

Telecom Equipment Hosting and Marketing Activities Agreement for the poa! Wireless Internet Connectivity Service

poa! Internet (the "**Service**") is a wireless internet connectivity service provided by Poa Internet Kenya Limited ("**Poa**"), which provides Internet access for WiFi enabled smartphones, tablets, and laptops and other devices via the Poa data communication network ("**Poa Network**"). The Terms and Conditions for the Service other rules or policies for its use are posted on the poainternet.net (the "**Web Site**").

This document and a duly completed Internet Installation Form ("**Form**"), in combination form legally binding terms and conditions ("**Agreement**") between Poa and the Party specified on the Form ("**Landlord**") under which Poa will install certain telecommunications equipment ("**Equipment**") at the location ("**Premises**") specified in the Form. This Equipment will form part of the Poa Network, so that Poa can provide the Service at or near the Property. The Premises comprises of areas shared between all Occupants ("**Public Areas**") and individual residences occupied by a limited number of Occupants ("**Single Residences**"). In addition, Poa will perform certain sales and marketing activities ("**Sales Activities**") at or near the Property as specified in the Form to sell the Service to the occupants of the Premises ("**Occupants**"). Landlord will also supply Poa with an electricity ("**Power**") as set out in the Form so that Poa can to operate the Equipment.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE SIGNING THE FORM AS IT AND THIS DOCUMENT CREATES A LEGALLY BINDING AGREEMENT BETWEEN LANDLORD AND POA, EACH A "**PARTY**" AND TOGETHER THE "**PARTIES**". BY SIGNING THE FORM, YOU CONFIRM THAT YOU ARE THE AUTHORISING PARTY SPECIFIED ON THE FORM AND LEGALLY AUTHORISED AND ENTITLED TO ENTER INTO THIS AGREEMENT.

NOW, THEREFORE, in consideration of the promises, terms, and agreements contained herein, the Parties agree as follows:

1. Poa or its agents may conduct an inspection of the Premises so that the technical viability of installing and operating the Equipment and sourcing the Power can be ascertained ("**Inspection**"). The Inspection may be performed during several visits to the Premises. It is expected that Landlord will supply the Power at the location within the Premises identified in the Form ("**Supply Point**"). If Poa decides at its sole discretion that the Supply Point is not suitable it may reach agreement with Landlord on a suitable alternative or determine that it is technically unviable to source the Power from Landlord. If Poa decides at its sole discretion that it is technically unviable install the Equipment and / or to source the Power it may immediately terminate this Agreement.
2. Landlord hereby grants Poa or its agents access to the Property in order to
 - a. sell, market and promote the Service to the Occupants as specified in the Sales Activities.
 - b. Conduct the Inspection
 - c. Install and maintain the Equipment
 - d. Interconnect the various pieces of Equipment throughout the Premises using cables which may be laid in both the Public Areas and the Single Residences
 - e. Interconnect the various pieces of Equipment with the Supply Point using cables which may be laid in both the Public Areas and the Single Residences

Poa shall be entitled to enter the Premises 24 hours a day on any day of the year. Poa shall arrange entry to the Premises through the individual identified in the access contact section of the Form ("**Caretaker**") or their alternative from time to time. Landlord shall ensure that the Caretaker is aware of Poa's right to enter the Property and takes all reasonable actions to facilitate the same. Poa will use reasonable efforts to ensure that the Equipment is installed expeditiously and with minimum impact to the Property.

