

Airtel Malawi PLC Enterprise Services Terms and Conditions v.1.0.

1. Interpretation

The following definitions and rules of interpretation apply in these Airtel Enterprise Services Terms and Conditions.

1.1 Definitions:

Agreement: this Agreement consists of the Service Order signed by the Parties referencing and incorporating the Schedules attached to the Service Order and these Airtel Enterprise Services Terms and Conditions.

Business Day: a day other than a Saturday, Sunday or public holiday in Malawi, when banks in Lilongwe are open for business.

Charges: means a charge per unit or a fixed monthly rate set out in the schedule of tariffs published by Airtel from time to time which measures use of the services and enables the Customer to be charged for such use.

Commencement Date: has the meaning given in clause 5.

Control: means the power to direct or cause the direction of management and policies of an entity, either directly or indirectly, whether through direct or indirect ownership, voting rights, contract or otherwise. '**Controlling**', '**Common Control**', '**Controlled by**' and '**under Common Control with**' and '**Change of Control**' will be construed accordingly.

Connection: means the provision of services and/or the activation of Customer Equipment on the Airtel network.

Connection Charge: means the relevant installation fee payable for connection.

Customer: the person or firm who purchases Goods and/ or Services from Airtel.

Customer Equipment: means the wireless or fixed equipment and accessories as supplied by Airtel or Airtel's nominated Agents/Distributors to the Customer for connection to the Airtel network.

Data controller, data processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Personal Data Protection Legislation: the Personal Data Protection Legislation and regulatory requirements in force in Malawi which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Equipment: the Airtel supplied Equipment as is more fully described in the Service Order and/or any agreement.

Fees : mean any charge levied by Airtel in accordance with the schedule of tariffs published by Airtel from time to time

including any tax, duty, charge or imposition levied in connection with the Service.

Goods: the goods (or any part of them) set out in the Service Order.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and [neighbouring and] related rights, moral rights, trademarks [and service marks], business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off [or unfair competition], rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

MACRA or Regulator means Malawi Communications Regulatory Authority.

Service Order: the order for Services as set out in the overleaf or Customer's purchase order form or in the Customer's written acceptance of Airtel's quotation as the case may be.

Services: the services supplied by Airtel to the Customer as set out in the Service Order.

Specification: the description or specification of the Services provided by Airtel to the Customer as set out in the Service Order.

Terms and Conditions: these Airtel Malawi Plc Enterprise Terms and Conditions as amended by Airtel from time.

2. Basis of contract

2.1 The Service Order constitutes an offer by Airtel to purchase Goods and /or Services in accordance with these Terms and Conditions.

2.2 The Service Order shall only be deemed to be accepted upon signature by both parties at which point and on which date the Agreement shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by Airtel, and any descriptions or illustrations contained in Airtel's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Provision of Services

- 3.1 Airtel shall provide the Services to the Customer in accordance with the Specification set out in the Service Order.
- 3.2 Airtel shall use all reasonable endeavours to meet any performance dates specified in the Service Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Airtel reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Airtel shall notify the Customer in any such event.
- 3.4 Airtel reserves the right to change the terms and conditions upon which the services are offered, as a result of new or amended legislation, statutory instrument, Government Regulations, Policy, Licence or any other reasons deemed justifiable by Airtel. In the event of any such review Airtel shall notify the Customer of such changes by SMS or email or through the Media (including newspaper publications, Television and Radio) or on our website at <https://www.airtel.mw/business>. Continued use of the services shall be deemed to be your agreement to all such terms, conditions, notices, charges and any changes thereto.
- 3.5 The Customer recognizes that the Service by its very nature may, from time to time, be adversely affected by natural or man-made physical structures/constructions, atmospheric conditions, natural phenomenon and other causes of interference including without limitation solar radiation, and may fall or require maintenance without notice. Airtel shall not be liable for any disruption, interruption, suspension or termination of the service caused due to the fore going. In addition, Airtel shall not be liable for any interruption, suspension or termination of any Service necessitated by order of the Government of the Republic of Malawi or if required by law, whether with or without notice.
- 3.6 Airtel shall not be liable for any failure to fulfill any of its obligations in these terms and conditions if and to the extent that fulfillment is delayed, interfered with or prevented by circumstances which are beyond the control of Airtel including but not limited to failure of equipment, system failure, power failure, power rationing, power interruptions, acts of God or government action.

