

DOCUMENTS: STANDARD FORM



HTSA TOWERS SITE LEASE AGREEMENT

Site Name: Maranata Church
Site Number: ZAGA
Region: Tshwane
Site Coordinates: -25.681947, 28.180196

Date: _____ (the "Signature Date")

1. This agreement between **ANNA MARIA JACOMINA JANSE VAN VUUREN** of **(Cnr of Koos de la Rey & Rus Street, Pretoria)** (Mobile: **(072 721 2110)** and email address **(mathysjvv@gmail.com)** (the "Landlord") and **HTSA TOWERS (PTY) LTD** with registered number 2018/616561/07 of Unit D8, El Ridge Office Park, 100 Elizabeth Road, Bartlett, Boksburg, Gauteng, 1459, South Africa ("Helios") permits Helios to construct, operate and maintain a telecommunications mast (the "Mast") within a fenced compound on a plot of land measuring [8 meters x 8 meters] (the "Site") at **Remainder of Portion 1 of Erf 1185, Pretoria North Township**. (the "Property") as identified on the attached plan.
2. Notwithstanding the Signature Date, which shall be the effective date of this agreement, Helios shall be permitted to occupy the Site for nine (9) years and eleven (11) months commencing on the date designated by Helios to the Landlord (the "Site Occupation Date") in a written notice from Helios to Landlord for the Site to be made available to Helios (the "Site Occupation Notice"). Helios shall, with effect from the Site Occupation Date, have the unrestricted right to install and maintain equipment on the Site and the Mast as it deems is necessary or desirable. Helios, or any of its customers, also has an unrestricted right to install and maintain equipment such as but not limited to solar panels, generators, fuel tanks and batteries within the fenced compound on the Site.
3. Helios shall, with effect from the Site Occupation Date, be entitled to allow any entity, company, or supplier of telecommunication services to share, occupy or lease space on the Mast and to allow them to install their own equipment on the Mast and the Site without any financial demand from the Landlord, unless Helios uses ground space other than the Site. If Helios uses more ground space, the Landlord may request an increase in the Rental, which is to be mutually agreed between the parties but in no event shall exceed one third of the existing annual Rental.
4. With effect from the Site Occupation Date, Helios and its customers will be allowed unrestricted access to the Site twenty-four (24) hours a day; seven (7) days a week. All access will be strictly controlled by Helios and anyone seeking to enter the fenced area, including the Landlord's representatives must first obtain permission from Helios.

5. With effect from the Signature Date, the Landlord grants Helios the exclusive right to construct a Mast at the Property, which exclusivity shall endure until the termination of this agreement.
6. Helios shall, with effect from the Site Occupation Date, pay a monthly rental of **Five Thousand South African Rand (5000.00 ZAR)** excluding value-added tax (the "**Rental**"). The Rental will be paid **annually in advance** by Helios to the Landlord by electronic funds transfer into the following bank account: Bank: _____, Account Name: _____, Account Number: _____, with Branch Code: _____. The parties agree that Helios shall not be liable for any Rental arising prior to the Site Occupation Date.
7. The parties agree that the Rental shall increase on each one (1) year anniversary of the Site Occupation Date, in accordance with the annual percentage change, aggregated over the five (5) year period, in the Consumer Price Index (all items – Table 2) as published by Statistics South Africa or its successor from time to time in its Consumer Price Index publication PO141.1, or in any substitute publication which becomes the norm for the measurement of the general rate of inflation in South Africa, but such increase shall not exceed five per cent (5%) of the Rental over that period.
8. If the Site or any portion thereof is damaged or destroyed to the extent that Helios is not able to use the Site for its intended purpose, then Helios may, without limiting or derogating from its further rights under this agreement or at law, and in Helios's sole and absolute discretion, elect to immediately terminate the agreement on written notice to the Landlord. In the event that Helios does not elect to terminate the agreement in accordance with the further provisions of this clause 8, then:
 - a. Helios may repair and rebuild those damaged or destroyed portions of the Site, during which time the Rental shall not be payable by Helios to the Landlord; and
 - b. the term of the lease, as contemplated in clause 2 above, shall be extended for a period equivalent to the time taken to restore the damage or destruction contemplated in 8(a) above.
9. Helios is responsible for obtaining, retaining and renewing all permits and licences relating to the construction of the Mast and operation of the Site (collectively, the "**Permits**"). The Landlord is obliged, with effect from the Signature Date, to provide Helios with any related documentation (such as title or land registration deeds) in order to verify that the Landlord is the true owner of the Site. In addition, the Landlord shall perform all other activities, and procure and provide all approvals and all other resources, personnel, materials, infrastructure and facilities as may be necessary to enable Helios to obtain the Permits, within five (5) days of request by Helios. The Landlord shall at all times co-operate with Helios and comply with the requirements and reasonable instructions of Helios in relation to the Permits. The Landlord agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this agreement and the transactions and activities

