



## CLOUD ONE TERMS AND CONDITIONS

### 1. Definition

- 1.1. ACCOUNT: Means Cloud One Limited's (in further text "Cloud One") records of personal details, outstanding charges payable by and payments received from clients.
- 1.2. ACCOUNT HOLDER: Means the Client.
- 1.3. ACTIVATION DATE: Means the date on which the Client successfully subscribes for prepaid & postpaid services provided by Cloud One AND the terms "Activate" and "Activation" shall have corresponding meanings.
- 1.4. Cloud One: Means Cloud One Limited a limited liability company incorporated in the Republic of Kenya under the Companies Act (Chapter 486 of the Laws of Kenya) of P.O Box 18814 - 00500 Nairobi (hereinafter referred to as "Cloud One" which expression shall where the context so admits include its successors and assigns).
- 1.5. CHARGES: Means all the fees cost charges and interests associated with subscription to and use of Cloud One's prepaid & postpaid services.
- 1.6. CLIENT: Means a person or entity who successfully subscribes for Cloud One's prepaid or postpaid services (herein defined) and executes a contract with Cloud One accordingly. The term "Client" shall include the said subscriber's personal representatives / successors in title and assigns as well as persons who Cloud One believes to be acting with the Client's authority as agents, servants or employees of the Client. The term "Account Holder" will have a corresponding meaning.
- 1.7. CONNECTION: Means the process through which a Client is given access to the Cloud One prepaid or post-paid services through Cloud One's network. The terms "Connected", "Disconnected" and "Reconnection" will have corresponding meanings.
- 1.8. CONTENT: Means audio, text, visual or other information software and materials availed by means of the network including all information supplied by content providers from time to time.
- 1.9. CONTRACT: Means the terms and conditions contained herein as read together with the Service Application Form overleaf and any variation witnessed in writing.
- 1.10. COVERED AREA: Means the Geographical area covered by the network and within which the Client can access the service or network as advised by Cloud One.
- 1.11. DEPOSIT: Means such amount as Cloud One may require a Client to pay in order to procure Connection or Reconnection to the network. Such amount may be refundable and shall be payable by the Client prior to Connection or Reconnection accordingly.
- 1.12. DUE DATE: Means the date by which Cloud One may require that a Client settle outstanding Charges (herein defined).
- 1.13. INITIAL FEE: Means a fee to be paid to Cloud One by the Client before the Client can have access to the network and related services, which amount may include a Subscription Fee (for a prescribed period), Deposit, Setup Fee and Connection Fee.
- 1.14. INTERNATIONAL CALLING FACILITY: Means a facility availed to a Client by Cloud One or through Cloud One's assistance as standard and at such additional costs as may be advised by Cloud One, which facility allows the client to make and receive phone calls to or from a foreign country.
- 1.15. MINIMUM PERIOD: Means a period of Twelve (12) calendar months computed from the date on which the Service is first provided to the Client or such other period as may be agreed between Cloud One and the Client and witnessed in writing.
- 1.16. MONTHLY BILLING DATE: Means the day in each month on which the Client's invoice will be issued by Cloud One to the after the Client procures Connection to the Services.
- 1.17. NETWORK: Means Cloud One equipment or software and facilities that enable the client to have access to the Services.
- 1.18. USERNAME: Means an identification used by the Client person with access to Cloud One network or service. Username is allotted to every Client to control access to the network and the term "PASSWORD" shall have a corresponding meaning.
- 1.19. POINT OF SALE: Means any shop or place where the client can make an offer for any of the Services.
- 1.20. POSTPAID: Means a credit facility availed by Cloud One to a Client subject to the terms of this Contract the client pays for use of the network and the service at the end of the period of consumption set by Cloud One.
- 1.21. PREPAID: Means a credit facility availed by Cloud One to a Client subject to the terms of this Contract the client pays for use of the network and the service at the beginning of the period of consumption set by Cloud One.
- 1.22. PRICE LIST: Means a list of charges for tariffs for Services as levied by Cloud One, which Price List may be updated by Cloud One from time to time and may include related explanations definitions notes and conditions.
- 1.23. RIGHTS: Means copyright trademark and other relevant proprietary and intellectual property rights relating to the content or contained in any software that is required and / or utilized by Cloud One to operate the network and to provide the Services.