4. Customer's obligations

- 4.1 The Customer shall:
- ensure that the terms of the Service Order [and any information it provides in the Specification] are complete and accurate;
 - co-operate with Airtel in all matters relating to the Services;
 - provide Airtel, its employees, agents, consultants and subcontractors, with access to

- the Customer's premises, office accommodation and other facilities as reasonably required by Airtel;
- provide Airtel with such information and materials as Airtel may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- prepare the Customer's premises for the supply of the Services;
- obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- comply with all applicable laws, including health and safety laws;
- keep all materials, equipment, documents and other property of Airtel (Airtel Equipment) at the Customer's premises in safe custody at its own risk, maintain Airtel Materials in good condition until returned to Airtel, and not dispose of or use Airtel Materials other than in accordance with Airtel's written instructions or authorisation;
- comply with any additional obligations as set out in the Specification.

4.2 If Airtel's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- without limiting or affecting any other right or remedy available to it, Airtel shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Airtel's performance of any of its obligations;
- Airtel shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Airtel's failure or delay to perform any of its obligations as set out in this clause **Error! Reference source not found.**; and
- the Customer shall reimburse Airtel on written demand for any costs or losses sustained or incurred by Airtel arising directly or indirectly from the Customer Default.

5. Commencement and duration

5.1 This Agreement shall commence on the date on which the Service Order has been signed by all the parties and shall continue, unless terminated earlier in accordance with



clause 9, or until either party gives to the other party three months' written notice to terminate.

5.2 Where such notice is given by the Customer and expires before the end of the notice period as indicated in the Service Order, the Customer shall pay Airtel the early termination charges specified in the Charges schedule.

6. Security Deposit

6.1 Customer shall pay a Security Deposit equivalent to One (1) months' Charges for post-pay services. No deposit is applicable for prepaid services (those that are paid before use). Customer and Airtel herein agree that the said security deposit shall be paid on execution of the Agreement and shall be held as security for the performance by Customer of the Customer's payment obligations under the Agreement and shall be refundable without any interest to the Customer after the expiry of the term or earlier termination of the Agreement.

6.2 The said deposit may be used by Airtel to defray any outstanding Charge due by the Customer under Agreement. In case the security deposit is used in part or in full by Airtel in accordance with this Clause, Customer shall pay back the necessary amount to maintain the Security Deposit to the equivalent of three month's charges. If the Customer fails to pay such a deposit or provide such a guarantee, Airtel has a right to suspend the provision of the Service.

7. Charges

7.1 The Customer shall pay the charges for the Service specified in the Charges Schedule. Charging shall begin on the operational service date. Airtel will calculate the charges for the use of the Services in accordance with the details recorded by, or on behalf of, Airtel.

7.2 If Airtel terminates the Service due to non-payment and/or breach of any of these terms and conditions, the Customer may be required to pay a reconnection fee, if the Service is reactivated.

7.3 Airtel reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Charges Schedule.

7.4 Unless otherwise agreed by Airtel in writing and without prejudice to Airtel's right to charge other or different amounts in the future, a Customer shall pay Airtel:

- a) Customer Equipment costs - payable prior to the delivery and Connection of the Customer's Equipment if any. The Customer Equipment shall also be available on a fixed monthly rental in which case the Customer shall be required to submit a

security deposit with Airtel as per Airtel's prescribed predetermined rates.

- b) Installation Fee - payable (where applicable) prior to installation and Connection of the Customer Equipment with the Airtel network.

- c) Access Charge - payable by the Customer to Airtel in advance, for the Service and from the date the service is made available to the Customer. d) Taxes, Duties and Levies which are or may be levied in accordance with applicable laws, rules and regulations.

7.5 The Access Charge shall continue to be payable by the Customer to Airtel during any period of suspension or disconnection of the service which is requested by the Customer or when enforced by Airtel in events such as non-payment of its invoices and dues or misuse of the Service or pursuant to these Terms and Conditions.

8. Payment Terms

8.1 Invoices for fixed recurring Charges and monthly recurring Charges shall be raised by Airtel monthly in advance or in arrears and quarterly in advance or quarterly in arrears for select customers. Charges for one time Services shall be raised by Airtel on completion of the Services or agreed milestones, unless otherwise specified in the Agreement.

8.2 Customer shall deduct withholding tax from payments made to Airtel in the manner required by the Applicable Law and pay same to the Revenue Authority. Customer agrees to pay or reimburse Airtel for all other taxes or fees, excluding taxes based on Airtel income.

8.3 All invoices are due and payable within thirty (30) calendar days of the date of the invoice. Payment shall be made by wire transfer to the bank account indicated by Airtel to Customer, direct debit or by Airtel Money.

8.4 If the Charges are billed in a foreign currency, the Customer shall pay the corresponding invoice in such foreign currency or in the local currency subject to conversion at the prevailing rate. Payment shall be made by the Customer to Airtel via bank transfer, direct debit, cheques or Airtel Money. The Customer shall not remit any cash money to an Airtel employee in payment of the Charges.

8.5 Customer may dispute an invoice in good faith within thirty (30) calendar days of the invoice date and withhold payment of any such disputed amount. Failing any notification of a dispute from Customer to Airtel within calendar thirty (30) calendar days of the invoice date, Customer will be deemed to have accepted the amounts stated in the invoice.

8.6 Notwithstanding anything to the contrary in the Agreement, the Customer recognizes and agrees that any dispute between the Customer and Airtel with respect to one or several invoice(s) shall not relieve the Customer

from its obligation to pay any undisputed amounts to Airtel within the thirty (30) calendar days of the date of receipt of the invoice(s).

8.7 Airtel may, post a thirty (30) calendar days' written notice to this effect, choose to suspend the Service, or part thereof, if the Customer defaults the payment of any undisputed amount. Customer shall not be entitled to any compensation in respect of such suspension of Services and Airtel shall not incur any liability.

8.8 Any dispute with respect to an invoiced amount shall be addressed in the following manner:

- (a) Customer shall issue a written notice with respect to any disputed amounts to Airtel no later than thirty (30) calendar days from the date of the invoice.
- (b) Customer shall provide Airtel with a detailed explanation regarding the disputed Charges, the manner in which they were calculated, supporting documents necessary to establish the same, and any other information that Airtel requests.
- (c) Airtel shall issue a credit note for the disputed amount which the Customer shall settle, subject to the notification by Airtel of such credit note to the Customer in accordance with the Agreement.
- (d) Customer shall pay to Airtel any outstanding undisputed amount within seven (7) calendar days of the receipt of the credit note.
- (e) Customer and Airtel shall use the governance and dispute resolution process as stated in Clause 22 hereunder for the resolution of the disputed amount.

8.9 Failure by Customer to pay any Charges in accordance with the Agreement will entitle Airtel to charge interest on a daily basis from the original due date at the rate of 5% above the base rate of the central bank of Malawi. Such interest shall accrue from the due date until actual payment of the overdue amount, whether before or after judgment. Customer shall pay the interest together with the overdue amount.

9. Termination

9.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Agreement and (if such a breach

is remediable) fails to remedy that breach within thirty (30) calendar days of that party being notified in writing to do so;

- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

9.2 Without affecting any other right or remedy available to it, Airtel may terminate the Agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Agreement on the due date for payment; or
- (b) there is a change of Control of the Customer.

9.3 Furthermore, Airtel shall be entitled to disconnect service or terminate the Agreement forthwith in the event that:

- (a) any charges payable hereunder by the Customer remain unpaid after becoming due or in the event of misuse or non-use of the service by the Customer.
- (b) disconnection service and/or termination the Agreement is required by the government of Republic Malawi, the Regulator or any other governmental agency.

9.4 Any Customer who for any reason whatsoever ceases to use the Airtel services shall take immediate steps to notify Airtel of that cessation to avoid incurring unnecessary monthly charges. If no such notification is received, Airtel shall continue to charge the standing charges at the prevailing rates for as long as notice from the Customer has not been received, provided that Airtel may in its absolute discretion, terminate Airtel services to any such Customer who has not used the services for a period of at

least One (1) month without prejudice to its rights to recover any amounts due to it up to date of termination.

(b) in violation of the Airtel's Enterprise Services General Terms and Conditions or applicable law.

10. Consequences of termination

10.1 On termination of the Agreement:

- (a) the Customer shall immediately pay to Airtel all of Airtel's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Airtel shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Airtel Equipment which have not been fully paid for. If the Customer fails to do so, then Airtel may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.

11. Survival

11.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination [or expiry] of this agreement shall remain in full force and effect.

11.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

12. Suspension of service

12.1 Airtel may terminate or temporarily suspend the Service at the Customer's expense if:

- (a) Airtel is entitled to terminate the Agreement under any of the provisions of these terms and conditions;
- (b) the Customer is in arrears with any payment due under the Agreement for more than thirty (30) calendar days.

12.2 Airtel may also prevent the Customer from continuing to use the Service if the Customer has used the Service:

- (a) in a way that is likely to adversely interfere with Airtel's ability to provide the Service to the Customer or any third party;

12.3 Airtel may from time to time and without notice suspend the Service (and at Airtel's discretion disconnect the Customer Equipment from the Airtel network), in addition to its rights to disconnect or suspend in accordance with this Clause 12

- (a) During any period in which the system is subject to technical failure, modification or maintenance; or b) If the Customer, any person appearing before Airtel to act on behalf of the Customer, or any government authority reports the loss or theft of the Customer Equipment. The Customer's liability for services used from the relevant Customer Equipment shall continue until midnight on the day the Customer or its authorized representative provides written advice to Airtel of the loss or theft provided the advice is received by 1700 hours, otherwise the liability of services used will continue until midnight on the next working day. It is in the Customer's own interest to report the loss of Customer Equipment to the police as well as Airtel as soon as possible; or

- (b) If the Customer allows anything to be done to the Customer Equipment or its Installation or otherwise which, in Airtel's opinion, may have the effect of jeopardizing the successful operation of the Airtel network or the Service.

12.4 Where the Service is suspended under this paragraph, the Customer shall pay the charges for the Service until the agreement has been terminated by either party in accordance with clause 9.

13. Intellectual Property Rights

13.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Airtel.

13.2 The Customer grants Airtel a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Airtel for the term of the Contract for the purpose of providing the Services to the Customer.

13.3 Each party Agrees that it shall not at any time during the term of this Agreement of after its expiration or termination adopt use or register whether as a trademark, service mark, trade name, copyright symbol or

combination in a manner prejudicial to the Intellectual property rights of the other party.

14. Personal Data protection

14.1 Both parties will comply with all applicable requirements of the Personal Data Protection Legislation. This clause **Error! Reference source not found.** is in addition to, and does not relieve, remove or replace, a party's obligations under the Personal Data Protection Legislation. In this clause **Error! Reference source not found.**, Applicable Laws means (for so long as and to the extent that they apply to Airtel) the Data Protection Legislation applicable in Malawi. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and Airtel is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). The contractual data processing provisions between the parties sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.

14.2 Without prejudice to the generality of clause **Error! Reference source not found.**, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Airtel for the duration and purposes of this Agreement.

14.3 Without prejudice to the generality of clause **Error! Reference source not found.**, Airtel shall, in relation to any Personal Data processed in connection with the performance by Airtel of its obligations under this Agreement:

14.4 process that Personal Data only on the written instructions of the Customer unless Airtel is required by Applicable Laws to otherwise process that Personal Data.

- (a) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer,
- (b) to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and

resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) not transfer any Personal Data outside Malawi unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - I. the Customer or Airtel has provided appropriate safeguards in relation to the transfer;
 - II. the Data Subject has enforceable rights and effective legal remedies;
 - III. Airtel complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - IV. Airtel complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - V. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - VI. notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - VII. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - VIII. maintain complete and accurate records and information to demonstrate its compliance with this clause **Error! Reference source not found.** and allow for audits by the Customer or the Customer's designated auditor.

14.5 The Customer consents to Airtel appointing any of its subcontractors as a third-party processor of Personal Data under this Agreement. Airtel will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause **Error! Reference source not found.**

15. Title and Risk of Loss

15.1 The ownership in and to the Equipment as set out in the component list in the Service Order shall remain vested in Airtel.

15.2 The risk of loss or damage to the equipment at Customer's premises/Site shall be vested in Customer, unless such loss or damage has arisen from wear and tear, natural factor(s), or any act, negligence or fault of Airtel, its servants or agents.

16. Limitation of liability

16.1 The following provisions set out the entire financial liability of Airtel (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

- (a) any breach of the Agreement however arising;
- (b) any use made by the Customer of the Service, or any part of it; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.

16.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

16.3 Airtel shall be liable the Customer only for direct damage to tangible property to the extent that it is shown to have been caused by the negligence of Airtel or its employees in connection with the performance of this agreement.

16.4 Nothing in these conditions excludes the liability of the parties for:

- (a) death or personal injury caused by negligence; or
- (b) fraud or fraudulent misrepresentation;

16.5 Subject to clause 16.3 and clause 16.4:

- (a) Airtel shall not be liable for any errors or interruption in the installation process, whether within or outside its control;
- (b) Airtel shall not be liable under any circumstances to the Customer whether in contract, tort (including negligence) or

restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

- i. loss of profits;
- ii. loss of business
- iii. depletion of goodwill or similar losses;
- iv. loss of anticipated savings;
- v. loss of goods;
- vi. loss of contract;
- vii. loss of use of Service;
- viii. loss or corruption of data or information; or
- ix. special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, suffered by the Customer that arises under or in connection with this Agreement.

16.6 Airtel's total liability under this sub-clause including all related costs, fees and expenses and whether arising in contract, negligence or other tort or otherwise howsoever arising will not under any circumstances cumulatively exceed 50% of the charges of the last 12 months preceding the incident. In the case of damage occurring within the first 12 months following the conclusion of the agreement, the charges due up to that date shall be projected for a 12-month period.

16.7 Airtel shall not be held responsible for any loss, damage or inconvenience the Customer may suffer for emergencies or scheduled maintenance as detailed in the Service Order.

17. Confidential information

17.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of five (5) years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 17.2.

17.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this 17; and

- (b) as may be required by law, court order or any governmental or regulatory authority. If a party is required to disclose any Confidential Information to a Government Authority, promptly upon receiving the disclosure request, but to the extent legally permissible, that party will provide notice to the other party about such disclosure requirement.

17.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

18. Notices

18.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address specified in the Service Order.

18.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the proper address; and
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the [second] Business Day after posting [or at the time recorded by the delivery service; and
- (c) if sent by fax or email, at the time of transmission, or if this time falls outside Business Hours at 9.00 am on the next Business Day after transmission.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

19. Variations

19.1 Airtel reserves the right to revise the Fees from time to time in its discretion and such revisions shall be binding on the Customer provided that Airtel shall endeavor to notify the Customer of such changes within a

reasonable period of time. Such notice may be given by Airtel by including details of the revised fees together with the bill of the Customer or by providing the details of the revised Fees on its Web site or through any other means as deemed appropriate.

19.2 If as a result of any new law, change in license conditions or other change in circumstance, Airtel determines that this Agreement requires amendment it may amend the same by prior notice to the Customer, such notice may be given by sending details of the same to the address supplied by the Customer or by publishing details of the same in one national daily newspaper. Such variation shall be binding on the Customer as from the date stipulated in the notice and the Customer agrees to accept the same.

20. Assignment

The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of Airtel such consent not to be unreasonably withheld or delayed, unless expressly set out in this Agreement.

21. Governing law

21.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Malawi.

21.2 Airtel may at any time assign its rights under this Agreement to any third party without prior notice to the Customer. Airtel shall ensure that any such assignment shall not affect the provision of services to the Customer adversely.

22. Dispute Resolution

22.1 If any dispute, constraint, difference or disagreement arises in relation to implementation of the terms of this Agreement, or its validity, interpretation, execution, performance or termination ("Dispute"), such Dispute will be resolved in the first instance through the process described under Clauses 22.2 and 22.3.

22.2 Either Party may refer the Dispute for resolution in the manner below:

- (a) The Party raising a Dispute will provide a written notice to the other Party elaborating the dispute in reasonable detail;
- (b) Upon receipt of the notice, at each level of resolution specified below, the Parties will designate their nominees for

resolution of the Dispute within five (5) Business Days;

- (c) The nominees will attempt to resolve the Dispute within 30 calendar days of being designated.

22.3 The Dispute resolution process under Clause 22.2 will be through referral to the following tiers:

- (a) In the first instance, to the senior Representatives of each Party;
- (b) In the second instance, to the senior most management executives of each Party;

22.4 If the Dispute is not resolved in accordance with Clauses 22.2 and 22.3 within thirty (days) calendar days of the first written notice of the Dispute from either Party to the other, and the value of the matter is less than the equivalent of four hundred thousand (400,000) USD, the Dispute shall be referred to a court of competent jurisdiction within Malawi. If the value of the matter is superior to the equivalent of four hundred thousand (400,000) USD, the dispute shall be finally settled by arbitration in accordance with Clause 22.5.

22.5 Disputes referred to arbitration shall be resolved by a single arbitrator appointed by the Parties. If the parties are unable to agree on the choice of the sole arbitrator within fifteen (15) calendar days from the date the aggrieved party formally notify the other party of the Dispute, then the arbitrator shall be appointed by the Chairman of the Malawi Law Society. The seat and place of arbitration shall be Malawi. The language of arbitration shall be English. Arbitration shall be conducted in accordance with the UNCITRAL Arbitration Rules in effect on the date of this contract, as shall be read together with the Arbitration Act, cap 6: 03 of the Laws of Malawi for the time being in force. The rights and obligations of the Parties will remain in full force pending the arbitrator's award. The arbitration award shall be final and binding to the extent permissible by the applicable laws.

23. Force majeure

23.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of

sanctions, embargo, or breaking off of diplomatic relations;

- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident; [and]
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) [non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and]

interruption or failure of utility service.

23.2 Provided it has complied with clause 23.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

23.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

23.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event [but no later than three (3) calendar days from its start], notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

23.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than twelve weeks, the party not affected by the Force Majeure Event may

terminate this Agreement by giving eight (8) weeks written notice to the Affected Party.

24. Waiver

24.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

24.2 A failure or delay by a party 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.

24.3 A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

25. Severance

25.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

25.2 If any provision or part-provision of this agreement is deemed deleted under clause 25.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

26. No partnership or agency

26.1 Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorize any party to make or enter into any commitments for or on behalf of any other party.

26.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

27. Entire agreement

27.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

28. Conflict

28.1 If there is an inconsistency between any of the provisions in the Service Order and the Terms and Conditions, the provisions in Terms and Conditions shall prevail.

29. Disclaimers

29.1 It is expressly agreed between the Customer and Airtel that Airtel shall not be subject to any liability or responsibility by reason of any delay in effecting repairs or for any failure or delay in establishing communication between the Customer or any other person or for any failure or delay while the Customer is communicating any message or is linked to any website or is performing any work or research etc. whether such failure of delay shall arise from accident, defects in Customer Equipment of Service or any other equipment or for any other cause whatsoever. Airtel shall also not be liable to the Customer for any loss, expense or damage of any kind in connection with its performance under this Agreement or arising from any delay in installation of Customer Equipment, or delay in Connection or any disruption, interruption, suspension or malfunction of the Service for whatever reason.

29.2 Airtel's obligations under this Agreement are contingent upon Airtel continuing to be licensed to operate the Airtel network. Should Airtel for whatever reason not continue to be so licensed, its obligations under this Agreement shall cease and Airtel will only be liable to the Customer for refund of any advance payment or deposit made to Airtel less any amounts which may be outstanding against the Customer within Ninety (90) days from the date Airtel ceases to hold the Licence.

29.3 Airtel shall not in any event be liable for the acts or omissions of any other person, operator, organization, governmental agency or otherwise whether wireless, fixed-line or outside Malawi.

29.4 Airtel shall not be liable to the Customer or be deemed in breach of this Agreement by reason of any delay in performing or failure to perform, any of its obligations under this Agreement, except for Airtel's gross negligence.

29.5 Airtel shall take reasonable measures to protect confidential information about the Customer, other than directory information from being disclosed to third parties including Airtel's own subsidiaries, affiliates and affiliated companies except information which is required (i) for the process of collection of debts owed to Airtel (ii) By Airtel's auditors for the purpose of auditing Airtel's accounts, or (iv) for the prevention or detection of crime or the apprehension or prosecution of offenders or as may otherwise be authorized by or under any law of [Malawi] Airtel may disclose information about the Customer where Airtel has explained to the Customer (i) the nature of the information to be disclosed, (ii) the

recipients of the information to be disclosed and (iii) the purpose for the disclosure, provided the customer has provided Airtel with consent to such disclosure. Airtel shall not be liable for any information disclosed by the Customer or obtained by any third party or person during or pursuant to use of Service by the Customer.

29.6 The Customer acknowledges that international copyright, patent and trademarks law protects computer software as well as published data contained on the Internet accessing through the Airtel services and the Customer shall only therefore download information for which a license has been granted by the owner of such Intellectual Property rights. The Customer undertakes to inform Airtel of any misuse or threaten misuse of Airtel services to publish such proprietary information of software.

29.7 The Customer shall not use Airtel services for purposes of religious, political or ethnic promotion or persecution, vulgar or offensive language or in a manner likely to offend other users such as sending spam messages, chain letters, unauthorized advertising and fundraising of any kind whatsoever.

29.8 The Customer shall not use the Airtel services for purposes of disseminating prohibited publications or in furtherance of the objectives of any unlawful organizations, criminal practices and anything that might be contrary to law, justice morality or good order.

29.9 In the event of breach of any provision of the foregoing Clauses by the Customer or any of its users, the Customer shall indemnify and keep Airtel indemnified to the fullest extent against liability at law or damages, costs and expenses in respect of claims made against Airtel in respect of infringement of copy right, patent rights, registered trademarks, libel, slander, of any other claims arising from use of Airtel services. The Customer also agrees to indemnify and keep Airtel Indemnified against expenses for making good or withdrawing any article, information, software or document giving rise to such claim, and against all costs and expenses incurred in defending such claims.

