

DATED THIS DAY

BETWEEN

CO-LOCATION AGREEMENT

COMMUNICATION HILLS ESTATES

ASSOCIATION

**AND**

SCANCOM PLC

OF 2022

**THIS AGREEMENT is made this \_ Day of \_\_\_\_\_\_\_, 2022**

Between

**Communications Hills Estates Association** registered according to the laws of the Republic of Ghana, with its registered office located at House No. 22 Kpone, Forson Street, Accra, and whose Postal Address is P.O.Box CT 1568 Cantonments Accra (hereinafter referred to as **"CHA"** which expression shall where the context so requires or admits, include its successors and assigns) acting per its **Estate Committee Chairman** and authorized representative **William Mensah Dodoo** of the one part.

**1.**

**DEFINITIONS**

And

**SCANCOM PLC** a company incorporated under the laws of the Republic of Ghana, whose head office is situated at MTN House, Independence Avenue, West Ridge, Accra and whose postal address is P. 0. Box 281, Trade Fair, La, Accra (hereinafter referred to as **"MTN" or "Co-locator"** which expression shall where the context so requires or admits, include its successors and assigns) acting per its Chief Technical Officer and authorized representative Mohammed Rufai of the other part;

Whereas:

* + 1. MTN is a leading mobile telecommunications company in Ghana
    2. CHA is an association of homeowners and the owners or licensees of certain tower sites ("Co-location Sites") on which communication equipment is installed
    3. MTN wishes to sub-license space and facilities at certain sites of CHA
    4. CHA has agreed to permit the installation of Co-locator's Equipment for such purposes on the terms and conditions of this Agreement.

The Parties defined in the heading of this Agreement shall retain such definition and save where the context indicates otherwise the following terms shall have the meanings assigned to them hereunder namely:

* 1. "Agreement" means this Agreement together with all annexes and schedules

1.2 "Equipment" means with respect to each Co-location Site, **Co-locator’s**

Communication equipment and other property installed at the Co-location Site

* 1. "Co-location Site" means the portion of land, buildings, structures and premises which

the Co-locator will sub-license tower space and ground space at the Co-location site.

* 1. "Monthly Access Charge" - shall mean the monthly charge of an equivalent Four Thousand, Five Hundred Ghana Cedis (GHC4,500.00) recurring fees due from MTN to CHA for use

of the co-location sites which has been procured by MTN in connection with this contract.

**SCOPE**

**2.**

Each party agrees to provide services to the other party in accordance with the terms and conditions of this Agreement. The services may be varied to include additional services based on specific discussions between CHA and MTN.

**3.**

**TERM**

This Agreement shall commence on the last date of signature and shall continue for an initial period of two (2) years. Renewal after two (2) years shall be subject to agreement between the two (2) parties.

**4.**

**PRICING AND BILLING**

4.1 CHA will charge MTN a monthly co-location fee for Equipment installed on each

Co-location Site. Service charges will be issued quarterly in advance as detailed in Schedule 1. The invoices shall state clearly the due date and the amount for the quarter.

4.2 The quarterly collocation service charges due hereunder by MTN shall be payable

to CHA in the local currency (Ghana Cedis). Payment shall be subject to the deduction of withholding tax and other applicable statutory taxes.

4.3 If MTN disputes any invoice amount, it shall submit to CHA within five (5) days

following receipt of such an invoice a complaint in writing. Upon receipt of Where the discrepancy is resolved, **MTN** shall be expected to pay the undisputed invoiced amount within thirty days of such notice.

**6.**

**ACCESS RIGHT**

4.4 Payment will be made to the following account:

Communication Hills Estate Owners Association Cal Bank

0301021493820

Airport City ACCCGHAC

Account Name: Bank Name:

Account Number: Bank Branch:

Swift Number:

**5.**

**PERMITTED USE OF SITES**

5.1 MTN shall be permitted to install, maintain, operate, service, modify and/or replace the Equipment at the co-location sites during the Term of this agreement. No person or entity other than MTN shall have the right to install, maintain or operate MTN's equipment or transmit or receive communications at, or otherwise use, any of the co-location sites, except pursuant to a separate agreement with CHA.

