, proclamations and regulations relating to its occupation of a Location, as and where applicable.
- 9.5 The Parties undertakes to not knowingly contravene any conditions of the title deeds of a Site.

## **10. ELECTRICITY**

- 10.1 The Parties record that the Lessee shall require the supply to the Location of electric current required in order to utilise the Location for the purposes envisaged herein.
- 10.2 The Parties specifically record that, unless otherwise agreed in a Lease Schedule, the electricity charges are not included in the rental and the Lessee shall be responsible for all charges relating to the consumption of electricity and meter readings, which charges shall, unless otherwise agreed, be based on sub-metering. The Lessor shall invoice the Lessee for such amounts on a monthly basis in arrears based on the actual metered consumption and payment shall be effected by the Lessee within thirty (30) days from the date of receipt of the applicable invoice by the Lessee.
- 10.3 The installation and cost of sub-meters (if required) shall be the responsibility of the Lessee, unless otherwise agreed between the Parties. The meter type shall be as per the Lessor's specifications. The aforesaid meter shall be installed in such a manner that the Lessor shall have reasonable access to it.
- 10.4 In the event that the electric current available at a Location is insufficient to provide for the Lessee's needs, the Lessee shall, subject to the Lessor's approval (which approval shall not be unreasonably withheld or delayed) and adherence by it to all applicable legislation, be entitled, at its own cost and expense, to upgrade the electric current supplied to such Location.
- 10.5 In the event that the electricity supply to the Location is for any reason whatsoever unavailable, suspended and/or terminated, the Lessee shall be entitled to install, at his own expense and risk, a generator at the Location. The deployment of a generator will be subject to the Lessor's directions with respect to the positioning thereof.

- 10.6 The Lessee shall comply with all relevant laws and by-laws, as well as safety regulations in the deployment of a generator and use its best endeavours to ensure that it does not create an impediment or nuisance to other occupants of the Site and its surrounds.
- 10.7 The Lessor shall from time to time, and at its cost and discretion, upgrade, repair and maintain the power systems provided by the Lessor.

## 11. SECURITY AND ACCESS

- 11.1 The Lessor shall ensure that Lessee and its employees, agents, contractors, sub-contractors, nominees and permitted assigns shall have access to a Site and a Location for the purposes of this Agreement for the duration of the relevant Location Lease
- 11.2 Unless otherwise agreed in a Lease Schedule, the Lessee shall be allowed access to the Site and Location on a twenty-four (24) hour basis any day of the week and the Lessor shall insofar possible ensure that such access is not unreasonably refused or prevented. The Lessee shall use its best endeavours to conduct all maintenance and other activities that are required to be done at the Location during normal business hours, but equipment failures or other emergency situations may necessitate work to be done outside of such hours.
- 11.3 When accessing the Site, the Lessee will respect and abide by the Lessor's security arrangements, and the Lessee will not obstruct or impede any activities on the Site.
- 11.4 Lessee shall provide Lessor with a list of authorised personnel who may access the Location from time to time. The Lessee shall update said list each time it revokes authority from or passes authority to any of its personnel to access a specific Location

## 12. HEALTH AND SAFETY

- 12.1 The Lessor shall make available to the Lessee copies of the health and safety policies pertaining to the Sites as included the Lease Schedule, and the Lessee shall ensure that all of the Lessee's Contractors,
- 12.1.1 are aware of the contents of such policies, as well as rules and regulations of the OH&S Act; and
- 12.1.2 adhere to such policies, as well as rules and regulations of the OH&S Act.
- 12.2 The Lessee undertakes and warrants to the Lessor that,
- 12.2.1 it acknowledges that this Agreement also constitutes an agreement in terms of the COID Act and Sections 8, 13 and 14 of the OH&S Act, whereby all responsibilities for health and safety matters relating to the work that the Lessee and its

Contractors are to perform while on Site remains the obligation of the Lessee.