29.10 It shall be duty of the Customer to check for viruses before uploading and downloading any files and Airtel shall not be responsible if any software is transmitted over the internet or Airtel services happen to contain viruses or any form of malicious software or spam.

29.11 The Customer acknowledges that the use of Airtel services is at the Customer's sole risk and Airtel does not give any guarantees, explicit, legal, or otherwise and excludes particularly any implicit or explicit guarantees concerning accessibility and effectiveness of the Airtel services in responding or answering to the particular expectations and needs of the Customer and the Customer shall be fully responsible for all the direct

liabilities, damages expenses and costs arising out of the use or inability to use all the Airtel services and will indemnify and keep Airtel indemnified from all claims which may be made against Airtel including the reasonable fees of the Advocates retained by Airtel to defend such claims.

29.12 Airtel shall not be liable of any damage to the Customer's computer caused by the installation of software supplied by Airtel. Airtel gives a one (1) month warranty for the software installed by it to be run from the date of completion of the installation. Thereafter Airtel will levy a site support charge to be determined by Airtel.

29.13 Airtel shall not be responsible of any loss of profits, loss of fees or any form of damage suffered by the Customer or any third party as a result of the use or inability to use the Airtel services.

29.14 The fact of any dispute, claim, query, loss of fees, profits or any other complaint by the Customer or any third party claiming under or against the Customer shall not absolve the Customer of the liability to pay the monthly subscription and other charges to Airtel or to which Airtel may be entitled.

30. Use of the service via Customer Equipment

30.1 Airtel reserves the right to issue such instructions concerning the use of the service as it may from time to time consider necessary to maintain the integrity, quality and safety of the service all customers and such instructions shall be binding upon the Customer and be deemed to form part of this Agreement.

30.2 The Customer shall be personally responsible for all services activated from the Customer Equipment registered in the name of the Customer and shall neither use nor permit any person to use the said Customer Equipment for:

- a) Sending abusive, offensive, indecent, obscene, or menacing messages or communications; or
- b) Un authorized intercepting or learning the contents of any message; or
- c) The persistent using of services which may cause annoyance, inconvenience, or needless anxiety to any person; or
- d) Any improper, immoral or unlawful purpose, of any purpose not recommended by the equipment manufacturer.

30.3 Airtel has the right to treat use of the system in contravention of sub-paragraph (b) above, as a justifiable reason for the suspension forthwith of the service, and/or termination forth with of this Agreement.

- 30.4 Airtel has the right to make any alteration or adjustment to any Customer Equipment as it may consider desirable for the purpose of maintaining satisfactory Service for the Customer or for customers as a whole. Any such alteration made will be billed to and payable by the Customer at the rate stipulated by Airtel in advance.
- 30.5 The Customer shall not place or use anything in such a way or position in relation to the Customer Equipment or any other link that is not approved for such use by Airtel.
- 30.6 At first instance, access to the Airtel services shall commence with the password specified by the Customer, where applicable. Thereafter, the Customer shall select a new password using the Airtel self-care service, which password shall be safeguarded in strict confidence and shall not be disclosed by anyone. Airtel shall not be liable for any damages suffered by the Customer for not safeguarding this password.
- 30.7 In the event of a technical fault or other difficulty requiring the assistance of Airtel the Customer may be required to disclose the password to Airtel's representatives but immediately the assistance is received, the Customer should dispense with the use of the password and select another confidential password to be safeguarded in the like manner.
- 30.8 The Customer shall be liable to pay for all charges incurred as a result of the use of the services by any person whatsoever, using the Customer's password (with or without the Customer's consent) and the obligation to pay shall only cease on the day following the date on which Airtel receives notification in writing or by electronic mail of the unauthorized use of the password.

31. General Provisions

- 31.1 Notwithstanding anything herein contained herein, these Terms and Conditions are subject to the terms and Conditions of Airtel's Licence and any other law, statute or agreement in force or which may come into force and shall become applicable and binding on Airtel and the Customer. If anything contained herein is contradictory to Airtel's obligations under the aforesaid Licence (s) or should the Customer commit any act or omit to do such things such that Airtel shall be deemed to have contravened or be held to be in contravention of any term and Condition of the Licence or should it contravene any term or condition of the Licence, Airtel shall be entitled to claim for any loss incurred by way of penalty or otherwise or in the case of material or substantial breach or contravention terminate these terms as provided for herein unless the contravention, inconsistency or contradiction in question can be remedied without us having to terminate the services.
- 31.2 It is the Customer's duty to acquaint itself and to comply with all applicable requirements and restrictions imposed by the Government of Malawi and other

Regulatory Bodies relating to provision and use of the Service and the Customer Equipment.