5.2 The Equipment shall only be utilized for the transmission and reception of wireless data communications signals within legal frequencies. CHA shall not unreasonably withhold its approval of use by MTN of any different frequency as long as MTN has undisputed rights to use such frequency, no interference issue are caused by such use, and such frequency is used with the Equipment. Except as otherwise agreed to in writing by the parties, MTN's permitted use with respect to each collocated site shall be limited solely to, and consist solely of, the rights enumerated in this paragraph. MTN shall only have use rights to the Co-location Site as set forth in this Agreement and shall not have any expressed or implied rights under any applicable real property or real estate laws, rules or regulations in Ghana with respect to

the Co-location Site other than those rights explicitly set forth herein.

MTN's authorized technicians ("Authorized Personnel") shall have twenty-four. (24) hours per day, seven (7) days per week rights of access, by giving CHA prior notice, during the Term for the purpose of installing, the repairing, operating, or removing Equipment described in the Schedule, subject to prior approval (which shall not be unreasonably withheld) from CHA, and at no additional charge or cost to MTN. CHA shall have the right to supervise all MTN access. MTN understands and agrees that other licenses and their authorized representatives shall have similar access rights to the Co-location Site for similar purposes.

**7.** **PERFORMANCE OF WORK**

MTN shall perform, or cause to be performed, all installation works in strict compliance with the provisions of this Agreement and Applicable Law. MTN shall ensure that its Equipment does not interfere with the operation of any communications systems and/or equipment of any other users of co-location site.

**8.** **EQUIPMENT AND EQUIPMENT PERMIT**

MTN covenants that all of the Equipment to be constructed or installed at the Co-location sites and all frequencies utilized fall within licensed frequencies by the National Communications Authority (NCA) of Ghana or the regulatory authorities.

**9. LIMITATION OF LIABILITY**

**9.1** Neither Party shall be liable to the other for consequential or indirectlosses or damages arisingunderthis Agreement including withoutlimitation, third party claims, unless such loss or damage is due to thenegligence of either Party or its representatives.

**9.2** Notwithstanding any other provision of this Agreement, in no event shalleither Party be liable to the other for indirect, special, consequential,incidental, economic or punitive damages, including without limitation,damages arising out of loss of data, loss of income, loss of profit or failure torealize expected savings, foreseeable or not, arising from its performance ornon-performance of its obligations under this Agreement, whether throughnegligence or otherwise.

**10. INTELLECTUAL PROPERTY**

**10.1** 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 used or displayed by any third party, without the prior written consent of that other Party.

**10.2** It is expressly understood by each Party that the trade names, service marks, brands, trademarks of the other Party, together with all and any intellectual property rights pertaining to that Party's business, are proprietary.to that Party and nothing in this Agreement constitutes the grant of a general license to use the said trade names, service marks, brands trademarks or other intellectual property rights.

**11. FORCE MAJEURE**

Neither Party shall be liable for any failure to fulfill its obligations under this Agreement if and to the extent such failure is caused by any circumstances beyond its reasonable control, including but not limited to flood, fire, earthquake, war, tempest, hurricane, government restrictions or acts of God. If any event under this clause substantially prevents, hinders, or delays performance by CHA of its duties and obligations under this Contract, then CHA shall have the right to procure performance of such duties by a third party, provided that if CHA is for any reason unable to procure such performance within 15 (fifteen) days following the force majeure event, MTN may at its option procure such performance from an alternate source. If CHA fails to-resume performance within 30 (thirty) days following the instance of force majeure, either Party shall be entitled to terminate this Agreement without liability.

**12. TERMINATION**

Either party may terminate the agreement by giving six (6) months' notice in writing of its intention to terminate this contract.

