

STANDARD TERMS AND CONDITIONS

1 INTRODUCTION

- 1.1 The Parties to this Agreement are:
- 1.1.1 **AFRICONNECT ZAMBIA LIMITED**, a company duly under the laws of the Republic of Zambia under company number 44066, with its registered address at May Building – The Gallery Office Park, Plot 4015, Lagos Road, Rhodespark, Lusaka, Zambia ("**Service Provider**"); and
- 1.1.2 Any customer of the Service Provider to who Services are provided from time to time, and whose details are set out in a Service Order and/or Proposal from time to time ("**Customer**").
- 1.2 These terms and conditions will apply to any telecommunication services that the Service Provider and/or its Affiliates provide to its Customers as set out in a Service Schedule, Proposal and/or Service Order.

2 DEFINITIONS

- 2.1 Save as otherwise set out in relation to a particular Service Order, Proposal and/or Service Schedule, capitalized terms not otherwise defined in these Terms and Conditions, shall for the purposes of this Agreement have the meaning assigned to them below:
- 2.1.1 "**Affiliate**" means, with respect to a Party, any other person or entity which directly or indirectly Controls, is Controlled by, or is under common Control with such Party;
- 2.1.2 "**Agreement**" means this agreement including the Terms and Conditions, attachments hereto and Proposals, Service Schedules and/or Services Orders concluded between the Parties from time to time;
- 2.1.3 "**Charges**" means the charges set out in a Proposal and/or Service Order for the Services to be paid by the Customer to the Service Provider;
- 2.1.4 "**Confidential Information**" means any information which is by its nature or content is identifiable as confidential and/or proprietary to a Party, excluding information or data which is lawfully in the public domain, or is disclosed by operation of law, regulation or court order;
- 2.1.5 "**Control**" means the ability, by virtue of ownership, right of appointment, right to control election or appointment, voting rights, the ability to control the exercise of voting rights, management agreement, or agreement of any kind, to control or direct, directly or indirectly, the board or executive body or decision making process or management of such entity;
- 2.1.6 "**CPE**" means Customer premise equipment at the Customer's site comprising of a terminal or associated equipment connected to the Service Provider's network for the provision of the Services;
- 2.1.7 "**Due Date**" means the date on which an invoice is due for payment, as set out at Clause 5.5 of these Terms and Conditions, or as otherwise set out in the relevant Service Order;
- 2.1.8 "**Effective Date**" means the earlier of the date on which the Proposal and/or Service is concluded or the service is activated;
- 2.1.9 "**Intellectual Property**" means all forms of knowledge and information that are generally recognised as being capable of being the subject of proprietary rights, whether such proprietary rights are registerable or not;
- 2.1.10 "**MRC**" or "**Monthly Recurring Charge**" means the recurring monthly amount charged by the Service Provider to the Customer for the Services;
- 2.1.11 "**Parties**" means either Party to this Agreement;
- 2.1.12 "**Proposal**" means any proposal for services mutually agreed between the Parties for additional Services from time to time;
- 2.1.13 "**RFS Date**" means the ready for service date, or the date that a particular Service is handed over to Customer for user acceptance testing;
- 2.1.14 "**Service Schedule**" means a schedule with a detailed service description and/or service levels applicable to specific Services from time to time;
- 2.1.15 "**Service(s)**" means the services set out in a Proposal, Service Schedule and/or Service Order;

- 2.1.16 "Service Order" means an order for Services concluded between the Parties in a format prescribed by the Service Provider from time to time, and governed by these Terms and Conditions;
- 2.1.17 "Site" means a location at which the Services will be provided to the Customer;
- 2.1.18 "Terms and Conditions" means the terms and conditions herein; and
- 2.1.19 "Users" means any employee and/or third party authorized by the Customer to make use of the Services.

3 AGREEMENT STRUCTURE

- 3.1 This Agreement comprises of these general Terms and Conditions, including attachments hereto. A Customer may order Services from time to time in terms of which the Service Provider shall present a Proposal, Service Schedule and/or Service Order. All Proposals, Service Schedules and Service Orders shall be deemed to incorporate these Terms and Conditions.
- 3.2 In the event of a conflict between the Terms and Conditions and a Proposal, Service Schedule and/or Service Order, the following order of precedence shall apply: (i) Service Order; (ii) Service Schedule; (iii) Terms and Conditions; and (iv) Proposal.

4 COMMENCEMENT AND DURATION

- 4.1 Unless otherwise agreed in a Service Order:
- 4.1.1 these Terms and Conditions commence on the Effective Date and endure for the duration that the Service Provider continues to provide Services to the Customer; and
- 4.1.2 the Services will commence on the date that the Service Provider commences provisioning any Services and will endure for a period of twelve (12) months from the RFS Date ("**Initial Period**"), provided that upon expiry of the Initial Period the Services under any Service Order and/or Proposal shall automatically renew annually for twelve (12) month periods at a time ("**Renewal Term**").
- 4.2 In the event that there are no Services contracted for under these Terms and Conditions, either Party may terminate these Terms and Conditions on ninety (90) days written notice to the other Party.
- 4.3 The Customer may terminate a Service Order or part thereof on ninety (90) days written notice to the Service Provider, subject to payment of MRCs payable for the remainder of the Initial Period and/or Renewal Term.
- 4.4 Upon expiry of any Initial Period or Renewal Term under a Service Order, the Customer shall be entitled to terminate any Service Order in whole or part on ninety (90) days written notice to the Service Provider, provided that the Customer shall pay to the Service Provider equipment costs, as well as any abortive costs including but not limited to de-installation costs and/or third party early termination fees incurred by the Service Provider.

5 SERVICES

- 5.1 The Service Provider shall provide the Services to the Customer in accordance with these Terms and Conditions as contemplated in a Proposal, Service Schedule and/or Service Order from time to time.
- 5.2 The Service Provider shall comply with all applicable local laws in connection with the provision of the Services.
- 5.3 Services will be provided and accepted by the Customer in accordance with the standard the Service Provider acceptance testing methodologies prescribed by the Service Provider from time to time. Acceptance will be deemed to occur on the earlier of satisfactory completion of the acceptance testing or use of the Service.

6 CUSTOMER OBLIGATIONS

- 6.1 The Customer shall:
- 6.1.1 make available facilities and/or information, and grant access to the Customer's site as required by the Service Provider, its staff and/or subcontractors from time to time in order to provide the Services;
- 6.1.2 be responsible for providing a suitable and secure environment for the Services, in compliance with the Service Provider's requirements, including any original equipment manufacturer's requirements,
- 6.1.3 keep its environment free from environmental hazards and shall keep Service Provider equipment free from all liens, charges, and encumbrances;

- 6.1.4 not remove or attempt to remove any stickers or other markings, identifying such equipment as the property of the Service Provider, its subcontractors or other agents;
 - 6.1.5 be responsible for procuring and maintaining, in its name and at its expense, all necessary permits and consents required for the provision of the Service and/or the installation and/or use of the CPE and/or any ancillary equipment for the duration of the Agreement;
 - 6.1.6 ensure that the Service is used strictly in accordance with AfriConnect' s Acceptable Use Policy posted at www.iconnect.zm ;
 - 6.1.7 be responsible for its own local area network and infrastructure and shall implement such reasonable security measures to ensure that the security of the Services are not compromised;
 - 6.1.8 promptly comply with all notices, instructions or directions given by the Service Provider in respect of the installation, use or operation of the Services, software and/or CPE;
 - 6.1.9 install, use and maintain all Customer-owned equipment, including equipment controlled by the Customer which is necessary for the provision of the Service in good working order (fair wear and tear excepted) in accordance with the specifications, guidelines and recommendations of the Service Provider, original equipment manufacturer and/or third party vendors;
 - 6.1.10 at all times retain custody and control of the CPE at the premises occupied by the Customer or such other premises as the Service Provider may have approved for such purpose;
 - 6.1.11 use the Service for its own internal business purposes and shall not be entitled, either directly or indirectly, to transfer, distribute, re-distribute, copy, sell, re-sell, lease, rent, lend, license or sub-license the Service, either in whole or in part, in any way whatsoever, to any third party without the Service Provider's prior written consent; and
 - 6.1.12 not carry out or permit to be carried out any additions, improvements, adjustments, modifications, alterations or replacements to the CPE without the prior written consent of AfriConnect.
- 6.2 The Customer acknowledges and agrees that:
- 6.2.1 the Agreement is executed by it on behalf of all Users who use the Service with its permission and accordingly, the Customer shall bear the responsibility of ensuring that all such Users comply with the terms and conditions of the Agreement; and
 - 6.2.2 it shall be liable for all breaches of the terms of the Agreement by such Users.

7 CHANGES

The Customer shall formally request changes required in relation to the Services, including requests for additional services, upgrades, downgrades or site relocation and/or technical changes to the Services. Any change requested by the Customer will be subject to a Service Order being presented to the Customer for approval and signature.

8 PRICE AND PAYMENT

- 8.1 The Customer shall: pay for the Services as more particularly set out in a Proposal and/or Service Orders.
- 8.2 All prices quoted are exclusive of all applicable sales taxes and the Customer will pay to the Service Provider the amount set out in an initial Proposal and/or any subsequent Service Order or Proposal.
- 8.3 The Customer may be liable to pay Provider a once-off fee which shall be billed and invoiced to the Customer together with the MRC due for the first month following activation of the applicable Service.
- 8.4 Prices quoted are exclusive of any civil works or other costs incurred in the provisioning of the Services.
- 8.5 The Monthly Recurring Charge shall be invoiced monthly in advance and the Customer shall pay all undisputed amounts due and so invoiced within thirty (30) calendar days of date of the applicable invoice ("**Due Date**").
- 8.6 The Customer acknowledges that any Customer requests for changes to the Services, including relocating the provision of the Services to a new Site, may result in additional charges.
- 8.7 Invoices will be emailed to the Customer to the email ID for receipt of invoices set out in the Service Order for particular Services.

8.8 Where the Customer disputes that an invoice or any part of it that is payable by the Customer ("**Disputed Amount**"), the Customer shall notify the Service Provider within 21 (twenty) days of receipt of the invoice of the Disputed Amount, including details of why the Disputed Amount is incorrect and/or is being disputed and, if possible, how much the Customer considers to be the correct amount. If the Parties are unable to resolve the dispute then the matter shall be referred for resolution in accordance with dispute resolution process under this Agreement.

8.9 Unless otherwise agreed by the Parties in writing, or otherwise stipulated in a Service Order, all Pricing and Service Orders are presented in United States Dollars (USD). The Parties agree that the Vodacom Treasury department will (i) determine the applicable foreign exchange rate at the RFS Date; (ii) review such rate of exchange on a quarterly basis; (iii) prescribed an update to the exchange rate in the event that it changes by more than 5% from the rate determined at the RFS Date.

9 CONFIDENTIALITY

9.1 Without prejudice to any other confidentiality arrangements already in place between the Parties, each Party undertakes not to disclose Confidential Information which comes into its possession in connection with this Agreement to a third party without the disclosing party's written consent. Both Parties shall take all steps necessary to prevent any unauthorised disclosure of Confidential Information.

9.2 Confidential Information shall remain the property of the disclosing Party and Confidential Information, including all copies thereof, shall be returned to the disclosing Party or destroyed upon request of the disclosing Party. The obligations under this clause shall survive its termination by a period of five (5) years.

9.3 No public statements or announcements relating to this Agreement shall be issued by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

10 INTELLECTUAL PROPERTY

10.1 Both Parties shall retain all right, title and interest in and to their Intellectual Property.

10.2 Any Intellectual Property furnished by the Service Provider and/or its Affiliates to the Customer shall be owned by the Service Provider, its Affiliates or a third party and may not be used or commercially exploited by the Service Provider, except in relation to the provision of the Services and/or with the Service Provider's prior written consent.

11 DATA PROTECTION

11.1 The Parties will process all personal information in accordance with the applicable laws or regulations governing the processing of personal information in the applicable jurisdiction where personal information is processed ("**Applicable Privacy Law**").

11.2 Where required by Applicable Privacy Law (i) the Customer authorises the processing of the personal data for and (ii) agrees to use reasonable endeavours to notify Users about:

11.2.1 processing for maintaining the security, integrity and quality of the Services. Such processing may include interception, monitoring or recording of communications in accordance with applicable laws;

11.2.2 processing for the Service Provider's own market research and analysis in order to develop and improve the Service Provider's products, services and commercial propositions. Such processing will not include providing personal data to third parties or making it publicly available; and

11.2.3 disclosure of personal data by the Service Provider to third parties:

11.2.3.1 if required by applicable law, court order or regulatory authority; or

11.2.3.2 where such third parties are sub-contracted processors of the Service Provider.

11.3 In order to exercise any statutory rights in respect of personal data and if required by Applicable Privacy Law, the Customer will notify the Service Provider in writing and by such means as to provide proof of mailing and receipt.

12 FORCE MAJEURE

12.1 No failure or omission by either Party to carry out or observe any terms and conditions of this Agreement, except for any obligations to make Payment, shall give rise to any claim against the Party in question or be deemed a breach of this Agreement if such failure or omission arises from a cause of force majeure, an act of Government or any other cause beyond the reasonable control of that Party. If such delay or failure continues

for at least ninety (90) days, either Party will be entitled to terminate this Agreement by notice in writing to the other Party.

13 ANTI BRIBERY

13.1 The Service Provider shall comply with all relevant applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption and shall not give or receive any bribes, including in relation to any foreign public official.

14 TRADE CONTROLS AND SANCTIONS

14.1 Each Party shall, in the context of the Services:

14.1.1 comply with all economic, trade and financial sanctions laws, regulations, embargoes or restrictive measures administered ("**Sanctions**"), as well as all trade control laws and regulations ("**Trade Control Laws**") enacted or enforced by the governments of the United Kingdom, European Union, United States of America and any other relevant country;

14.1.2 not knowingly do anything which may cause the other Party or members of its group to breach Sanctions;

14.1.3 provide such assistance, documentation and information to the other party as that Party may reasonably request, including but not limited to, end customer information, destination and intended use of the Services;

14.1.4 notify the other Party in writing as soon as it becomes aware of an actual or potential investigation/breach in relation to the applicable laws or any material change in the status of any of the Parties to this Agreement in respect of:

14.1.4.1 Sanctions status e.g. the inclusion on a Sanctions list in any applicable jurisdiction (as stated in 14.1.1 above); and

14.1.4.2 licence or authorisation status e.g. a loss of licence/authorisation in respect of Sanctions or trade controls;

14.1.5 have the right to terminate this Agreement if any of the provisions of this clause 14 are breached; and

14.1.6 have the right to seek indemnities from the Party which has breached the relevant provisions for any direct losses incurred.

15 WARRANTIES

15.1 Each of the Parties hereby warrants to and in favour of the other that this Agreement shall be binding and that it has the legal capacity and is duly authorised to enter into this Agreement, and the execution of this Agreement will not contravene any law or other obligation.

15.2 To the full extent allowed by law, the Service Provider disclaims all warranties and conditions regarding any equipment and/or Services, either express or implied, including, but not limited to, warranties of merchantability, fitness for a particular purpose and non-infringement of third party rights.

16 LIMITATION OF LIABILITY

16.1 Neither Party will be liable to the other Party and/or any third party for any damages for loss of profits or savings or other economic loss (whether direct, indirect or consequential), or for any other indirect, consequential, special, or punitive damages whatsoever and howsoever arising out of or related to any breach of this Agreement.

16.2 Each Party's liability under this Agreement shall be limited to 100% (one hundred percent) of the amounts payable by the Customer under this Agreement in the 12 (twelve) months preceding the date on which a claim arose.

17 SUSPENSION, BREACH AND TERMINATION

17.1 The Service Provider reserves the right to, upon seven (7) days' notice, suspend Services to the Customer in the event that any undisputed amount is not made timeously in terms of this Agreement or whether the Customer is in material breach of this Agreement and/or the applicable laws.

17.2 In the event of any of the Parties ("**Defaulting Party**") committing a material breach of any of the terms of this Agreement and failing to remedy such breach within a period of thirty (30) days after receipt of a written notice

from another Party ("**Aggrieved Party**") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement (in whole or part) forthwith and without further notice, and in either case to claim and recover damages from the Defaulting Party.

17.3 Without prejudice to any other rights, either Party may immediately terminate this in whole or part, upon written notice in the event that the other Party: (i) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency); or (ii) becomes insolvent or ceases paying its debts generally as they fall due.

18 GENERAL

18.1 **Governing Law:** This Agreement will be governed by the laws of England and Wales and all disputes under this Agreement shall be referred to the courts of England which shall exercise exclusive jurisdiction.

18.2 **Notices of Legal Proceedings:** The Parties select the physical addresses set out in clause **Error! Reference source not found.** for the purposes of giving or sending any notice provided for or required under this Agreement. Any legal notice shall be hand delivered to a Party's "Legal Department".

18.3 **Survival:** The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

18.4 **Support:** The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

18.5 **Assignment:** Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party, provided that the Service Provider shall be entitled to assign its rights and/or obligations in whole or part under this Agreement to any of its Affiliates.

18.6 **Whole Agreement:** This Agreement is the entire agreement between the Parties in relation to its subject matter. There is no agreement between the parties outside of this Agreement and except as specifically referenced in this Agreement, no interactions between the Parties preceding the signature date will have any effect between the Parties.

18.7 **Amendment:** The Service Provider may amend the terms and conditions from time to time on written notice to the Customer.

18.8 **Waiver and Suspension:** No waiver by a Party of any of its rights under this Agreement will be of any force or effect unless contained in writing signed by the authorised representative of that Party. No suspension of the rights of a Party under this Agreement will occur unless that Party has agreed to that suspension in writing signed by the authorised representative of that Party.

18.9 **Severability:** Each provision of this Agreement is severable from every other provision of this Agreement.

18.10 **Nature of Relationship:** The Parties are independent contractors and neither Party is the agent of the other and neither Party shall be allowed to bind the other Party.