**MyanmarSat-1 satellite venture and lease agreement**

**Entered into by and between**

**XXXX**

**and**

**YYYY**

**On ……, 2015**

SUMMARY

[PREAMBLE 4](#_Toc426538300)

[1. DEFINITIONS 5](#_Toc426538301)

[2. SCOPE OF THE AGREEMENT 6](#_Toc426538302)

[3. TERM OF THE AGREEMENT 7](#_Toc426538303)

[4. PRICE 7](#_Toc426538304)

[5. PAYMENT 8](#_Toc426538305)

[6. OUTAGES 8](#_Toc426538306)

[7. CONFIRMED FAILURE 9](#_Toc426538307)

[8. AGENCY’S RIGHT TO SUBLEASE 9](#_Toc426538308)

[9. AGENCY’S RIGHT TO RENAME THE SATELLITE CAPACTY 9](#_Toc426538309)

[10. EXCLUSIVITY OVER THE TERRITORY 9](#_Toc426538310)

[11. TERMINATION RIGHTS 10](#_Toc426538311)

[12. ASSIGNMENT 10](#_Toc426538312)

[13. PROPRIETARY INFORMATION 11](#_Toc426538313)

[14. RIGHT IN DATA 12](#_Toc426538314)

[15. PUBLIC RELEASE OF INFORMATION 12](#_Toc426538315)

[16. NOTICES 12](#_Toc426538316)

[17. FORCE MAJEURE 13](#_Toc426538317)

[18. APPLICABLE LAW AND DISPUTE RESOLUTION 14](#_Toc426538318)

[19. REPRESENTATIONS AND WARRANTIES 14](#_Toc426538319)

[20. LANGUAGE 15](#_Toc426538320)

[21. EFFECTIVE DATE OF THE AGREEMENT 15](#_Toc426538321)

[APPENDIX 1 – TECHNICAL CHARACTERITICS OF MYANMARSAT-1 16](#_Toc426538322)

[APPENDIX 2 - TECHNICAL SUPPORT SERVICES 17](#_Toc426538323)

[APPENDIX 3 – TRAINING 18](#_Toc426538324)

This lease agreement is made as of ….., 2015, between:

XXXX, a statutory body organized under the laws of the Republic of Union of Myanmar, with its principal place of business located at …., duly represented for the purposes hereof by ….., and hereinafter referred to as the “Agency”,

And

YYYY, a company registered in …., with its principal place of Business located at …., duly represented for the purposes hereof by ….., and hereinafter referred to as the “Operator”,

Herein collectively referred to as the “Parties” and individually as a “Party”.

# PREAMBLE

1. The Government of the Republic Of Union Of Myanmar has formulated a space program (the “Myanmar Space Program”) which aims at embedding the space aspirations of the Republic Of Union Of Myanmar, and at meeting strategic and commercial objectives, in allowing the Republic Of Union Of Myanmar acquiring broadcast independence, gaining control over strategic national communications, creating a commercially viable and sustainable satellite based communication industry in Myanmar and building a selective position in regional and multi-regional markets;
2. In this respect, the Republic Of Union Of Myanmar has issued a Request For Proposal (the “RFP”) dated ….., and has selected the Operator, a global leader in the supply of satellite services, in the aim of setting up a venture for the joint operation of the satellite ZZZZ (the “Satellite” as defined below) located at the geostationary arc at …. E orbital location (the “Orbital Location”) and whose coverage areas are set forth in Appendix A;
3. The Agency desires to operate a portion of the payload ( “MyanmarSat-1”) of the Satellite and the Operator desires to lease MyanmarSat-1 to the Agency.

**Now therefore, the Parties hereby agree as follows:**

# DEFINITIONS

* **Bandwidth** means any portion of the MyanmarSat-1 capacity more fully described in Appendix 1 - *technical criteria of MyanmarSat-1*
* **Business Day** means a working day in the Operator’s country.
* **C-Band Annual Lease Price** has the meaning ascribed to it in Article 4 hereof.
* **C-Band Terminated Use** means the product of the number of MHz in the C-Bandwidth terminated in accordance with Article 10 hereof by the number of Years and portion of Year between the date of termination and the end of the Term.
* **C-Band** means the portion of Bandwidth in C-band.
* **Change** has the meaning ascribed to it in Article 3.
* **Commencement Date** has the meaning ascribed to it in Article 3 hereof.
* **Confirmed Failure** has the meaning ascribed to it in Article 7 hereof.
* **Confirmed Outage** has the meaning ascribed to it in Article 6.1 hereof.
* **End-Of-Service Date** with respect to the Satellite means the contractual end of the lifetime provided by the satellite manufacturer to the Operator and to be notified by the Operator to the Agency.
* **Frequencies** means the … band frequency ranging …..
* **Initial Agreement Term** has the meaning ascribed to it in Article 3 hereof.
* **Ku-Band Annual Lease Price** has the meaning ascribed to it in Article 4 hereof.