3. Landlord will provide Poa sufficient space with the Public Areas to install the Equipment. The exact location of this Equipment and any cables interconnecting the different pieces of the Equipment or the Equipment to the Supply Point shall be determined by Poa during the Inspection at its sole discretion.
4. Poa will be responsible for the operation of the Equipment. Poa will use reasonable efforts to ensure that the installation and on-going operations of the Equipment and any maintenance of the Equipment have minimal impact on Landlord, the Premises and the Occupants.
5. Landlord will use reasonable efforts to ensure that the Occupants, Landlord's employees, Landlord's agents and the general public do not interfere with the Equipment or Supply Point and that the Equipment and Supply Point is kept secure at all times.
6. Poa will be responsible for securing the necessary licenses and permits to install and operate the Equipment and perform the Sales Activities.
7. Poa will be responsible for insuring the Equipment. At its discretion, Poa may decide not to insure or to self-insure the Equipment.
8. The Equipment will remain the property of Poa at all times. Landlord, its employees or agents shall not modify or interfere with the Equipment in any way.
9. Landlord shall be responsible for the general maintenance and upkeep of the Premises.
10. Poa will perform the Inspection, install the Equipment, operate and maintain the Equipment and perform the Sales Activities at its own expense unless otherwise specified in the Form.
11. Landlord shall provide Power for the Equipment at the Supply Point. Once the Service is provided at or near the Premises and Landlord has provided the Power, if specified in the Form, for each whole month where Landlord supplies the Power, Poa will compensate Landlord for the Power either by:
 - a. Making a payment to Landlord (or alternative recipient if specified in the Form) of a monthly amount specified on the Form. Such amount will never exceed the maximum amount specified on the Form. Payment will be due within 30 days of the end of each month. All amounts specified on the Form are inclusive of VAT or any other taxes or levies. Poa may deduct from the payments any VAT, taxes or levies that its required to under law; or
 - b. Credit the Landlord's (or alternative recipient if specified on the Form) Account for use of the Service with a monthly amount specified on the Form. Such amount will never exceed the maximum amount specified on the Form. Credit will be applied to the Account within 30 days of the end of each month.
12. Whilst performing the Sales Activities, Poa may make a sale of the Service to Occupants referred by Landlord ("**Referred Occupant**"). Poa at its sole discretion will determine if an Occupant can be considered a Referred Occupant. If specified on the form, for each Referred Occupant, Poa will make a one-time payment to Landlord for the amount specified on the Form. This payment will be made within 30 days of the end of the month in which the Service is provided to the Single Residence of the Occupant. Such payment is contingent on Poa receiving full payment for the installation and operation of the Service from the Referred Occupant. The amount paid will never exceed the maximum amount specified on the Form. Any amount specified on the form is inclusive of VAT and any other taxes or levies that may apply. Poa may deduct from the payments any VAT, taxes or levies that its required to under law

13. This Agreement shall become effective as of the date as of the effective date specified on the Form (“**Effective Date**”).
14. This Agreement shall continue in effect for an initial term of 25 years (“**Initial Term**”).
15. Following the Initial Term, this Agreement shall automatically renew for successive 25 year periods unless terminated by either Party upon not less than one hundred and eighty (180) days’ written notice to the other Party prior to the date of renewal.
16. Clauses 14 and 15 notwithstanding, Poa may immediately terminate this Agreement with no further penalty or commitment if:
 - a. following the Inspection, Poa deems that the Premises do not meet the necessary technical requirements for the Equipment;
 - b. the Parties are unable to agree dates for the Inspection or installation of the Equipment, or Poa is not able to complete the Inspection within 1 month of the Effective Date;
 - c. If Poa determines at its sole discretion that the provision of the Service at the Premises is no longer commercially or technically viable; or
 - d. the Equipment is stolen or damaged more than once in any six-month period; or
 - e. at Poa’s sole discretion.
 - f. In the event of a non-remedy of breach of this Agreement as specified in Clause 17.
17. In the event of a breach of this Agreement by either Party, the Party claiming the breach shall be entitled to serve on the other Party written notice specifying the breach and requiring that Party to remedy the breach within two (2) weeks. If after the expiry of such notice period the Party in breach has failed or refused to remedy the breach, the Party claiming breach shall be entitled to terminate this Agreement by written notice forthwith but subject to the terms and conditions contained herein.
18. Without prejudice to damages due to either Party for breach of this Agreement, either Party shall be entitled to immediately terminate this Agreement on the occurrence of any of the following events:
 - a. If any material part of the, assets (excluding the Premises) or revenues of either party is sold or disposed of or threatened to be sold or disposed of (otherwise than in the normal course of trading) whether in a single transaction or a number of transactions or is nationalised, compulsorily acquired, seized or appropriated; or
 - b. If either Party shall be liquidated or wound up or have a petition for winding up presented against it or pass a resolution for voluntary winding up (otherwise than for a bona fide reconstruction or amalgamation) or if similar or analogous proceedings are successfully instituted against or taken by the Customer; or
 - c. If either Party shall have a receiver or an administrative receiver appointed in respect of all or any part of its assets or if similar or analogous proceedings are instituted against its assets; or
 - d. If either Party enters into an arrangement for the benefit of its creditors; or
 - e. If any step shall be taken to levy a distress or execution or if a distress or execution shall be levied or threatened to be levied upon any chattels of or in the possession of either Party.

19. Each Party hereby covenants to the other Party to immediately notify it in writing of the occurrence of any of the events referred to in clause 18.
20. Upon termination of the Agreement, Poa may at its discretion decide to un-install the Equipment. In which case, it will perform the un-install within three (3) calendar months. Landlord will grant Poa all necessary access to the Premises in order to perform the un-install.
21. If Landlord sells the Property, transfers ownership of the property to a third party, or no longer has the legal authority to enforce this Agreement at the Property, the Landlord shall ensure that this Agreement and all the obligations it contains on Landlord shall be transferred to such third party as has the ability to enforce this Agreement at the Property.
22. The trade names, service marks, brands and trademarks of each Party are proprietary to that Party and nothing in this Agreement constitutes the grant of any license or right to use such trade names, service marks, brands or trademarks. Each Party agrees not to display or use any of the other Party's trade names, service marks, brands or trademarks and shall not permit the same to be displayed or used by third parties, unless otherwise consented to in writing by the other Party.
23. Each Party agrees not to not release any publicity, press releases or similar publicity relating to this Agreement without the other Party's prior written consent. It is Poa's intent to publicise the Service widely and may include Landlord's involvement in the Service in such publicity.
24. Neither Party is liable to the other Party or any of its affiliates or any other person, firm or entity for direct, indirect, consequential, special, incidental, actual or punitive damages, or for any lost profits of any kind or nature whatsoever, even if foreseeable, arising out of any mistake, accident, error, omission, interruption, or defect in transmission or delay arising out of or relating to the obligation of each Party pursuant to this Agreement and any schedules to it including without limitation any failure to provide timely, accurate delivery of any of the activities contemplated in this Agreement, or conditions which may result from actions of regulatory or judicial authorities.
25. Poa may assign its rights and obligations under this Agreement to any party that it nominates so long as such party will be bound by the obligations and benefits contained herein.
26. Poa at its sole discretion may use third parties or appointed agents to perform any of its obligations or activities set out in this Agreement.
27. Poa may at its sole discretion assign any or all of its rights and obligations under this Agreement to one or more third parties.
28. The parties acknowledge that, in the course of their performance under this Agreement, it may be necessary for one Party to provide documentation, technical and business information and/or intellectual property, in whatever form recorded (collectively, "Confidential Information") to the other Party. This Agreement shall be regarded as Confidential Information. All Confidential Information provided or disclosed by either Party hereunder shall remain the property of the furnishing party, and shall be held in strict confidence by the receiving party, unless the furnishing Party otherwise consents in writing or unless disclosure of such Confidential Information is required by the applicable laws. Confidential Information furnished by any Party hereunder (i) shall not be reproduced or copied, in whole or in part, by the receiving party except for use as specifically authorised by this Agreement; (ii) shall, together with any copies thereof, be returned to the disclosing party, or at the request of the disclosing party, destroyed, when no longer needed for purposes of this Agreement; and (iii) shall only

be disclosed by the receiving party to its employees who have a need to know such Confidential Information in connection with the performance of this Agreement; and who have agreed to comply with the confidentiality obligations set forth herein.

29. All intellectual property relating to or used in connection with or provided under this Agreement (the "Poa IPR"), and the technical infrastructure and equipment related thereto, shall at all times remain the exclusive property of Poa and may not be exploited, reproduced or used by the Landlord or the Landlord's officers, employees or agents except as expressly permitted in this Agreement, and the Landlord shall not have or acquire any right, title or interest in or otherwise become entitled to any such Poa IPR. The Landlord undertakes that it shall at no time, have any right, title or interest in such Poa IPR and agrees that it shall not (or permit any third party to) reverse engineer, decompile, modify or tamper with the Equipment.

30. Neither Party shall be liable for its delay of performance or its failure to perform hereunder, owing to causes beyond its control, including, but not limited to: acts of God; fire, flood, or other catastrophes; act of government (including failure to issue, maintain or renew required approvals or licenses); national emergencies, insurrections, riots, wars; or industrial disputes of third parties. In the event of any one or more of the foregoing occurrences, notice shall be given by the Party unable to perform to the other Party and the Party unable to perform shall be permitted to delay its performance for so long as the occurrence continues.

31. Unless otherwise specifically proved herein, any notice required by this Agreement is effective and deemed delivered
 - a. three (3) business days after posting by certified mail, return receipt requested, properly addressed and with the correct postage;
 - b. or one (1) business day after pick up by the courier service when sent by overnight courier;
 - c. or upon receipt when sent by electronic mail.

32. Notices will be sent to the addresses set forth below, unless either Party notifies the other of an address/number change in writing:

Notices to POA	Notices to LANDLORD
<p style="text-align: center;">Legal Counsel (Notices) Poa Internet Kenya Ltd 4th Ngong Avenue Towers 7th Floor North Wing 4th Ngong Avenue PO BOX 42713-00100 Nairobi</p> <p>With Copy to the following email address: notices@poineternet.net</p>	<p>Written notices will be served to Landlord at the email address specified in the Form. If no email address is specified then to the Property.</p>

33. Neither Party shall have the authority to act for or to bind the other Party in any way, or to execute agreements on behalf of the other Party. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of an agency, partnership, joint venture or employer and employee relationship between the parties.
34. No provision of this Agreement shall operate so as to exclude any liability of one of the Parties in respect of a fraudulent misrepresentation made by that Party to the other, or to restrict or exclude any remedy, which the other Party may have in respect of such misrepresentation.
35. This Agreement does not create or confer any rights or benefits enforceable by any person not a Party to it except a person who is a permitted successor assignee of the rights or benefits of this Agreement.
36. This Agreement and its Schedules constitute the whole agreement and supersede all other agreements, representations or warranties made by or between the Parties concerning the same.
37. Failure by either Party to exercise any rights under this Agreement in any one or more instances will not constitute a waiver of such rights in any other instance. Any waiver of rights will only be effective if it is in writing and signed by that Party and a waiver of any breach will not be regarded as a waiver of any subsequent breach of the same or different term or condition.
38. If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced. In such case, the Parties shall forthwith enter into good faith negotiations to amend the provision(s) in such a way that, as amended, it is (or they are) valid and legal and to the maximum extent possible carries out the original intent of the Parties as to the clause(s) in question.
39. Each Party will meet its own costs in relation to preparing, entering into and enforcing this Agreement.
40. Each party warrants that:
 - a. It is a duly recognised legal entity and its obligations under this Agreement are legal, valid and binding obligations, enforceable against it in accordance with its terms.
 - b. It has full power, capacity and authority to enter into, perform and comply with its obligations under this Agreement.
41. This Agreement shall be governed by and shall be interpreted in accordance with the laws of Kenya and in the English Language.
42. All of the Schedules to this Agreement constitute an integral part hereof, and references in this Agreement to clauses and Schedules are to clauses and Schedules of this Agreement.
43. All references made to the Parties shall include their respective personal representatives' successors and permitted assigns.
44. This Agreement may be executed in any number of counterparts, all of which taken together will constitute one single agreement between the Parties.
45. Poa may at any time revise this Agreement. The latest version of these Agreement will be contained in the Web Site. You should periodically visit the Agreement to examine the then-current Agreement by which you are bound.