1.24. **SERVICES:** Means postpaid or Prepaid services supplied by Cloud One or any other application or content providers by means of the network and the term “Service” includes all such value-added services, package deals and other optional services as may be availed by Cloud One. Services are subject to the Terms and Conditions (as modified from time to time)

## **2. Commencement and Terms of the Contract**

- 2.1. This contract is for the Minimum Period as defined in Clause 1.15
- 2.2. Upon expiry of the Minimum Period the Contract shall be renewed automatically for further consecutive terms of Twelve (12) months each unless terminated or determined as herein provided.
- 2.3. By signing this contract the Client agrees to be bound to subscribe for the service for the Minimum period and settle the charges related to the Client’s utilization of the Services as set out in this Contract as well as all monthly subscription fees payable in respect of the entire duration of the Minimum period.

## **3. Provision and Use of the Service**

- 3.1. Subject to the provisions of the Contract the Client is only entitled to the Services or such part thereof as are be availed by Cloud One at the time the Client signs this Contract. The Client will be informed by Cloud One through the press or Points of Sale of various other components relating to review of the Services provided as and when they are availed by Cloud One.
- 3.2. Cloud One hereby reserves the right to vary the terms and conditions of this Contract at any time.
- 3.3. Subject to the provisions of this Contract Cloud One will provide the Client with a service and take all reasonable steps to make the service available to the Client on such terms and date as shall be agreed.
- 3.4. The Client shall not be entitled or have a right to any specific phone number(s) and Cloud One reserves the right to offer, withdraw and change such phone number(s) as may be allocated upon giving adequate notice to the Client.
- 3.5. The international calling facility and or roaming shall be made available to the Client and shall be subject to such further or additional terms and conditions as Cloud One may impose before availing any of the said facilities.
- 3.6. The service is not fault free and the quality and availability of the service may be affected by factors outside the control of Cloud One including but not limited to local geographic and physical obstruction atmospheric conditions and other causes of radio interference as well as faults in other telecommunication networks to which the network is connected or dependent. The network and the service may also from time to time require upgrading, modification, maintenance or other works that may also result in the service or any part thereof becoming temporarily unavailable.
- 3.7. On activation, the CLIENT will be entitled to the quality of service generally provided by a competent IP Telecommunication service provider exercising reasonable skill and care.
- 3.8. Cloud One may suspend services or any part thereof without giving the CLIENT notice if Cloud One has good reason to believe that the CLIENT has not complied with one or more of the terms of the Contract.
- 3.9. Cloud One will exercise all reasonable endeavors to maintain the content but the content may be complete out of date or inaccurate and it is provided on an “as is” basis and the CLIENT hereby acknowledges that Cloud One will not be liable for any action the client takes in reliance on the content.
- 3.10. Cloud One may vary the content or the technical specification of the service from time to time and will advise the client accordingly without creating an obligation to do so.
- 3.11. The client is solely responsible for evaluating the accuracy and completeness of the content and the value and integrity thereof and accordingly Cloud One will not be a party to or in any way responsible for any transaction concerning the content or defects therein.
- 3.12. The coverage maps issued by Cloud One are estimated but not guaranteed of the availability of the service or coverage by the network which may vary from place to place due to Internet connectivity by 3rd Party Operators
- 3.13. Cloud One shall only activate the CLIENT when has received the initial fee in full and the client has complied will other requirements set out in this contract.
- 3.14. The Deposit shall be refundable to the CLIENT without interest and without deduction on termination of this Contract in accordance with the terms and conditions contained herein PROVIDED THAT all sums owing and payable to Cloud One by the Client in respect of this Contract have been paid in full.
- 3.15. The Connection or Setup Fee shall be non-refundable once the client has been activated connected or reconnected.
- 3.16. Cloud One hereby reserves the right at any time during the term of this contract to transfer the benefit of this Contract or the CLIENT’S account(s) to any other provider of similar services.
- 3.17. The rights relating to the software are the property of Cloud One. The service supplied to the client under license by Cloud One for the proper use with the services only. The CLIENT may not copy, change or re-engineer the software in any manner whatsoever. Cloud One reserves the right at any time to the substitute or replace the Username & Password at no cost to the Client.
- 3.18. In the event of the loss of the Username & Password, Cloud One shall at the CLIENT’S request and after verifying the CLIENT’S identity replace the Username & Password provided the that Cloud One may require the client to pay such fee as it may determine the loss or stolen Username & Password is replaced.