* **Ku-Band** means the portion of the Bandwidth in Ku-band.
* **Ku-Band Terminated Use** means the product of the number of MHz in the C-Bandwidth terminated in accordance with Article 10 hereof by the number of Years and portion of Year between the date of termination and the end of the Term.
* **Lease Service** means the provision by the Operator to the Agency of access to Bandwidth under this Agreement.
* **MyanmarSat-1** has the meaning ascribed to it in Appendix 1 – *MyanmarSat-1*
* **MyanmarSat-1 Satellite Characteristics** means the technical characteristics of the Satellite as set out in Appendix 1.
* **Orbital Location** means the ….East slot on the geosynchronous arc.
* **Outage Credit** has the meaning ascribed to it in Article 6 hereof.
* **Satellite** means the satellite ZZZ launched (*or “scheduled to be launched”)* by the Operator on ….., located (*or “to be located”)* at theOrbital Location and embedding MyanmarSat-1.
* **Technical Support Services Fee** has the meaning ascribed to it in Article 4 hereof.
* **Term** means the Initial Agreement Term and any extended term as described in Article 3 hereof.
* **Territory** means the territory of the Republic Of Union Of Myanmar.
* **Total Annual lease Price** has the meaning ascribed to it in Article 4 hereof.
* **Year** means a period of 365 consecutive calendar days.

# SCOPE OF THE AGREEMENT

* 1. The Operator undertakes to provide, and the Agency undertakes to lease MyanmarSat-1 in accordance with the terms of this Agreement.
	2. The Operator shall provide assistance to the Agency in developing local satellite services, expertise that should encompass technical support for developing teleport and ground infrastructure facilities for telecommunication services in Myanmar and in the region and training of staff for developing and operating satellite services as specified in Appendix 2 –*Technical Support Services* and Appendix 3 – *Training.*
	3. The Operator will remain responsible of the telemetry, tracking, command and satellite monitoring services.
	4. Operator will remain responsible for the coordination of the Frequencies required by any relevant authority for the use of the transponders embedded in MyanmarSat-1.

# TERM OF THE AGREEMENT

* 1. The Commencement Date of this Agreement is the date of its signature by both Parties.
	2. The initial term of this Agreement (“Initial Agreement Term”) shall begin on the Commencement Date of this Agreement and end on the third (3rd) anniversary date of the Commencement Date.
	3. This Agreement shall be extended automatically for additional terms of one Year each, unless the Agency gives six months’ written notice prior to the expiry of the Initial Agreement Term or three months’ written notice prior to the expiry of any extended Agreement Term, as the case may be, that it does not intend to renew this Agreement. In the case the Agreement is extended and if the End-Of-Service Date occurs during the one-Year extension it will automatically end at the End-of-Service Date of the Satellite, except if the Parties decide otherwise.
	4. Parties may decide prior to a renewal to redefine the Bandwidth in which case a Change to the Agreement will have to be agreed upon and signed between the Parties.
	5. The following Articles shall survive the end of Term of this Agreement: Article 1 – Definitions, Article 15- Notices, Article 17 – Applicable Law and Dispute Resolution.

# PRICE

* 1. The Operator shall provide MyanmarSat at a Total Annual Lease Price of US$ …. representing
		1. A C-band Annual Lease Price of US$ …..
		2. a Ku-Band Annual lease Price of US$ ….
	2. The Operator shall charge a Technical Support Services Fee of US$ …. For the technical support services set forth in Appendix 2 –*Technical Support Services.*
	3. The Operator shall charge a Training Fee of US$ …. For the training services set forth in Appendix 3 – Training Services.
	4. The Agency shall be entirely responsible for all present and future taxes, levies and duties whatsoever imposed under this Agreement in the Agency’s country and in any other countries to the exception of any custom duties, VAT, import taxes, sales taxes levied in the Republic Of Union Of Myanmar.