- 31.3 All information contained in Airtel's promotional material, advertisements and publicity campaigns is for information only and shall not be deemed to be a part of this Agreement. The Customer acknowledges that he/she has not relied on, or been induced by, any such material in entering this Agreement.
- 31.4 If it is required that the Service be registered in the name of a limited company, the company secretary or a duly authorized director shall sign acceptance of these conditions on behalf of the company. If it is requested that the Service be registered in the name of the firm or organization other than a limited company, the proprietor or partner of an authorized official of the firm or organization shall sign acceptance of these conditions and shall produce the business registration certificates and any other documents required by Airtel.
- 31.5 All and any Customer Equipment supplied to the Customer shall remain the property of Airtel unless Airtel confirms to the Customer in writing that title to the same has been transferred to the Customer. All Customer Equipment shall be returned to Airtel forthwith on termination of this Agreement and Airtel shall return any security deposit if applicable to the Customer after making the due deductions.
- 31.6 The Customer has no ownership or other rights in respect of any number allocated by Airtel which shall remain the exclusive property of Airtel.
- 31.7 The Customer shall be liable to pay all charges that may be levied by the law or the Regulatory Authorities from time to time with respect to the Customer's use of the Service.
- 31.8 Any Employee or Agency, duly authorized in this behalf by Airtel, shall have complete authority to investigate any present or potential Airtel subscriber(s) including the Customer.
- 31.9 The Customer confirms that save as expressly set forth herein, any notice, bill or invoice shall be deemed to be duly served on the Customer Two (2) business days after dispatch by Airtel to the address provided by the Customer overleaf. The Customer agrees to intimate any change in its address to Airtel in writing prior to any such change-taking place.
- 31.10 Airtel shall not be liable to the Customer for any personal injury, illness, loss of other damage suffered by the Customer arising from use of the Service or the Customer Equipment by the Customer.

32. Further Undertakings

32.1 The Customer hereby agree to the following Further Undertakings as follows:

- (a) That the Customer shall not engage in any criminal activity nor assist, aid, hide or divert the funds from any criminal activity whatsoever;
- (b) the Customer shall not engage or assist and/or facilitate any terrorist activity or give any aid to any terrorist group or person whosoever and whatsoever; and
- (c) The Customer shall ensure compliance with, among other things, anti-corruption, anti-money laundering and anti-terrorism laws and best practices and it shall set up internal structures to track, prevent and detect such violations including breaches of all such laws, regulations and conventions.

32.2 Customer hereby certifies as follows:

- (a) That it shall keep suitable records of its business relationship with Airtel especially relating to funds received and shall on written request by Airtel make available these records for the purposes of an independent audit;
- (b) That it shall disclose or has already disclosed in writing any connection it has with a government official and/or has disclosed where any government official has a controlling interest in its business;
- (c) That it has performed all reasonable and necessary due diligence on all its sub Customers, agents, and any of its representatives who shall be engaged for the purposes of rendering any service(s) to Airtel.
- (d) That it shall not facilitate any tax evasion;
- (e) That it shall not participate to any forced labour under any form;
- (f) That it is not a sanctioned person or entity as defined respectively by the United States, the United Kingdom and the European Union.

32.3 Customer shall at all times maintain high standards of ethics in the use of the service; Customer (for itself and on behalf of its privies, agents, consultants and sub-Customers) warrants that it has not given and will not give any commissions, payments, gifts of any value, kickbacks, lavish or extensive entertainment or other things of value to any employees, members of an employee's family, or any agent

of Airtel or any governmental authorities, nor has it received nor will it or any of its employees receive the same from Airtel in connection with matters pertaining to this Agreement and Customer further acknowledges that the giving or receiving of any such payments, gifts, kickbacks, lavish or extensive entertainment or other things of value is strictly in violation of the policy of Airtel and may result in the termination of this Agreement and all future business.

32.4 Customer shall notify Airtel via the mail addresses of any solicitation by or provision/payment of the above to any of the employees, their family members or agents of Airtel or of any governmental authority in connection herewith.