**13. TERMINATION FOR DEFAULT**

13.1 CHA. without prejudice to its other rights at law or in equity, may terminate this Agreement immediately and without notice:

1. If MTN defaults in the payment of any amount due hereunder and fails to remedy such default within sixty (60) days of receipt of written notice from CHA, or
2. In the event of any evidence of the insolvency or bankruptcy of MTN.

13.2 MTN may without prejudice to its other rights at law or in equity, may terminate this Agreement immediately and without notice:

1. If CHA defaults in its obligations under the Agreement and fails to remedy such default within thirty (30) days of receipt of written notice from MTN, or

b) In the event of insolvency or bankruptcy of CHA.

**14. CONFIDENTIALITY**

Each Party shall maintain the confidentiality of all information or data of any nature ("information") provided to it by the other Party or obtained under or in connection with this Agreement in respect of the other Party's affairs or business. For purposes of this article, this Agreement and all of its annexes shall be considered "Confidential". Each Party shall use the same efforts to protect information it receives hereunder as it uses to a protect its own information, but in no event less than reasonable standard of care. The above requirements shall not apply to Information, which is already in the possession of the receiving party through no breach of any confidentiality obligations to CHA or MTN by any third party, is already publicly available, or has been previously independently developed by the receiving Party without the use of any information.

However, this Agreement shall not prevent any disclosure of information pursuant to applicable law or regulation provided that prior to making such disclosure the receiving Party shall use reasonable efforts to notify the disclosing Party of this required disclosure.

**15. NOTICES**

Any notice, demand, or communication required or permitted under the terms of this Agreement shall (unless otherwise provided by this Agreement) be in writing and shall be sufficiently served if delivered by hand or sent by registered mail, telex or facsimile or E-mail to the respective Parties as follows: -

* + - 1. **FOR CHA:**

Address: House No. 22 Kpone, Forson Street, Accra

Postal Address: P.O.Box CT 1568 Cantonments Accra

Attention: Isaac Koduah

**b)FOR SCANCOM PLC:**

Address: MTN House, Independence Avenue West Ridge

Postal Address: P,0 Box TF 281-Accra

Attention: Chief Technical Officer

**16. DISPUTE RESOLUTION**

16.1 The Parties shall, through good faith negotiations, attempt to re disagreement or dispute which may arise between them reinterpretation, the performance of or the failure to perform Agreement.

16.2 The parties shall endeavor to resolve any disputes amicably between themselves via their respective contact persons. Any unresolved issues shall be escalated to and be determined by the mediation of the in authorized representatives herein of the parties, the event that the to authorized representatives are not in a position resolve the dispute within a period of twenty-one, (21) Business Days of the mediation, either Party may require that such dispute be submitted to arbitration. Unless

otherwise agreed in writing between the Parties, the arbitration shall be held in Accra, in the Republic of Ghana. The arbitration panel shall consist of three (3) members: one of each may be nominated by both party and the third party to be agreed between the two nominated arbitrators. The arbitration shall be conducted in accordance with the rules of Alternative Dispute Resolution Act, (2010) Act 790, whereupon the arbitration panel shall decide upon and give directives as to all matters of procedure to be followed by the Parties in resolving the dispute and who shall bear the costs of the arbitration. The decision of the arbitrator shall be final and binding and may be made an order of court.

**17. GOVERNING LAW**

This Agreement shall be governed by the laws of the Republic Ghana.

**18. GENERAL**

18.1 Any article or subsection of this Agreement or any clause of this Agreement which is, or becomes illegal, or unenforceable shall be severed therefrom, and shall be ineffective to the extent of such illegality or unenforceability and shall not affect or impair the remaining provisions hereof which shall continue to remain in full force and effect.

18.2 The failure or delay on part of either Party to exercise any right or obligation under this Agreement shall not operate as a waiver thereof. Any waiver by either Party of a breach by the other of any provision of this Agreement shall be limited to the particular breach and shall not operate in any way in respect of any future breach. No waiver shall be effective unless given in writing.

18.3 MTN shall not use the Co-location Sites for any purpose prohibited under applicable law. This Agreement and the continuance thereof by the Parties, is contingent upon the obtaining

and the continuance of such approvals, consents, governmental and regulatory

authorizations, licenses and permits as may be required or deemed necessary by the Parties, who shall endeavor to obtain and continue the same.

18.4 This Agreement represents the entire agreement between the Parties and supersedes and cancels all previous negotiations, Agreements or commitments (whether written or oral) with respect to the subject matter of the specific service.

18.5 Nothing in this Agreement shall be deemed or construed as creating a joint venture or partnership between the Parties. Neither Party is, by virtue of this Agreement, authorized as a agent, employee or legal representative of the other. Neither Party shall have any power or authority to bind or commit the other.

18.6 The Parties shall at all times comply with all applicable laws and, where required, obtain the approval of the appropriate regulatory and governmental tribunals ("Regulations"). A Party is not liable for a breach of this Agreement as a consequence of any action taken in complying with any Regulations. The Parties agree to negotiate in good faith to amend this Agreement to reflect or accommodate any such Regulations.

18.7 This Agreement may only be modified if such modification is in writing and signed by a duly authorized representative of each Party hereto.

18.8 This Agreement may be executed in as many counterparts as may be required, each of which when delivered is an original but all of which taken together constitute one and the same agreement.

**19 ANTI-BRIBERY AND CORRUPTION**

19.1. MTN has a zero tolerance for bribery and corruption. MTN therefore enjoins each business partner to ensure compliance with this policy.

19.2. MTN requires that CHA as well as its subcontractors, directors, shareholders and officers shall observe the highest standard of ethics during the procurement and performance of this Agreement.

19.3. Under the zero-tolerance policy, MTN charges both MTN's employees and

the CHA's employees to report any knowledge or awareness of improper

and unethical conduct that breaches MTN's anti- bribery and anti- corruption.

**20. POLITICAL NEUTRALITY CLAUSE**

CHA shall neither say nor do anything to bring the name of MTN into disrepute and shall among other things, ensure that it does not jeopardize the politically neutral status of MTN. CHA in engaging its employees and other assigns shall ensure by Agreement that such representatives and other assign do not do or say anything that shall bring the name of MTN Into disrepute or to jeopardize the politically neutral status of MTN.

**21. ETHICS**

MTN is committed to a policy of openness and integrity in the conduct of its Business. The Parties shall therefore conduct their affairs honestly, Fairly and legally in accordance with the Code of Ethics of MTN in a completely ethical and transparent manner so as not to derive any unfair advantage as regards over each other. Both Parties shall function in a manner which contributes to the moral regeneration of the community while ensuring maintenance of acceptable standards of both personal and corporate governance so as to benefit all associated entities.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN WITNESS WHEREOF THE PARTIES HERETO HAVE HEREUNTO SET THEIR HANDS THE DAY AND YEAR FIRST ABOVE WRITTEN**

Signed on behalf of Scancom PLC: Signed on behalf of CHA:

Name Name

Title Title

Signature Signature

Date Date

In the presence of : In the Presence of :

Name Name

Title Title

Signature Signature

**SCHEDULE 1 – COST SCHEDULE FOR CO-LOCATION**

Below are the services accepted by MTN for the purpose of this Agreement.

|  |  |  |
| --- | --- | --- |
| **LOCATION** | **CONTRACT PERIOD** | **MONTHLY COST PER TOWER SPACE(GHS)** |
| Communications Hills, East Legon | 2 Years | 4,500 |

1. The above costs are exclusive of VAT, NHIL and CST.
2. All payments shall be made quarterly in advance within thirty (30) days of receipt of invoice.

**SCHEDULE 2 – OUT OF SCOPE SERVICES**

CHA will not be responsible for providing power management i.e supply and maintenance of UPS and backup generator equipment.

.....

' '

l