# PAYMENT

* 1. **Payment of the Annual Lease Price:** for each calendar year for which MyanmarSat is leased, the Operator shall invoice the Agency on the last day of the calendar year and the Agency shall make payment within 30 (thirty) days from the date of issue of the relevant invoice.
	2. **Payment of the Technical Support Services Fee:** once the Technical Support Services have been successfully conducted in accordance to the Appendix 2 – *Technical Support Services* the Agency shall sign the Technical Support Services Acceptance and the Operator will be entitled to issue the invoice for the Technical Support Services Fee. The Agency shall make payment within 30 (thirty) days from the date of issue of the relevant invoice.
	3. **Payment of the Training Fee:** once the Training has been successfully conducted in accordance to the Appendix 3 – *Training* the Agency shall sign the Training Acceptance and the Operator will be entitled to issue the invoice for the Training Fee. The Agency shall make payment within 30 (thirty) days from the date of issue of the relevant invoice.
	4. **Currency of Payment:** All payments by the Agency shall be made in United States Dollars.
	5. **Method of Payment:** Payments shall be made by bank wire transfer to such bank account as the Operator may specify in writing to the Agency.
	6. **Right to offset:** the Agency will be entitled to offset any Outage Credit and/or the Termination Charge recognized within a Year from the payment related to that Year.

# OUTAGES

* 1. If, during the Term of this Agreement, the Lease Service fails to meet MyanmarSat-1 Satellite Characteristics for fifteen (15) or more consecutive minutes for the C-Bandwidth, and for thirty (30) or more consecutive minutes for the Ku-Bandwidth, then MyanmarSat-1 shall be deemed to have suffered a Confirmed Outage.
	2. For each Confirmed Outage, the Operator shall credit the Agency with an Outage Credit calculated in accordance with the following formula:
	3. Outage Credit equals:
* **For C-Bandwidth: (N/8760) x C-Bandwidth Annual Lease Price x C**
* **For Ku-Bandwidth: (N/8760) x Ku-Bandwidth Annual Lease Price x C**

Where  **N =** the number of hours (or portion thereof) during a Year that there was a Confirmed outage of any of the Bandwidth

 **8760 =** the number of hours in a Year

 **C =** factor of compensation (c=3 for C-band and c=3 for Ku-band)

# CONFIRMED FAILURE

If, during the Term of this Agreement:

* + 1. The Lease Service suffer a Confirmed Outage for any period of forty eight (48) consecutive hours, or
		2. The Lease Service fails to meet the MyanmarSat-1 Satellite Characteristics for ten (10) or more periods of at least fifteen (15) minutes or longer per occurrence within any period of thirty (30) consecutive days;

Then Lease Service shall be deemed to have suffered a Confirmed Failure unless the failure is attributable to a Force Majeure Event. If the Operator does not restore Lease Service, the Agency shall be entitled to all of the rights and remedies, as applicable, regarding Outage Credits and termination as per the provisions of Articles 6 and 10 hereof.

# AGENCY’S RIGHT TO SUBLEASE

The Agency is entitled to sublease the Bandwidth or any portion thereof to any third party without the consent of the Operator.

# AGENCY’S RIGHT TO RENAME THE SATELLITE CAPACTY

The Operator acknowledges and agrees that the Agency has renamed “MyanmarSat-1” the bandwidth embedded in the Satellite which is leased to the Agency under this Agreement. In addition, the Agency is fully entitled to use the name “MyanmarSat-1” designating the Bandwidth for all purposes, including all activities relating to the marketing of said Bandwidth.

# EXCLUSIVITY OVER THE TERRITORY

The Operator will not, during the Term of this Agreement lease any portion of the Operator’s Bandwidth to third parties that will uplink from the Territory or will downlink to the Territory.

# TERMINATION RIGHTS

* 1. **Termination for Confirmed Failure:** If the Lease Service suffers a Confirmed Failure and is not restored within seven (7 days, then the Agency is entitled to terminate this Agreement in whole or in part upon written notice to the Operator. If the Agency decides to terminate only a portion of this Agreement because the Confirmed Failure affects only a portion of the Bandwidth, this Agreement shall continue with appropriate adjustments in the Annual Lease Price.
	2. **Termination for Operator’s Insolvency:** The Agency shall be entitled to terminate the Agreement forthwith and without liability for payment of any termination charges, in the event that:
	3. any court of competent jurisdiction shall make a winding up order in respect of the Operator; or
	4. the Operator has voluntarily commenced bankruptcy or insolvency or other similar proceedings (other than for the purpose of solvent amalgamation or reconstruction) or has insolvency, bankruptcy or other similar proceedings brought against it without its consent and such proceedings are not dismissed or effectively stayed within sixty (60) days of such commencement; or
	5. the Operator has receivership, administration or other similar proceedings brought against it without its consent and the proceedings are not dismissed or effectively stayed within sixty (60) days of such commencement and provided that the receiver, administrator or manager consents to such termination.
	6. **Refund in case of Termination for Confirmed Failure or for Operator’s insolvency:** in case of Termination under the provisions of paragraphs 10.1 and 10.2 above, the Operator shall
		1. promptly refund to the Agency un-applied Outage Credits to which Agency was entitled prior to termination, and
		2. promptly pay to the Agency the Termination Charge computed as follows:

Termination Charge = (C-Band Terminated Use x …..US$) + (Ku-Band Terminated Use x ….US$)

# ASSIGNMENT

Neither Party shall transfer, assign or delegate this Agreement or any of its rights, duties, or obligations hereunder to any other person, in whole or in part, without the prior express written approval of the other Party (which approval shall not be unreasonably withheld or delayed). However, the Agency may assign this Agreement to any other Burmese Government entity or any other Burmese legal entity that is directly controlled by the Government of Republic of Union of Myanmar which may replace the Agency, in which event the Agency shall give the Operator the earliest practicable notice of its intention to do so.

# PROPRIETARY INFORMATION

* 1. To the extent that either Party discloses information which it considers proprietary, said Party shall identify such information as proprietary when disclosing it to the other Party by making it clearly and conspicuously as proprietary information. Any such information disclosed under this Agreement shall be protected by the recipient in the same manner as the recipient protects its own proprietary information and shall be used by the recipient thereof only in its performance under this Agreement. Neither Party shall be liable for disclosure or use of proprietary information as provided above which:
		1. Is or becomes available to the public from a source other than the receiving party before or during the period of this Agreement;
		2. Is released without restrictions in writing by the disclosing Party;
		3. Is lawfully obtained by the receiving Party from a third party or parties without obligation of confidentiality;
		4. Is known by the receiving Party prior to such disclosure;
		5. Is at any time developed by the receiving Party independent of any such disclosure from the disclosing Party.
	2. Neither Party shall be liable for the inadvertent or accidental disclosure of proprietary information if such disclosure occurs despite exercising the same degree of care as the receiving Party normally takes to preserve and safeguard its own proprietary information.
	3. Neither Party shall be liable for the disclosure of any technical information, which it receives under this Agreement, pursuant to judicial action or decree, or pursuant to any requirement of any government or any agency or department thereof having jurisdiction over such parts. The Parties shall inform each other in case of disclosure made pursuant to this provision, and shall indicate the type of technical information to be disclosed, together with the agency, department of government this information shall be disclosed to.
	4. No licence under any patents or otherwise shall be deemed granted or implied by the provision of any proprietary information or other information to any Party under this Agreement, and none of such information which may be provided or exchanged by the Parties shall constitute any representation, warranty, assurance, guaranty, or inducement by either Party to the other with respect to the infringement of patents or other rights of the Parties or any third party.

# RIGHT IN DATA

Subject to Article 12 – *Proprietary Information,* the Agency shall have the right to sue, duplicate, and disclose to its Consultants the written documentation and the information contained in any writings, presentations or reports delivered or provided pursuant to this Agreement without the written consent of the Operator.

# PUBLIC RELEASE OF INFORMATION

* 1. During the Term of this Agreement, the Operator or its respective affiliates, subcontractors, employees, agents and consultants shall not brochures, advertisements, prepared speeches, or other information releases, relating to the Agreement, without the prior written consent of the Agency.
	2. Notwithstanding the above, the operator may disclose information to the extent required by law. If such disclosure is required, the operator must if practicable, first consult and take into account the reasonable requirements of the Agency.

# NOTICES

* 1. Any notices or requests or receipts required or desired to be given or made hereunder shall be in writing and shall be effective if delivered by hand to the recipient Party or sent by registered air mail or by facsimile transmission and received by the recipient party, at the address indicated below:

In respect of the Agency:

………

For the attention of:

E-mail:

Fax:

In respect of the Operator:

………

For the attention of:

E-mail:

Fax:

* 1. Any notice or request shall be deemed to have been served if delivered by hand, when delivered, if sent by registered airmail, upon receipt, and if sent by facsimile transmission, 24 hours after the time recorded on the transmitting machine.
	2. The Parties shall have the right to modify the above-mentioned addresses and contact details by notification thereof to the other as per the provisions of this Article.