contemplated by it and, if the Landlord fails to do so after receiving a request from Helios, the Landlord hereby irrevocably authorises and irrevocably grants Helios the authority, right and power of attorney to execute all such deeds, instruments, transfers or other documents for and on behalf of the Landlord

10. The Landlord must allow any reasonably required cables (power or technology) to be run over or under the adjoining property that are needed to connect to the Site. At all times, with effect from the Site Occupation Date, the Landlord must allow Helios or any of its customers access over any adjoining property to the Site that it owns or controls in order to access the Site and must keep such roads in good repair.
11. With effect from the Site Occupation Date, the Landlord grants Helios the exclusive right of passage to install any physical connection (buried or aerial) from the site to any external network (including any optical fibre, electrical or other copper cabling). Non-exercise of such exclusive right by Helios shall not constitute a forfeiture of such right. The Landlord shall ensure that anyone installing such physical connection has received prior written approval from Helios.
12. The Landlord shall at all times collaborate with Helios to ensure the safety of the people and equipment present on the Site against theft, flood, lightning, fire or any other hazard.
13. The parties record that Helios requires a minimum of 60 Ampere 3 phase electricity supply and the electricity supply to the Property may need to be upgraded. Should Helios determine that such an upgrade is required, the parties agree that the costs approved by Helios in relation to the consumption, supply, installation, upgrade and laying of any electricity to the Site, as well as all expenses relating to the metering of such consumption, shall be borne and paid by Helios. The Landlord shall not object to any upgrade to the electricity supply to the Property and the Landlord shall do all things necessary, to ensure the timeous and proper upgrade to ensure satisfactory electricity supply to the Site.
14. The parties agree that, until such time that Helios obtains a direct connection from the appropriate electrical authority, if necessary, the following provisions will apply:
 - a. The Landlord shall permit Helios to take an electricity connection from the Landlord's electricity connection through a separate sub-meter installed solely for Helios's purposes;
 - b. Helios shall provide the Landlord with the sub-meter reading and pay the electricity charges to the Landlord on a pro rata and monthly basis on or before the tenth (10th) day of the next month;
 - c. The Landlord shall provide Helios with the latest municipal account reflecting the rates and taxes payable for the Property every three (3) months.
 - d. Save for the amounts payable for the actual consumption of electricity, Helios shall not be liable to pay any further fees, whether administrative or otherwise, to the Landlord in relation to the electricity.