- 12.2.2 it shall ensure that all of its Contractors are and remain adequately and validly insured in terms of the COID Act and shall deliver proof to that effect to the Lessor if and when required to do so. In addition, the Lessee shall, if and when required to do so, furnish to the Lessor a copy of a certificate of good standing or company insurance issued by the compensation commissioner appointed in terms of COID Act;
- 12.2.3 it shall supply all personal protective equipment and clothing, and other safety measures and equipment (including first aid kit, safety harness and fall protection equipment) as may be necessary in the circumstances (or as may be requested by the Lessor from time to time) in order to protect the Lessee's Contractors while they are on Sites.
- 12.3 The Lessee hereby certifies that all of its Contractors are trained on health and safety and recognize the inherent hazards that exist on Sites and that they enter Sites entirely at their own risk. The Lessee accordingly waives any claim of whatsoever nature against the Lessor, its employees, agents and/or mandatories in respect of any loss, damage and/or injury, whether same is the result of any negligent act or omission on the part of the Lessor, its employees, agents and/or mandatories, other independent contractor or third person, or by way of defective equipment or materials.
- 12.4 In addition to the above, the Lessee shall comply with all relevant environmental and other legislation governing the construction and/or upgrading of its Dedicated Equipment and provide proof of such compliance upon request, as and where applicable.
- 12.5 The Lessee shall for the full duration of each Location Lease comply with all conditions contained within all issued Records of Decisions granted to the Lessor in terms of Regulations R1182 and R1183 issued under the Environmental Conservation Act, 1989 (Act No. 73 of 1989) or any replacing or additional environmental legislation as may be promulgated.
- 12.6 The Lessee shall within 24 hours report all incidents referred to in Section 24 of the OH&S Act to the Department of Labour as well as to the Lessor
- 12.7 The Lessor shall be informed of any investigation or formal inquiry to be conducted in terms of section 31 and 32 of the OH&S Act, involving any incident arising from any activities undertaken and controlled by the Lessee on the Sites.
- 12.8 This clause 12 shall serve as the mutual agreement in terms of Section 37 (2) of the OH&S Act and shall apply as a default in all cases where the Lessor and the Lessee have

not otherwise entered into a separate long form agreement in terms of Section 37 (2) of the OH&S Act.

### **13. INSURANCE**

- 13.1 Both Parties shall ensure that it is at all relevant times properly insured against all public liability and other risks that may arise from or be associated with the lease of each Site, the Shared Infrastructure at each Location and any risk for which it is or may be liable in terms of this Agreement at its own cost and expense.
- 13.2 Neither Party shall at any time do anything or omit to do anything which may have the effect of negating or rendering unenforceable the insurance policies or claims there under and/or increasing the insurance premiums of such insurance policies of the other Party.
- 13.3 The risk of loss or damage to equipment at a Location shall be borne by the Party in whom ownership of such equipment vests.

### **14. INTELLECTUAL PROPERTY**

- 14.1 Nothing contained in the Agreement shall be construed as conferring on either Party any right to the Intellectual Property of the other Party. For purposes of this clause "Intellectual Property" means trademarks (whether registered or not), inventions, patents (whether registered or not), copyrights, designs (whether registered or not), know-how and/or any other intellectual property vesting in a Party by the operation of law.

### **15. FORCE MAJEURE**

- 15.1 Neither Party shall be liable to the other for inability to perform or delayed performance in terms of this Agreement, should such inability or delay arising from any cause beyond the reasonable control of such Party as relates to a particular Location (hereinafter referred to as a "force majeure event"); provided that the existence or happening of such force majeure event has been drawn to the attention of the other Party within a reasonable time of occurrence of such force majeure event. For the purposes of this clause a force majeure event shall include strikes, lock outs, accidents, fires, explosions, thefts, war (whether declared or not), invasions, civil insurrections, floods, earthquakes, lightning strikes, acts of local or national Government, Martial Law or any other cause beyond the reasonable control of the Party affected as relates to the particular Location.
- 15.2 The Party affected by a force majeure event shall, within twenty-four (24) hours of it becoming aware of the existence of the event (or as promptly thereafter as possible)

notify the other Party in writing of the estimated extent and duration of such event as well as the extent to which such event is likely to affect its ability to perform its obligations in terms of a Location Lease and/or this Agreement.

- 15.3 If a force majeure event in relation to a particular Location continues for a period of 3 (three) months or less, any and all obligations outstanding in terms of a Location Lease and/or this Agreement shall be fulfilled by the Party affected by the force majeure event as soon as possible after cessation of the event, save to the extent that such fulfilment is no longer practically possible or is not required by the other Party.
- 15.4 If a force majeure event in relation to a particular Location continues for more than 3 (three) months and such force majeure event prevents the affected Party from performing its obligations in whole or in part during that period, the unaffected Party shall (after the expiry of such 3 (three) month period) be entitled to terminate the particular Location Lease/s, by giving not less than 30 (thirty) Days written notice to the other Party.