- 3.19. The Username & Password shall be automatically deactivated if the wrong Username & Password is entered five consecutive times. If the client is for any reason unable to access the Cloud One Network because the Username & Password has been deactivated for this reason, Cloud One may at the request of the client and after carrying out such investigations as it deems fit reactivate the Username & Password. The Username & Password can be reactivated by emailing a scanned letter from the authorised account holders to Cloud One Support center and Cloud One shall be entitled to charge the CLIENT such fee as it shall deem fair for reactivating the Username & Password.
- 3.20. If at any time before the monthly billing date the CLIENT'S consumption on any one or more of the client's account(s) nears exceeds the amount of the deposit paid in respect thereof Cloud One shall be at liberty to notify the client and demand an interim payment to normalize the account(s) and if in any one month Cloud One demands an interim payment more than twice on any accounts Cloud One shall require the client to increase the deposit by paying such additional sum as Cloud One may determine.
- 3.21. The value of the said deposit shall be the credit limit for the client in respect of one billing cycle. Cloud One reserves the right to vary from time to time and at its sole discretion the credit terms set out herein.
- 3.22. Cloud One shall not be liable to the client or any parties dealing with the client for any indirect or consequential loss or damage to them including without limitation any loss or damage arising from business interruption arising from the use of the service, the network or howsoever caused.
- 3.23. In the event that the client's account is suspended, Cloud One shall charge such fees as it deems fit before the client can be reconnected.
- 3.24. The rights shall remain the property of the respective content providers, software, suppliers or Cloud One as the case may be.
- 3.25. The client may in the event of any complaint or dispute with Cloud One with regard to the service or network contact the customer care department of Cloud One the telephone number which shall from time to time be provided.

#### **4. The Client's Obligations**

- 4.1. The Client agrees and covenants:
- 4.2. Not to assign or transfer the benefit of this contract to any person without the prior written consent of Cloud One.
- 4.3. Not to re-sell the services or use or permit any person the service for fee.
- 4.4. That the client acknowledges that Username & Password and the rights therein shall always remain the inalienable and nontransferable property of Cloud One.
- 4.5. That the client at all-time be responsible and accountable to Cloud One for the correct use preservation and correct use of the Username & Password
- 4.6. That the CLIENT at all times remain responsible for confidentiality any information or data received or transmitted by the CLIENT using the network and the client agrees to notify Cloud One immediately of any or any suspected unauthorized use of other Username & Password or the Services. The CLIENT acknowledges that Cloud One shall not be liable any loss the CLIENT may incur as a result of the unauthorized use of the service without the Client's knowledge.
- 4.7. That in the event of loss or theft of the Username & Password the client shall notify Cloud One using the designated telephone number requesting that the subscription to be suspended and shall immediately thereafter confirm the report of loss or theft in writing to Cloud One accompanied by an original police abstract to verify the loss or theft.
- 4.8. That the CLIENT shall be fully liable and shall pay Cloud One for all calls made using provided Username & Password whether or not the Username & Password has been stolen or lost and the client hereby undertakes to indemnify Cloud One in full and hold it blameless for any liability fees costs charges or expenses it may suffer or incur by reason of any fraudulent use of the Username & Password or by reason of the Username & Password being stolen or lost.
- 4.9. The client shall in the event of loss of the Username & Password as aforesaid remain responsible and to accountable to Cloud One for use of the Username & Password paying all the charges incurred on client's Account(s) up to and including the date on which the client Account(s) is suspended by Cloud One as well as all subscription fees incurred during the period that the client account remains suspended.
- 4.10. To indemnify Cloud One in full for all the charges that Cloud One may incur or suffer by reason of re-activating the Service arising as a result of any fraudulent claim.
- 4.11. To ensure that at all times while is in force that the client's consumption on any or all of its accounts with Cloud One shall not at all time exceed deposit for any one or all of them. The client confirms and warrants that the client has capacity to enter into this contract and to perform the client's obligations and herein set out and where this contract is signed a person other than the client that such person is duly authorised by the client as if it had been signed or executed by the client.
- 4.12. The client further warrants and confirms that information and particulars of the client given are true and the client shall notify Cloud One immediately in writing of any change therein and the client also undertakes that during the continuation of this contract the client shall provide Cloud One with information or documents required by Cloud One from time to time.
- 4.13. The client confirms that the client's liability under the contract shall be joint and several in cases where the client is more than one person.
- 4.14. The client also confirms that they shall not use the services for any criminal or immoral purposes and shall be solely responsible for any consequences arising from such criminal or immoral use of the services or the network.



## **5. Cloud One's Obligations**

- 5.1. Cloud One undertakes subject to the contract to provide the service to the CLIENT.

## **6. Charges**

- 6.1. The charges for the service and any variations thereof shall be notified to the CLIENT by Cloud One or at any Points of Sale.
- 6.2. Cloud One reserves the right to vary any of the charges at any time during the term of this contract provided that such variations shall only affect future accounts.
- 6.3. The charges shall be subject to foreign currency fluctuations.

## **7. Invoices**

- 7.1. Cloud One shall send invoices to the CLIENT on the monthly billing date and each include
- 7.2. The subscription fees for the month payable in advance;
  - 7.2.1. The fees for the actual Talk Time consumed by the CLIENT in using the service or the network in the period preceding the monthly billing date;
  - 7.2.2. And where applicable setup, connection or re-connection fees and other charges arising in respect of this contract; and Value Added Tax and any other tax or statutory charge where applicable.
  - 7.2.3. Cloud One reserves the right to issue an interim invoice and to change the dates on which the invoices are sent to the CLIENT.
  - 7.2.4. Cloud One shall endeavor to ensure that all charges accrued on the CLIENT'S account are involved in the immediate billing cycle. However, where it is not possible to do so Cloud One reserves the right to invoice for the accrued charges within a reasonable time and the CLIENT shall be liable to pay all charges so invoiced.
- 7.3. All Cloud One invoices shall be sent to the CLIENT using the address indicated over leaf and the CLIENT undertakes to notify Cloud One direct in writing immediately the CLIENT changes the mailing address.
- 7.4. The CLIENT shall pay the invoices raised by Cloud One by the due date without any deductions or set off in the manner and at such places as Cloud One may notify the Client in writing. Any overpayment shall be and remain credited to the Client's Account from the date on which the amounts were received by Cloud One. These amounts may be used to set off future invoices amounts.
- 7.5. The CLIENT shall inform Cloud One of any disputed amount in writing within
- 7.6. Seven (7) days of the Due Date indicated on the invoice failing which the amount stated as due on the invoice shall deemed to be correct and no dispute on the said amount will be entertained thereafter.
- 7.7. Subject to the provisions of this contract the CLIENT hereby agrees that in the event that the Client fails or defaults in paying the amount of any invoice by the due date the client shall pay an interest of 2.5% per month on such outstanding amount from the due date until payment in full whether after or before demand or judgment together with all collection costs and expenses (including legal fees) incurred by Cloud One until the amount outstanding is paid in full.
- 7.8. The payment by the CLIENT of interest on late payments shall not be constituted as a waiver of Cloud One right to suspend or terminate the Services as hereinafter provided.

## **8. Suspension**

- 8.1. Cloud One shall be entitled to suspend the service or any part thereof on anyone or more or all of the CLIENTS Account on giving notice in the following cases.
- 8.2. If the CLIENT fails for any reason whatsoever to pay the full amount of any invoice in the manner required by Cloud One by due date.
- 8.3. If the CLIENT'S mobile phone number is found to be emitting signals that interfere with the quality of the service or the network.
- 8.4. If any information provided by the CLIENT on the application form is found by Cloud One to be false or misleading.
- 8.5. If the CLIENT for any reason whatsoever fails or refuse to supply Cloud One with any information or document required by Cloud One for purpose of this contract whether before or after activation.
- 8.6. Cloud One shall with regard to suspend services, restore the service without undue delay once full payment has been received from the CLIENT.

## **9. Termination**

- 9.1. Either party may terminate this contract at any time by giving Sixty (60) days' written notice to that effect PROVIDED THAT if the CLIENT terminates this Contract during the Minimum Period he / she / it shall be liable to pay the monthly subscription charges for the outstanding duration of the Minimum Period together with any charges outstanding against the Account AND such charges shall constitute a debt recoverable from the CLIENT until payment in full.
- 9.2. Without prejudice to the rights of the parties herein this contract shall terminate automatically if for any reason the Communication Authority of Kenya (or any other regulatory body) revokes or cancels Cloud One's license to operate the network.
- 9.3. If this contract is terminated for any reason (other than the clause 10 herein) during the Minimum Period the Client shall be liable to pay to Cloud One the following: -
- 9.4. All outstanding charges;



- 9.5. Subscription fees for the remaining number of months of the minimum period; and
- 9.6. All outstanding Value Added Tax statutory charge due and payable during the Minimum Period.
- 9.7. Cloud One shall be entitled to terminate this contract and to Disconnect the service or any part thereof without notice of the following situations: -
  - 9.7.1. If any of the charges outstanding on any one or more of the CLIENT'S Accounts are not paid to Cloud One on the following Due Date;
- 9.8. If the CLIENT is in breach of the contract;
- 9.9. If Cloud One receives written notice of the CLIENT'S Death;
- 9.10. If the CLIENT is the subject of a bankruptcy order or becomes insolvent or makes any arrangement with or for the benefit or creditors or goes into either voluntary or compulsory liquidation or a receiver is appointed over its assets or if any judgment is made against the CLIENT and remains unsatisfied for a period exceeding thirty (30) days.
- 9.11. If Cloud One has reasonable causes to believe that the service or the Network is being used in a way forbidden by the provision of this contract or unacceptable to Cloud One or the Communication Authority of Kenya or any other regulatory board even if the CLIENT does not know that the service Networks is being used in such a way.
- 9.12. If Cloud One has reasonable causes to believe that the CLIENT is using the service or Network for purposes or in a manner contrary to any provision of this contract, the Laws of Kenya and/or for the purpose of undertaking annoying or offensive communication.
- 9.13. Upon termination of this contract Cloud One shall de-activate the phone number allocated to the CLIENT and shall be at liberty to re-allocate such phone number to any other person.

#### **10. Force Majeure**

- 10.1. Cloud One shall not be liable to the CLIENT in the event of any disruption of the service or the Network or any part thereof resulting for Force Majeure and Cloud One may suspend the service or part thereof in such event.
- 10.2. Force Majeure for purposes of this contract means any situation or event that makes it impossible for Cloud One to perform its obligations and includes but is not limited to any act of God such as lightning floods inundation earthquakes or prohibitive decisions made by the government or local authorities or civil conflicts and industrial strikes as well as any global or partial dysfunction of the network caused by a disrupted or suspension of the telecommunication facilities of Cloud One or approved or authorized third parties on whom Cloud One is dependent for provision of the Services.
- 10.3. If the service or any part thereof is suspended by reason of force Majeure for a period of Ninety (90) days or more the CLIENT shall be entitled to terminate this contract forthwith by written notice to that effect. In any such event the CLIENT shall not be liable to pay to Cloud One the monthly subscription fees for the period connecting from the date the notice of termination is received by Cloud One to the expiry of the contract.

#### **11. Modification**

- 11.1. The CLIENT may modify the Services within the limits set by Cloud One: -
- 11.2. By applying in writing for an alternative post paid or prepaid service offered by Cloud One; or
- 11.3. By requesting for additional value added services that are not part of the package that the CLIENT initially applied for.
- 11.4. All requests for modification shall be made to Cloud One by the CLIENT in writing and Cloud One reserves the right to refuse to effect any notification required by the CLIENT.
- 11.5. The CLIENT shall pay to Cloud One all the charges raised by Cloud One arising from such modification. The CLIENT shall be responsible for any modification made as a result of fraudulent request by a person other than the CLIENT and the CLIENT hereby agrees to hold Cloud One blameless and indemnified in full for any costs charges loss or expense that Cloud One may suffer or incur as a result of such fraud.
- 11.6. If the CLIENT wishes to transfer an account(s) to a third party for the purpose of access to Cloud One services or network the CLIENT shall be obliged prior to such transfer being effected pay to Cloud One: -
- 11.7. All outstanding charges; and
- 11.8. Any administration charges that may be communicated in relation to the transfer of account(s).
- 11.9. Any transfer by CLIENT or the account(s) to a third party shall be subject to acceptance of the third party by Cloud One as a CLIENT.

#### **12. Governing Law and Severability**

- 12.1. This contract shall be governed in all respects in accordance with the Laws of Kenya and a Court of competent jurisdiction in Kenya shall determine every claim or dispute arising out of or in connection with this contract.
- 12.2. If any part of this contract shall be found by court of competent jurisdiction in Kenya shall determine every claim or dispute arising out of or in connection with this contract.
- 12.3. If any part of this Contract shall be found by a Court of competent jurisdiction not to be enforceable then this contract shall be construed as if the unenforceable part did not form part of the contract.

#### **13. Credit Referencing and Use of Information**

- 13.1. Cloud One reserves the right to obtain without notice to the CLIENT information regarding the creditworthiness of the CLIENT from any credit reference organization.



- 13.2. Cloud One reserves the right to exchange with any other person or to disclose to any credit reference organization information regarding the CLIENT'S compliance or non-compliance with the terms of the contract.
- 13.3. Cloud One reserves the right to use the information as it is provided by the CLIENT, unless by express written instructions to the contrary, in a telephone Directory Enquiries service in printed or electronic format and in particular in connections with any legal, governmental or regulatory requirements imposed on Cloud One.
- 13.4. Cloud One also reserves the right to monitor the CLIENT'S use of the services for Cloud One's business purposes such as quality control, training and preventing unauthorized use of Cloud One's telecommunications operation. Such information may also be released to the Criminal Investigation Department, Kenya Police Department or any other body duly constituted by law, in pursuance of an official request as regards investigation into a crime or a matter of national security.
- 13.5. The CLIENT may be on giving adequate prior written notice and paying the requisite fee to Cloud One inspect his / her / its own account details.