# FORCE MAJEURE

* 1. Definition : in this Agreement, Force Majeure shall mean any cause preventing either Party from performing any or all of its obligations which arises from or is attributable to acts, omissions, events or matters beyond the reasonable control of the Party so prevented, including without limitation, lightning, flood, exceptionally severe weather, fire, explosion, earthquake, war, riot, civil disorder, strikes, lockouts (whether or not involving either Party), acts or decisions of government or other competent regulatory authorities or compliance therewith, the imposition of sanctions or other trade restrictions, and any space related factor such as meteorites, heavy ions, electrostatic discharges, electromagnetic disturbance or solar activity.
	2. Notice of Force Majeure: if either Party is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure, it shall promptly give written notice thereof to the other Party, specifying in reasonable detail the nature, extent and effect of the Force Majeure, and shall also notify the other Party in writing of the cessation of the Force Majeure.
	3. Effect of Force Majeure: the occurrence of Force Majeure shall (provided that the Party affected complies with the provisions of this Article and takes all reasonable measure to mitigate the effects of the Force Majeure) suspend those obligations which are affected by the Force Majeure, as well as the corresponding obligations of the other Party, for as long as the Force Majeure continues.
	4. Termination due to Force Majeure : if the Force Majeure continues for a period in excess of sixty (60) consecutive days either Party shall have the right to terminate this Agreement on notice in writing to the other Party, without further liabilities save for those in existence at the date of termination.

# APPLICABLE LAW AND DISPUTE RESOLUTION

* 1. This Agreement shall be governed and construed in accordance with the Code Suisse des Obligations.
	2. All disputes arising from this Agreement which cannot be settled amicably between the Parties within thirty (30) days after written notification by one Party to the other or such longer period as may be mutually agreed upon shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said rules unless the parties agree on one (1) arbitrator. The arbitration shall be in English language. Arbitration proceedings shall take place in Nay Pyi Taw (Republic of the Union Of Myanmar). The arbitration award shall be final and binding on the Parties and judgment may be entered thereon, upon application of either Party, by any court having jurisdiction.

# REPRESENTATIONS AND WARRANTIES

* 1. The Operator, except as expressly indicated herein, represents and warrants to, and agrees with, the Agency that, as of the Commencement Date:
		1. Authority, No Breach. It has the right, power and authority to enter into, and perform its obligations under, this Agreement. The execution, deliver and performance of this Agreement shall not result in a breach or non-performance of any agreements it has with third parties. It has complied, in all material respects, with every Law applicable to, and has no knowledge of any Law which would be violated by, this Agreement. As used in this Agreement, “Law” means any and all laws, rules, regulations, statutes, orders, or ordinances of or by any governmental authority of competent jurisdiction, whether federal, state, local, or international.
		2. Corporate Action/Legal Capacity. It has taken all requisite action to approve the execution and performance of this Agreement and this Agreement constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
		3. Consents. The execution and performance by it of its obligations under this Agreement will not result in a violation of, or default under, or noncompliance with, any applicable Law, any mortgage, deed of trust, loan agreement, or other agreement to which it is a party or by which it or any portion of its property is bound. All necessary or appropriate public or private consents, permissions, agreements, licences, or authorizations to which it is subject in connection with this Agreement, or which it must obtain by virtue of its ownership or use of or operation of the Satellite have been or shall be obtained in a timel manner.
		4. Litigation. To the best of its knowledge, there is no outstanding or threatened judgment, threatened or pending litigation or proceeding, involving or affecting the transactions contemplated by this Agreement.

# LANGUAGE

All data and reports supplied by the Parties and all communications between the Parties pursuant to the performance of this Agreement shall be in English.

# EFFECTIVE DATE OF THE AGREEMENT

The effective date of this Agreement shall occur upon its signature by both Parties.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SET THEIR HAND THIS (date)

|  |  |
| --- | --- |
| The Agency | The operator |
| By ………………… | By ………………….. |
| Title ………………. | Title : ………………… |

# APPENDIX 1 – TECHNICAL CHARACTERITICS OF MYANMARSAT-1

# APPENDIX 2 - TECHNICAL SUPPORT SERVICES

Technical support services must contain at least but not necessarily be limited to the following:

* Support to Migration of ground segment
* Support to transponder loading/planning & customer request accommodation
* …

# APPENDIX 3 – TRAINING

Training must contain at least but not necessarily be limited to the following:

* Satellite communications basics
* Satellite and Capacity management,
* Ground segment management and interference handling
* Basic of satellite operations
* …