15. In the event of electricity becoming unavailable, suspended or terminated, Helios shall be entitled to use generators to operate and abridge the time period that electricity is unavailable. In addition, the parties agree that Helios shall not be liable for any amounts pertaining to electricity usage to the extent that such amounts and usage do not relate to the Site.
16. The Landlord represents, warrants and undertakes that at all times it is not:
 - a. listed on the Specially Designated Nationals and Blocked Persons list prepared by the Office of Foreign Assets Control of the US Department of the Treasury, any sanctions or designated persons list maintained by HM Treasury of the United Kingdom, the European Union or United Nations or any such equivalent list of an applicable jurisdiction ("**Sanctions List**"); or
 - b. directly or indirectly owned or otherwise controlled by any person listed on a Sanctions List.
17. Without limiting or derogating from Helios's further rights under this agreement or at law, Helios shall be entitled, on immediate written notice to Landlord, to terminate this agreement and/or withhold any payments under this agreement if:
 - a. the Landlord is added to a Sanctions List or otherwise becomes a subject of sanctions;
 - b. the Landlord commits a material breach of this agreement that has not been resolved within seven (7) days of the date that written notice of the breach is sent to the Landlord by Helios;
 - c. the Landlord commits three or more breaches of this agreement during a calendar year, regardless of whether these breaches are subsequently remedied by the Landlord; or
 - d. it becomes unlawful for Helios to perform any of its obligations under this agreement.
18. Upon the termination of this agreement, for any reason, Helios shall remove all of its or a customer's equipment and materials from the Site and rehabilitate the Site to its pre-construction condition, fair wear and tear excepted, within a reasonable time period.
19. A failure or delay by Helios to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
20. Helios has the right to cede its rights and/or delegate its obligations under the agreement to a third party upon written notice to Landlord and without obtaining the Landlord's prior consent.
21. Helios has the right to pledge its interest in the Mast and the Site upon written notice to the Landlord.

22. This agreement will automatically renew on the same terms unless either party serves written notice on the other not less than three (3) months prior to the expiry of the agreement.
23. Helios shall obtain appropriate levels of insurance for the occupation of the Site. Any damage or loss to the Site caused by the Landlord shall be repaired at Landlord’s cost.
24. The Landlord confirms that the necessary authorisations have been obtained to enter into this agreement with Helios including obtaining all documentation relating to the ownership of the land and paying all government taxes relating to the land. The Landlord is liable for any costs or expenses incurred by Helios relating to any third-party claims made in relation to the Site.
25. If there are any disagreements between the parties relating to or in connection with this agreement which cannot be resolved amicably within twenty-one (21) days of a party serving notice on the other that there is a disagreement, the dispute shall be exclusively resolved in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa. The seat of any arbitration shall be Johannesburg, South Africa. The number of arbitrators shall be one and Helios shall nominate the arbitrator. This agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa. Nothing contained in this clause 20 shall prohibit either party from approaching any court of competent jurisdiction for urgent interim relief pending the determination of the dispute by arbitration. In respect of such proceedings, each of the parties specifically consents to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg).
26. A notice or other communication under or in connection with this agreement (a “**Notice**”) shall be in writing, in the English language and delivered either personally, sent by courier or by email to the party due to receive the Notice at the address set out below:

NAME OF PARTY	ADDRESS	EMAIL & CONTACT No.	ATTENTION OF
LANDLORD	Cnr of Koos de la Rey & Rus Street	072 721 2110 mathysjvv@gmail.com	ANNA MARIA JACOMINA JANSE VAN VUUREN
HTSA TOWERS (PTY) LTD	Unit D8, El Ridge Office Park, 100 Elizabeth Road, Bartlett, Boksburg, Gauteng, 1459, South Africa.	HTSALegal@heliostowers.com	Legal Manager

If a party wishes to change the notice provisions set out in this agreement it may do so by providing the other party with notice in writing, such notice to have effect five (5) days after it has been deemed given.

Unless a Notice is received earlier, a Notice is deemed given:

- a. If delivered personally or sent by courier, when left at the address above;
- b. If sent by email, in the absence of contrary evidence at the time of successful receipt by the recipient (as may be evidenced by, but not limited to the transmission of an automatic electronic read receipt form, or a manual acknowledgement by, the recipient).