## **16. LIMITATION OF LIABILITY AND INDEMNITY**

- 16.1 The Lessor will be liable to the Lessee only for direct damage to the Dedicated Equipment to the extent that it is shown to have been caused directly by the negligence of the Lessor or its employees and/or agents in connection with the performance of this Agreement.
- 16.2 The Lessee will be liable to the Lessor for any damage to the Shared Infrastructure to the extent that it has been caused by the Lessee or its Contractors.
- 16.3 Save in the event of the relevant Party's wilful act or gross negligence, neither Party shall be liable to the other or any third party for any loss, cost, expense or damage arising from this Agreement and the Parties shall indemnify and keep each other indemnified at all times from and against any claims, demands, losses, damages, liabilities and expenses which the other or any third party may suffer or incur as a result of or in connection with its failure to properly perform its obligations in terms of this Agreement.
- 16.4 Notwithstanding anything to the contrary contained in this Agreement, neither Party shall, under any circumstances, be liable for any indirect, special and/or consequential damages suffered by the other Party.

## **17. CONFIDENTIALITY**

- 17.1 Each Party undertakes to the other that it will use all reasonable endeavours to keep and procure that its directors, and Contractors shall keep secret all confidential

information belonging to the other Party and that it will not disclose such confidential information to any third party without the prior written consent of the Party (which consent shall not be unreasonable withheld or delayed) to whom the confidential information pertains.

- 17.2 The provisions of this clause 17 shall not apply to information which
- 17.2.1 is in or comes into public domain other than by default of one of the Parties;
  - 17.2.2 is or has already been independently generated by the Party receiving such information;
  - 17.2.3 is disclosed for the purposes of legal proceedings in connection with this Agreement or to satisfy a legal demand by a competent court of law or government body;
  - 17.2.4 is in possession or is known by the receiving Party prior to its receipt from the disclosing Party; or
  - 17.2.5 is disclosed pursuant to and in accordance with any relevant statutory obligation or in order for either Party to comply with the requirement of any recognised stock exchange.
- 17.3 The provisions of this clause 17 shall apply throughout the duration of this Agreement and for a period of two (2) years after its termination.

## **18. DATA PROTECTION**

- 18.1 Each Party warrants and undertakes to the other, in respect of all of each other's Data that it may process on behalf of the other, that it shall at all times—
- 18.1.1 only process each other's Data for the purposes necessary detailed in this Agreement and, in so doing, shall act solely on the instructions of the other Party. In particular, a Party shall not itself exercise control or transfer, or purport to transfer, control of the other's Data to a third party, except as it may be specifically instructed to do by the other Party or as may be agreed between the Parties;
  - 18.1.2 keep the other's Data logically separate to data processed on behalf of any third party;
  - 18.1.3 not process, apply or use the other's Data for any purpose other than as required for purposes of this Agreement;
  - 18.1.4 upon termination of this Agreement, at the other Party's option, destroy or return all the other's Data to it, along with any medium or document containing such Data; and
  - 18.1.5 maintain and continue to maintain appropriate and sufficient technical and



organisational security measures to protect the other's Data against accidental or unlawful destruction or accidental loss, damage, alteration, unauthorised disclosure or access, in particular where the processing of the other's Data involves the transmission of such Data over a network.

- 18.2 A Party may, subject to the other Party's consent, which shall not be unreasonably withheld, subcontract or outsource the processing of the other's Data under this Agreement to any other person or entity ("Sub-Processor") provided that it imposes legally binding contract terms substantially similar to those contained in this clause on the Sub-Processor.
- 18.3 Each Party acknowledges and agrees that it shall remain liable to the other for any breach of the terms of this clause by any Sub-Processor and other subsequent third party processors appointed by it.
- 18.4 Each Party acknowledges and agrees that the other may receive legally binding demands from a Law Enforcement Authority for the disclosure of, or other assistance in respect of, the other's Data, or be required by law, court order, warrant, subpoena or other legal judicial process to disclose any of the other's Data to another person and that the disclosing Party shall not be in breach of this clause for complying with such obligations to the extent legally bound. Each Party shall notify the other as soon as reasonably possible of any such demand, unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation.
- 18.5 Information Security
- 18.5.1 Each Party represents and warrants that its collection, access, use, storage, disposal and disclosure of the other's Data does and will continue to comply with all applicable privacy and data protection laws.
- 18.5.2 Without limiting a Party's obligations under clause 18.5.1, each Party shall implement administrative, physical and technical safeguards to protect the other's Data that are no less rigorous than accepted industry practices, and shall ensure that all such safeguards, including the manner in which the other's Data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this clause 18.
- 18.5.3 At a minimum, each Party's safeguards for the protection of the other's Data shall include: (i) securing business facilities, data centres, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (ii) implementing device

application, database and platform security; (iii) securing information transmission, storage and disposal; (iv) implementing authentication and access controls within media, applications, operating systems and equipment, and (v) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law.

- 18.6 Each Party reserves the right to audit the other to ensure compliance with the provisions of this clause 18 and each Party shall grant the other, its respective Contractors and/or Privacy Authority (where such Privacy Authority has the legal right to carry out an audit of such Party's processing activities), such reasonable access to its premises, computer and other information systems and records as may be reasonably required to enable the same to satisfy themselves that the other is complying with its obligations under this clause 18, subject to appropriate safeguards to protect the confidentiality and privacy of such Party's or third party data and information.

## **19. BREACH AND TERMINATION**

- 19.1 Should either Party breach any material term of this Agreement and/or the Execution Schedule and/or Lease Schedule, and fail to remedy such breach within thirty (30) days after receipt of written notice from the other Party requiring such breach to be remedied, or be liquidated (whether provisionally or finally) or placed under judicial management or business rescue, or any steps be taken to accomplish any of the foregoing, the other Party shall be entitled, without prejudice to any other rights or remedies to which it may be entitled at law or in terms of this Agreement, to
- 19.1.1 forthwith terminate an applicable Location Lease and/or this Agreement, with or without claiming damages, as the case may be; or
- 19.1.2 claim immediate specific performance, with or without claiming damages, whether or not an obligation has fallen due for performance.
- 19.2 Upon termination of a Location Lease for any reason whatsoever, the Lessee shall be obliged, within sixty (60) days after the termination, at its own cost and expense, to remove all its equipment, materials and signage from the Location and/or Site and to restore the Location to the good order and condition in which it was prior to the commencement of the Location Lease, fair wear and tear excepted. A failure by the Lessee to restore the Location and Site as contemplated in this clause shall entitle the Lessor to do so and retain and take ownership of all the Lessee's Dedicated Equipment, retain the deposit (if any), and invoice the Lessee for the costs incurred to restore the Location.

19.3 Save in circumstances where prevailing legislation provides that the Lessee does not need to hold a licence in order to provide communications services, this Agreement and all Location Leases shall automatically terminate immediately upon such licence of the Lessee being terminated or revoked for any reason whatsoever.

## 20. DISPUTE RESOLUTION

20.1 Should any dispute arise between the Parties in connection with this Agreement, or in relation to any matter affecting the interests of the Parties in terms of this Agreement, the Parties shall meet within five (5) Business Days of written notice of the dispute from one Party to the other (or such longer period as mutually agreed by the Parties in writing) to negotiate in good faith in an effort to settle such dispute.

20.2 Should the Parties fail to resolve any dispute between themselves within ten (10) Business Days of the meeting referred to in clause 20.1 (or such longer period as mutually agreed by the Parties in writing), the Parties undertake to meet promptly and consider whether or not the dispute should be referred to arbitration. If the Parties agree in writing that the dispute should be referred to arbitration, such dispute will be determined by arbitration in accordance with the remaining provisions of this clause relating to arbitration. If the Parties fail to reach agreement in writing to refer the dispute to arbitration within a period of ten (10) Business Days of meeting in terms of this clause 20.2 or, if either Party fails to attend the meeting in terms of clause 20.1 or the meeting in terms of this clause 20.2, then either Party shall be entitled to commence litigation proceedings against the other Party, in a court of competent jurisdiction.

20.3 Notwithstanding anything to the contrary contained in this clause 19.3, neither Party shall be precluded from obtaining interim, injunctive or similar relief from a court of competent jurisdiction.

20.4 The arbitration shall be held

20.4.1 in accordance with the rules of the Arbitration Foundation of Southern Africa or its successor in title (the "Foundation");

20.4.2 in Gauteng, in the English language;

it being the intention of the Parties that the arbitration shall be held and completed within twenty-one (21) days of its commencement.

20.5 The arbitrator shall be, if the matter in dispute is principally

20.5.1 a legal matter, an impartial practising advocate, practising attorney or retired judge of at least ten (10) years' standing;

20.5.2 an accounting matter, an impartial practising chartered accountant of at least ten

- (10) years' standing;
- 20.5.3 a technical matter, an impartial telecommunications expert in the relevant telecommunications field of at least ten (10) years standing; and
- 20.5.4 any other matter, any independent person(s), agreed upon between the Parties to the dispute.
- 20.6 Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting, or other matter within seven (7) days after the Parties' agreement to refer the dispute to arbitration, the matter shall be deemed to be a legal matter.
- 20.7 Should the Parties fail to agree on an arbitrator within ten (10) days after the matter was referred in terms of clause 20.2 to arbitration, the arbitrator shall be appointed by the Foundation at the request of either Party to the dispute, the Foundation to take into account the provisions of clause 20.5.
- 20.8 The decision of the arbitrator (including an award in respect of the costs of the arbitration) shall be final and binding on the Parties after the expiry of a period of thirty (30) days from the date of the arbitrator's ruling and may be made an order of a court of competent jurisdiction at the instance of either of the Parties, subject to the Parties' rights of appeal in terms of clause 20.9.
- 20.9 Either Party may appeal the decision of the arbitrator within a period of thirty (30) days after the ruling has been handed down by the arbitrator by giving notice to that effect to the other Party, such notice to be received before the expiry of the thirty (30) day period. The appeal shall be submitted to arbitration in Gauteng in accordance with the rules of the Foundation by a panel of three (3) independent arbitrators appointed by the Foundation.
- 20.10 The decision of the panel of arbitrators on appeal and as provided for in clause 20.9 above, shall, in the absence of manifest error, be final and binding on the Parties and may be made an order of a court of competent jurisdiction at the instance of either Party. The panel of arbitrators shall make an award of the costs of the appeal.
- 20.11 The Parties hereby consent to the non-exclusive jurisdiction of the Gauteng Local Division of the High Court for the purposes of this clause 19.3.
- 20.12 The Parties agree to keep the arbitration, including the subject matter of the arbitration and the evidence heard during the arbitration, confidential and not to disclose it to anyone except for the purposes of an order to be made in terms of clauses 20.8 and 20.10.
- 20.13 The provisions of this clause
- 20.13.1 constitute an irrevocable consent by the parties to any proceedings in terms of this

- clause 19.3 and neither Party shall be entitled to withdraw there from or claim at any such proceedings that it is not bound by such provisions; and
- 20.13.2 are severable from the rest of this Agreement and shall remain in full force and effect despite the termination of or invalidity for any reason of this Agreement, or any part of this Agreement.
- 20.14 The Parties shall continue to perform all undisputed obligations where possible whilst any dispute is being resolved.

## 21. DOMICILIA AND NOTICES

- 21.1 The Parties choose as their domicilia citandi et executandi their respective addresses set out in an Execution Schedule (or at such other address, not being a post office box or poste restante, of which the Party concerned may notify the other Party in writing) for all purposes arising out of or in connection with this Agreement, at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to either of the Parties.
- 21.2 Any notice given or other document sent in terms of this Agreement shall be in writing and shall
- 21.2.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 21.2.2 if posted by prepaid registered post be deemed to have been received by the addressee on the tenth (10<sup>th</sup>) working day following the date of such posting; or
- 21.2.3 if sent by electronic mail, the date on which such electronic mail is sent to the addressee, on condition that such notice be signed physically or electronically and be attached to the electronic email so sent.
- 21.3 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other, including by way of facsimile transmission or electronic mail, shall be adequate written notice or communication to such Party.

## 22. GENERAL

- 22.1 This Agreement constitutes the whole agreement between the Parties regarding the subject matter hereof.
- 22.2 Neither Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

- 22.3 No indulgence which either Party may grant to the other shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.
- 22.4 The Parties agree that they will comply with all applicable law relating to bribery and corruption including (i) The SA Prevention and Combating of Corrupt Practices Act 2004; (ii) the UK Bribery Act 2010; and (iii) the US Foreign Corrupt Practices Act and agree not to give, offer, promise, receive, or request any bribes, including in relation to any public official; for the purposes of this Agreement.
- 22.5 It is expressly recorded and agreed that the rights afforded to the Lessee hereunder are personal to the Lessee. The Lessee may not sell, cede, assign, delegate, sub-contract or in any other way alienate or dispose of any of its rights or obligations under this Agreement without the prior written consent of the Lessor.
- 22.6 The Lessor shall be entitled to sell, cede, assign, delegate or in any other way alienate or dispose of any of its rights or obligations under this Agreement to any party, whether within the Lessor group or otherwise, and such action shall not require the consent of the Lessee.
- 22.7 If any term or condition of this Agreement is held by any court having jurisdiction to be unenforceable, illegal, void or contrary to public policy, such term or condition shall be of no effect whatsoever upon the binding force or effectiveness of any of the remainder of this Agreement, it being the intention and declaration of the Parties that had they or either of them known of such unenforceability, illegality, invalidity or that the provision was contrary to public policy, they would have entered into a contract containing all the other terms and conditions set out in this Agreement.
- 22.8 Nothing in this Agreement shall be construed as constituting a partnership, joint venture, agency or employment between the Parties, and neither Party shall have the authority or power to bind, or contract in the name of, or to create a liability against, the other in any way for any purpose.
- 22.9 Each Party warrants to the other that it has the necessary rights and authorities to enter into and perform its obligations in terms of this Agreement.