27. If the Landlord (i) wishes to sell, transfer or otherwise dispose the Site; or (ii) receives an offer to purchase, acquire or take transfer of the Site (a "**Third Party Offer**") ((i) and (ii) each a "**Trigger Event**"), the Landlord shall promptly notify Helios in writing of its intention to sell, transfer or otherwise dispose the Site (the "**Sale Notice**") and first grant Helios a right to buy the said Site, prior to such sale, transfer or disposal. The Sale Notice shall set out the intention of the Landlord to sell, transfer or otherwise dispose of the Site and the applicable terms and conditions, including the price and manner of delivery. Where a Trigger Event is a Third-Party Offer, Helios's right of first refusal to purchase the Site shall be at the same cash price and on terms no less favourable than those of the Third-Party Offer. The Sale Notice shall be regarded as an offer by the Landlord to Helios to purchase the Site and shall be irrevocable and open for acceptance by Helios by written notice to the Landlord for a period of thirty (30) days after receipt of the Sale Notice by Helios.
28. If Helios or its customers is prevented from accessing or operating the equipment on the Site because of an Act of God or other circumstances outside of Helios' reasonable control, including but not limited to a lightning strike, fire or flood, or civil disturbance, then Helios will not be liable for the payment of rent until Helios and/or its customer can access the Site or operate the equipment on the Site, as applicable.
29. The parties acknowledge that there may be circumstances during the term of this agreement in which Helios undertakes a rationalisation exercise of its Sites for commercial or technical reasons ("**Rationalisation Exercise**") and, as a result of such a Rationalisation Exercise, Helios may terminate or relocate certain of its sites. If, as a result of a Rationalisation Exercise, Helios wishes to terminate this agreement, Helios shall give to the Landlord a minimum of thirty (30) days prior written notice of its intention to terminate this agreement. Upon expiry of such notice, this agreement will terminate and Helios shall pay an equivalent of three (3) months' rental as compensation for the early termination of this agreement, unless there is less than three (3) months remaining on the term of this agreement in which case, Helios shall pay the remainder of the Rental due up to the date of expiry. The parties agree that the payment by Helios of the amounts contemplated in this clause will be the sole right available to the Landlord arising from the termination of the agreement by Helios in terms of this clause.
30. This agreement embodies the entire agreement and understanding of the parties and supersedes, novates and invalidates any prior written lease agreements concluded between the parties. In the

event of a conflict between this agreement and any other document relating to the lease, the terms of this agreement shall prevail.

31. The Landlord hereby waives any hypotec, lien or right of retention the Landlord may have or acquire in respect of the Mast and equipment, including but not limited to solar panels, generators, fuel tanks and batteries.
32. All equipment including the Mast brought onto or constructed on the Site by Helios is intended to remain on the Site only for so long as this agreement, or any renewal of this agreement, is in existence and shall not accede to the Property. Such equipment and the Mast shall, notwithstanding that it may be fixed upon the Site in a manner which might, had it not been for this clause, be regarded as a permanent fixture, at all times be regarded as movable. Ownership of such equipment and the Mast shall at all times remain vested in Helios.
33. The parties agree that this agreement may at the option of the Helios be registered against the title deed of the property by a notary public appointed by Helios. The Landlord undertakes to do all things necessary as required to achieve registration of this agreement at the cost to Helios.
34. If the Property is registered as an agricultural holding and the local authority having jurisdiction requires the property to be excised from the agricultural holding register and incised into the farm register before it is prepared to approve building plans for the Mast, then the Landlord consents to such excision and incision. The cost of the excision and incision will be borne by Helios.
35. No contract varying, adding to, deleting from or cancelling this agreement, and no waiver of any right under this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.
36. The grant of any indulgence, extension of any time or relaxation of any provision by a Party under this agreement (or under any other agreement or document issued or executed pursuant to this agreement) shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.
37. This agreement may be executed in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument. A party who has executed a counterpart of this agreement may exchange it with another arty by faxing, or by emailing (to an address notified by the relevant arty for that purpose), a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post to the other party. Failure to make a delivery of a counterpart original of this agreement will not affect the validity of this agreement.



Signed and Delivered for and on behalf of the Landlord before me on this ... day of,
2019.

Property Owner: ANNA MARIA JACOMINA JANSE VAN VUUREN

Witness

Name:

Signature:

Address:

Signed and Delivered for and on behalf of Helios before me on this ... day of, 2019.

Signature/Stamp of HTSA Towers

Witness

Name:

Signature:

Address: