



## AGREEMENT FOR THE SUPPLY OF MANAGED SERVICES BETWEEN CLOUD ONE LIMITED AND CUSTOMER

THIS AGREEMENT is made on the ..... day of ..... 20..... ("Commencement Date") by and between:

**CLOUD ONE LIMITED**, a Limited Liability Company with its offices located at Saachi Plaza, Unit A3, Arwings Kodhek Road, Kilimani, Nairobi, Kenya and of P.O. Box 76306-00508 hereafter referred to as ("**Cloud One**"); and

..... Company Name ..... whose offices are located at ..... Street Address .....

and of P.O. Box .....Post Code ....., ....., Kenya hereafter referred to as ("**Customer**").

Cloud One and the Customer are each individually referred to as a "Party" and together as "Parties.",

### RECITAL

Cloud One has, at the request of the Customer, agreed to provide the Services (as defined below).

The Parties now wish to enter into this Agreement in order to define the terms and conditions for the supply of the Services.

### 1, DEFINITIONS AND INTERPRETATION

1.1 In this agreement:

(a) "**Agreement**" means the main body of this Agreement and the schedules. The schedules to this Agreement are:

Schedule 1 - The Services & the Charges as per the Service Application Form

Schedule 2 - Service Level Agreement

Schedule 3 – Acceptable Use Policy

(b) "**Charges**" means tariffs or charges defined in Schedule 1 and any other tariffs or charges which shall be paid by the Customer to Cloud One under section 3.

(c) "**Content**" means any call, message, video, data or any other material transmitted or communicated by Customer through the use of the Services.

(d) "**Customer Account**" means the Customer's account on the System through which the Customer will access the Services.

(e) "**Customer Account Credentials**" means the username and password used by the Customer to access the Customer Account.

Customer Initials.....

Cloud One Initials .....

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- (f) **“Customer Systems”** means the computers, terminals, hardware, software and related network connectivity required to access the Services or which are used by the Customer to access the Services.(g) **“Device”** means any terminal devices, equipment or hardware, including but not limited to mobile phone handsets, laptop computers, tablet devices, routers, network cards, modems, IP Phones , Phone System, VoIP Gateways, customer premises equipment including all related accessories and software supplied by Cloud One to the Customer. **“Device Manufacturer”** means the manufacturer of a Device.
- (h) **“Facilities”** means any network facilities or infrastructure, fiber, conduit, equipment, hardware or software provided by Cloud One in connection with the delivery of the Services.
- (i) **"Force Majeure Event"** means any cause affecting the performance by a Party of its Obligations or making such performance impossible or so impracticable as to be considered impossible in the circumstances arising from acts, events, omissions, happenings or non-happenings beyond a Party's reasonable control, including acts of God, riots, war, armed conflict, civil strife, acts of terrorism, acts of government or Regulators, fire, power outages, adverse weather conditions including flood, storm or earthquake, or disaster, geographical topography, the unexpected refusal or delay by a third party to supply the Services to Cloud One.
- (j) **“Governing Law”** means the laws of the Republic of Kenya.
- (k) **“Intellectual Property Rights”** or **"IPR"** means and includes any patents, copyrights, trademarks and all other intellectual property rights recognised by Governing Law.
- (l) **“Offending Material”** means any Content whose communication, transmission, storage or hosting:
- (i) is prohibited by Governing Law.
  - (ii) can reasonably be deemed as abusive, indecent, defamatory, obscene, offensive, menacing, and threatening;
  - (iii) is in breach of a Party's duty of confidence, Intellectual Property Rights of Party or of a third party, or violates a Person's right to privacy;
  - (iv) is intended to cause annoyance, inconvenience or a breach of peace or security.
- (m) **“Personnel”** means in relation to a Party, that Party's employees, agents, consultants and sub-contractors, who are involved in the performance of the Agreement.
- (n) **“Regulator”** means the Communications Commission of Kenya or its successor and any other Person exercising regulatory, supervisory or governmental authority under Governing Law.
- (o) **“Services”** means the Services defined in Schedule 1 and any other Services which will be supplied by Cloud One to the Customer in accordance with section 3.
- (p) **"Service Level Agreement" or “SLA”** means the document defining the standards of service specific to the delivery of defined Services. The SLA applicable to the managed services as at the Commencement Date is defined in schedule 2.



(q) **“Service Credits”** means credits against the Charges to which the Customer is entitled in respect of failures by Cloud One to meet the service levels defined in the Service Level Agreement.

(r) **“User”** means any person using or accessing the Services with the permission of the Customer (including where applicable, Customer System administrators and service managers, employees and contractors) or any person who has gained access to the services through the Customer’s Systems or through usernames assigned to the Customer.

(s) **“Third Party Software”** means software belonging to a third party (including Yealink, Yeastar, 3CX, VoipSwitch, EMC, VM Ware, and Cisco) which is provided by Cloud One to the Customer as part of the Services

(t) **“Trial Period”** means the seven (7) day trial period for the Services, commencing on the Activation date, which is the date on which Cloud One sends to the Customer the Customer Account Credentials.

1.2 Except where the context otherwise requires:

1.2.1 headings are included for convenience only and will not affect the construction or interpretation of this Agreement;

1.2.2 any phrase introduced by the words **"including", "includes", "in particular", "for example"** or similar shall be construed as illustrative and without limitation to the generality of the related general words.

1.2.3. unless expressly stated otherwise, any reference to a section, section or schedule is to the relevant section, section or schedule of this Agreement.

1.2.4 use of the singular includes the plural and vice versa.

1.2.5 any reference to "persons" includes natural persons, firms, partnerships, bodies corporate, corporations, associations, organisations, governments, government bodies, states, foundations and trusts (in each case whether or not incorporated and whether or not having separate legal personality).

1.2.6 all references to the Parties include their permitted successors and assigns.

## **2. TERM, GOVERNANCE & RELATIONSHIP MANAGEMENT**

### **2.1 Term**

This Agreement shall take effect on the Commencement Date and shall be in force for a period of twelve (12) months from the Commencement Date (the “Term”). If the Customer continues to use the Services after the Commencement Date, the Agreement shall automatically renew automatically for successive periods of twelve (12) months until such time as the Agreement is terminated by a Party in accordance with section 11. Where the Commencement Date has not been indicated, this Agreement shall take effect on the date on which billing for the Services commenced.

### **2.2 Governance**

"Each Party represents to the other Party that:

(a) it is properly constituted in accordance with the Governing Law.



(b) it has power to enter into this Agreement and to perform its obligations hereunder and has taken all necessary corporate action required to authorize the execution, delivery and performance of this Agreement.

(c) all consents, approvals, registrations, licenses or authorizations required to enable it lawfully to enter into this Agreement and perform its rights and obligations hereunder have been obtained or made and are in full force and effect and that each Party will maintain such approvals, registrations and authorizations during the Term.

## **2.3 Relationship Management**

(a) Cloud One and the Customer will each nominate a contact person or contact persons who shall be the points of contact for purposes of account Management and customer management. For the avoidance of doubt the points of contact will not have the authority to amend or vary the terms of this Agreement. Each Party shall keep the details of the contact persons updated

(b) A Party may, in addition to or in place of the contact persons referred to in section 2.3(a), designate a customer care or customer support helpline through which all matters in respect of the delivery of the Services or the performance by a Party of its obligations under the Agreement will be channelled.

## **2.4 Affiliates**

The Customer may, with the consent of Cloud One and on such terms and conditions as may be agreed between Cloud One and the Customer, extend the benefit of this Agreement to the Customer's affiliates or members of the Customer's group.

## **3. ORDERS FOR ADDITIONAL SERVICES AND CHANGE REQUESTS**

In the event that the Customer requires Services in addition to those defined in Schedule 1 or the Customer requests for changes to the Services defined in Schedule 1, ("Additional Services"); and Cloud One and the Customer agree on the terms and Charges for the Additional Services, the Customer and Cloud One shall sign an addendum to this Agreement to provide for such Additional Services. Alternatively, the Customer may sign Cloud One's order forms or service application forms for the Additional Services.

## **4. FACILITIES**

Cloud One is the owner of all right, title and interest in the Facilities. The Customer shall have no rights over the Facilities.

## **5. DEVICES & DEVICE SOFTWARE**

### **5.1 Terms of supply for Devices**

Where applicable,

(a) all Devices are supplied to the Customer subject to the Device Manufacturer's limited warranty.

(b) Cloud One shall not be under any obligation to supply any Devices which are out of stock or discontinued or where the market price for the Devices has increased significantly after submission of a quotation by Cloud One to the Customer or due to change in specifications by a



Device Manufacturer, a Force Majeure event or for delays in supply which are attributable to the Customer.

(c) Cloud One will be responsible for the repair or replacement of any faulty Devices in accordance with the Device Manufacturer's limited warranty. The Customer may incur additional charges for the repair or replacement of any Device which is out of warranty. The circumstances where a Device will be deemed to be out of warranty are defined in the Device Manufacturer's limited warranty.

(d) Where Devices are installed or stationed at the Customer's sites or premises, the risk of loss, theft or damage to a Device (other than damage covered under the Device Manufacturer's warranty) shall pass to the Customer upon delivery of the Device to the Customer. The Customer shall be responsible for the cost of replacement of any lost or stolen Devices.

(e) Title in a Device will pass to the Customer upon payment by the Customer to Cloud One of all Charges in respect of the Device. Title in a Device is on a "**rental lease subscription**" will always remain to Cloud One

## **5.2 Application of Terms & Third Party Software**

(a) No terms or conditions endorsed upon, delivered with or contained in the Customer's quotation, acknowledgement, purchase order or other Customer documents will form a part of this Agreement and the Customer waives any right which it otherwise might have to rely on such terms and conditions.

(b) Where Third Party Software is supplied to the Customer by Cloud One as part of the Services, the Customer may be required to accept Third Party Software license terms prior to the use or activation of the of the Third Party Software. The Third Party Software is supplied "as is" and except as otherwise stated in the Service Level Agreement or in the Service Application Form, Cloud One gives no express or implied warranties or guarantees as to merchantability or fitness of the Third Party Software for a particular purpose. The provision of the Third Party Software does not provide the Customer with any title or ownership rights in or to the Third Party Software, but only a right of use of the Third Party Software for the Customer's internal business purposes as further defined in clause 5.3.

(c) The Customer hereby agrees that upon accepting the Third Party Software license terms:

- (i) the Third Party Software license terms form an agreement between the Third Party Software licensor and the Customer separate and apart from this Agreement.
- (ii) the Customer will comply with the terms of the Third Party Software license in addition to the terms of this Agreement.
- (iii) in the event that Cloud One has reasonable grounds to believe that the Customer is in breach of the Third Party Software license terms, Cloud One may suspend the Services immediately upon issue of written notice to the Customer.

## **5.3 Restrictions on resale of the Services**

The Customer hereby agrees that the Services (and any Third Party Software) shall be used only for the Customer's internal business purposes (within the Customer's internal departments, divisions which are fully within the command and control of the Customer). The Customer shall



not sell, offer for sale, distribute the Services to any End Users or grant any End User access to the Services or the System except where Cloud One and the Customer have executed a reseller agreement or where such access by an End User is required or necessary in the normal course of the Customer's business operations, and in which case the Customer shall be fully and solely liable for any abuse of the System or breach of the Acceptable Use Policy by the End User. For the avoidance of doubt, the End User has no right to enforce any of the Customer's rights under this Agreement against Cloud One and the Customer hereby agrees to indemnify Cloud One from any such claim, demand or suit by an End User. An End User is defined for the purposes of this Agreement, as any person other than the Customer

## **6. CLOUD ONE'S OBLIGATIONS**

### **6.1 Service Warranties**

Cloud One will deliver the Services in accordance in a professional and workmanlike manner and in accordance with the Governing Law. Cloud One shall:

- (a) ensure that its Personnel are appropriately skilled, trained and experienced to provide the Services;
- (b) meet the service levels defined in a Service Level Agreement.

### **6.2 Service Availability**

Although Cloud One will take all reasonable steps to ensure that the Services are available to the Customer at all times, Cloud One cannot guarantee a fault free service. The quality and availability of Services be affected by factors including Force Majeure events, planned maintenance or rectification work on the Cloud One network or Customer Systems or faults on the Device. Where faults or interruptions in the Services are attributable to Cloud One, Cloud One will remedy the fault or interruption in accordance with the terms of the Service Level Agreement or on a best effort basis, as the case may be.

### **6.3 Service Credits**

- (a) Cloud One shall pay to the Customer the Service Credits in event of a failure by Cloud One to meet the service levels defined in a Service Level Agreement PROVIDED THAT Service Credits shall not be payable where the Customer's account is in arrears.
- (b) The Customer shall be entitled to Service Credits only where such service credits have been defined in a Service Level Agreement. Service Credits shall be calculated and applied in the manner defined in the Service Level Agreement.

## **7. CUSTOMER RESPONSIBILITIES**

The Customer shall:

7.1 provide to Cloud One such information and cooperation as Cloud One may reasonably require for the performance of the Service(s) or for the purpose of evaluating any requests for Services or changes to the Services made by the Customer.

7.2 where applicable, permit access to Customer premises to enable Cloud One's Personnel to deliver the Services (subject to observance by Cloud One's Personnel of reasonable site access



regulations as previously advised in writing to Cloud One. Cloud One shall, upon request of the Customer, provide details of all works to be carried out at the Customer's premises prior to commencement of such works, where the same is not agreed under an Application Form.

7.3 provide any hardware (in addition to the Devices, if any), cabling, power supply or such other items that are required for proper functioning or proper deployment of the Services as may be advised by Cloud One or as may be agreed by Cloud One and the Customer.

7.4 provide a suitable environment and carry out any preliminary works as agreed by Cloud One and the Customer or as notified to the Customer by Cloud One including all necessary trunking, connection, configuration of the Customer Systems, obtaining any consents, way leaves, and rights of way.

7.5 take responsibility for accuracy of any information provided by the Customer to Cloud One. The Customer will be liable for any costs associated with correction of any errors arising from inaccurate information provided by the Customer to Cloud One. The Customer acknowledges that failure to provide accurate information or to provide reasonable assistance or to execute any required forms or documents may adversely affect the delivery of Services.

7.6 The Customer represents to Cloud One that:

- (a) The Customer will not resell the Services.
- (b) The Customer shall not utilise and shall use reasonable efforts to ensure that no User utilises the Services for communication or transmission of any Offending Material for fraud or any other illegal or unlawful purpose.
- (c) The Customer shall not, and shall take reasonable measures to ensure that Users do not engage in any activity that interferes with, impairs, degrades, interrupts, obstructs or disrupts the operation of the Services or the Cloud One network.

7.7 Liability for Unauthorised Usage

(a) All Users will, unless otherwise notified by the Customer to Cloud One, be deemed to be using the Services with the full authority of the Customer. The Customer shall be responsible for maintaining the confidentiality and security of the Credentials and the Customer Systems. "Credentials" means the usernames, password and other security features employed by the Customer to secure access to the Services or to the Customer Systems. The Customer will be fully responsible for their internal LAN and security setups, including configuration of firewalls and other protocols required to protect their networks from hackers and malicious intrusion. It is the responsibility of the Customer to define the access rights of the Users and to enforce compliance with such access rights and to monitor the usage of the Services so that such usage does not exceed any thresholds set by the Customer.

(b) The Customer shall be responsible for the acts and omissions of all Users in connection with the use of the Services. The Customer shall be liable for payment of all Charges until such time as the Customer notifies Cloud One of any unauthorized use of the Services and the Customer authorizes Cloud One to suspend or discontinue access to the Services fully or in part.





#### **7.8 Network Connectivity**

Network Connectivity at Customer Site is the responsibility of the Customer

#### **7.9 Fault Reporting and Repair**

(a) Fault reporting and repair for the Services shall be done in the manner defined in the Service Level Agreement.

(b) In the event that the Customer requires support other than that stated in the Service Level Agreement any such support which Cloud One agrees to supply in addition to that covered under the Service Level Agreement will be charged at Cloud One's prevailing rates

#### **7.10 Service Related Notifications**

Cloud One may, from time to time and depending on the nature of the Service, send notifications or reminders to the Customer's relating to the Customer's use of the Service, including notifications to reset passwords, carry out upgrades or backups. It is the Customer's responsibility to act on any such notifications.

### **8. CHARGES & PAYMENT TERMS**

8.1 In consideration of Cloud One providing the Services, the Customer hereby agrees to pay the Charges.

8.2 The Customer shall make payment of the Charges within the days specified as per the Account type

(a) Immediately (0) days from the date of receipt of Cloud One's invoice in respect of the Charges for Prepaid Account

(b) Thirty (30) days from the date of receipt of Cloud One's invoice in respect of the Charges for Post-paid Account

8.3 If the Customer fails to make payment of the Charges in accordance with section 8.1. and 8.2 then without prejudice to Cloud One's other rights and remedies under this Agreement, Cloud One reserves the right to:

(a) suspend the Customer's or User's access to the Services until the Customer makes full payment of the Charges;

(b) charge interest on the unpaid, undisputed amount at a rate of 2% per month above the base rate of Diamond Trust Bank Kenya Limited from time to time (or, if lower, such other is rate as may be required by law) until payment of such undisputed Charges is actually received in full.

(c) refer the debt to a debt collection agency and the Customer shall be liable to pay the costs associated with the collection of the debt in addition to payment of all outstanding Charges. The Customer will be liable for all pre and post judgment collection costs reasonably incurred in pursuing any debt collection claim against the Customer until payment is received in full





8.4 Where an advance payment is required prior to delivery of any Services Cloud One reserves the right to withhold performance of any such services until the advance payment is made.

8.5 If the Customer disputes any of the Charges on any invoice, the Customer shall pay the undisputed amounts and submit to Cloud One a notice in writing of the disputed amount within seven (7) days from the date of receipt of the invoice. The Customer shall indicate the reasons for disputing the invoice in the notice. The Parties shall use reasonable efforts to amicably settle the dispute. It shall be the responsibility of Cloud One to produce records detailing the usage of the Services and such records shall, in the absence of manifest error be deemed to be a proper and final record of the transactions in relation to which the dispute was raised.

8.6 The Customer or the Users may lose the right to use a number(s) where Charges remain unpaid for a period of over one hundred and twenty days.

8.7 The Customer authorises Cloud One at any time, without notice to the Customer to obtain from and/or submit to credit referencing agencies information about the Customer's credit profile

## **9. LIMITATION AND EXCLUSION OF LIABILITY**

9.1 Subject to section 9.3 a Party's liability under this Agreement howsoever arising is limited to three (3) months Charges paid by Customer to Cloud One

9.2 No Party, its officers, employees, sub-contractors agents and partners will be liable to the other Party for any loss of profit, special, punitive, exemplary, indirect and/or consequential losses including loss of anticipated savings, loss of goodwill, consequential, incidental or special loss, corruption or loss of data or loss or damage attributable to Force Majeure events howsoever arising. The Customer is hereby notified and agrees that for hosted or managed services, Cloud One has no visibility of the Content.

9.3 Where Service Credits are provided as a remedy for a failure to meet the Service Levels in respect of the relevant Services it shall be the Customer's exclusive financial remedy to the extent the same is permitted by Governing Law.

9.4 Except as provided in this Agreement and except as otherwise stated under the Governing Law, Cloud One provides no warranties, conditions or guarantees as to the description or quality of the Services.

### **9.5 Indemnification**

**9.5.1 Indemnification.** A Party ("Defaulting Party") shall, subject to section 9.1 and 9.2 defend, and indemnify and hold the other Party ("Non-defaulting Party") harmless from and against any and all claims, injuries, damages, obligations, liabilities, causes of action, suits, judgment or costs including reasonable attorneys' fees, arising out of or in connection with the gross negligence or intentional acts or omissions, or non-



observance of any applicable law or regulation by the Defaulting Party in the exercise of its rights or performance of its obligations under this Agreement.

9.5.2 **Notification.** A Party shall promptly notify the other Party in writing of any claims subject to indemnification under Section 9.5.1. For a given claim, the Non Defaulting Party shall have no authority to settle such claim on behalf of Indemnifying Party.

## **10. SUSPENSION OF THE SERVICES**

In addition to Cloud One's right to suspend the Services under section 8.3, Cloud One may, upon notification to the Customer suspend or vary the Services without liability to compensate the Customer, solely to the extent for any period during which:

10.1 Cloud One is required or requested to comply with an order or instruction of or on recommendation from the government or a Regulator or other competent authority;

10.2 Such a suspension or variation is necessary to facilitate modifications to, or allow for planned or emergency maintenance of the Cloud One network;

10.3. Cloud One is investigating an alleged material violation by the Customer of its obligations under this Agreement.

## **11. EVENTS OF DEFAULT AND TERMINATION**

### **11.1 Termination for Breach by either Party**

A Party ("Non Defaulting Party") shall have the right, without prejudice to its other rights or remedies, to terminate this Agreement or to terminate specific Services immediately by written notice to the other Party ("Defaulting Party"), and such notice shall be effective immediately upon service to the Defaulting Party if.

(a) the other Party is in breach of any of its obligations under this Agreement (and either, that breach is incapable of remedy or that other Party has failed to remedy that breach within thirty (30) days after receiving written notice requiring it to remedy that breach; or

(b) the other Party is unable to pay its debts or becomes bankrupt or insolvent or an order or an application is made or a resolution passed for the administration, winding-up or dissolution of the other party (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any of the assets of the other party or the other party enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs.

### **11.2 Termination by Cloud One**

Cloud One shall be entitled to terminate this Agreement or to terminate specific Services by serving notice of immediate termination to the Customer where:

(a) Cloud One has been instructed to cease providing the Service by a Regulator or by the government or other competent authority

(b) the Customer is unable to meet or maintain the credit requirements defined by Cloud One in respect of the Customer's account.



### 11.3. Termination for Convenience

A Party may terminate the Agreement or to terminate specific Services without cause by serving thirty (30) days' notice of termination on the other Party.

### 11.4 Consequences of Termination

- (a) Cloud One shall deactivate the Services immediately upon expiry of notice period (if any) provided in the notice of termination issued by Cloud One or the Customer.
- (b) Termination will not affect any accrued rights or liabilities of any party at the date of termination.
- (c) The Customer shall, where applicable, provide Cloud One with access to the Customer's premises to recover any Devices which belong to Cloud One.
- (d) The Customer shall pay all outstanding Charges.

### 11.5 Force Majeure

The failure of a party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, PROVIDED THAT the party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms of this Agreement. A party affected by an event of Force Majeure shall notify in writing the other party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

## 12. CONFIDENTIALITY

### 12.1 Confidential Information

In this agreement, "Confidential Information" means any information which can be used to personally identify a user ("**Personal Data**") regardless of its source, information obtained by one party (the "Receiving Party") from the other party (the "Disclosing Party") for purposes related to the performance by a Party of its obligations under this Agreement or in the exercise by a Party of its rights under this Agreement, discounts and special offers extended by the Customer to Cloud One, any other information in any form:

- (i) that has been marked as confidential;
- (ii) whose confidential nature has been made known by the Disclosing Party to the Receiving Party.

Confidential Information does not include information which:

- (i) is already known to the Receiving Party at the time of disclosure by the Disclosing Party;
- (ii) is or becomes publicly known through no wrongful act of the Receiving Party;
- (iii) is independently developed by the Receiving Party without benefit of the Disclosing Party's Confidential Information; or
- (iv) is received by the Receiving Party from a third party without restriction and without a breach of an obligation of confidentiality.



12.2. The Receiving Party shall only disclose Confidential Information to its Personnel (i) have a need to access such Confidential Information solely for the purpose of fulfilling their obligations under this Agreement, and (ii) have been advised of the obligations of confidentiality and are under obligations of confidentiality substantially similar to those set out in this section 12.2 and 12.3. Subject to the provisions of section 13, the Receiving Party shall not otherwise use or disclose to any person, firm or entity any Confidential Information of the Disclosing Party without the Disclosing Party's express, prior written permission.

12.3. Each party shall exercises at least the same level of care to protect the other's Confidential Information as it exercises to protect its own Confidential Information of a similar nature but in no event less than reasonable care, except to the extent that applicable law or professional standards impose a higher requirement, including without limitation applicable data protection laws.

12.4 The obligations of the Receiving Party concerning confidentiality hereunder shall terminate three (3) years following receipt of the Confidential Information, except to the extent a longer period is required either by law or under this Agreement.

### **13. DATA USAGE AND PROTECTION**

13.1 Cloud One and its Personnel shall during the term of this Agreement comply with the Governing Law in connection with the processing of the Personal Data.

13.2 Cloud One may use the Confidential Information and the Personal Data for purposes connected to this Agreement for:

- (a) Fraud prevention and law enforcement; |
- (b) To comply with any legal, governmental or regulatory requirement;
- (c) In reasonable business practices necessary for delivery of Services hereunder to Customer, including but not limited to quality control, measures aimed at improvement of the services, resolving complaints and disputes, training and ensuring effective systems operation.

### **14. NOTICES AND NO WAIVER**

14.1 Any notices for purposes of legal proceedings will be served at the addresses indicated above.

14.2 Such notices will be deemed to have been received 5 business days after mailing if forwarded by post and the following business day if hand-delivered or dispatched by e-mail. **"Business day"** for the purposes of this section 14 means Monday to Friday between the hours of 0900 and 1700, excluding public holidays.

### **15. SUBCONTRACTING:**

#### **15.1 Assignment**

No Party shall be entitled to assign the rights or obligations created hereunder without prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any unauthorized assignment or attempt to assign automatically terminates this Agreement.



### **15.2 Subcontracting**

Cloud One shall be entitled to subcontract all or any part of this Agreement to competent subcontractor(s) PROVIDED ALWAYS THAT Cloud One remains responsible to the Customer for all actions, omissions and representations of the subcontractors.

## **16. DISPUTES**

### **16.1 Amicable Settlement**

The parties shall use their best efforts to settle amicably any dispute arising from or in connection with this Agreement or the interpretation thereof.

### **16.2 Arbitration**

(a) If the dispute has not been settled amicably within thirty (30) days (or such longer period as may be agreed upon between the Parties) from when the dispute resolution process was instituted (or such longer period as may be agreed upon between the Parties), the Parties may, by mutual agreement, refer the dispute to arbitration,

(b) Where the Parties elect to refer the dispute for arbitration, such arbitration shall be conducted in accordance with the rules of the Kenya Branch of the Chartered Institute of Arbitration of the United Kingdom and the provisions of the Arbitration Act 1995 (as amended).

16.3 Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.

## **17. ENTIRE AGREEMENT & VARIATION TO THE AGREEMENT**

This Agreement contains the whole agreement between the Parties relating to the Subject matter of this Agreement. This Agreement shall not be varied or cancelled, unless such variation or cancellation Shall be expressly agreed in writing by each party.

## **18. SEVERABILITY**

If any provision of this Agreement is declared by any judicial or other competent authority or an arbitrator appointed hereunder to be void, voidable, illegal or otherwise unenforceable, the Parties shall amend that provision in such. reasonable manner as achieves the intention of the Parties without illegality or at the discretion of Cloud One it may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

## **19, CUMULATIVE REMEDIES & NO WAIVER**

Except where this Agreement provides otherwise, the rights and remedies contained in it are cumulative and not exclusive to rights or remedies provided by law. The failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

## **20. COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be an Original but all of which shall together constitute one and the same Agreement.





## **SCHEDULE 1**

### **1. The Services & the Charges**

This will be defined in the attached Service Application Form

### **2. The Agreement**

The Service Application Form is hereby incorporated into the Agreement

## **SCHEDULE 2**

### **SERVICE LEVEL AGREEMENT (SLA) FOR PROVISION OF CLOUD ONE SERVICES**

1. This SLA defines the following: -

- a) Service Availability
- b) Customer incident management and support

#### **2. Service Availability**

The service quality indicator to be used is Service un-availability occurring as a result of Service Outage. Service Outage means un-availability of the cloud services when the cloud services are un-usable due to total failure in the cloud infrastructure. The term "Availability" means the percentage of a particular month (based on 24-hour days for the number of days in the subject month) that the content of customer's hosted system is available for access by third parties (via SIP, HTTP, HTTPS or other protocol) as measured by Cloud One

2.1 Cloud One shall deliver during each month of the term of the Customer's agreement a Service Availability as specified in Table 1 (Service Availability and Credits) as measured by Cloud One's standard monitoring tools.

2.2 In the event that the Services are unavailable and fail to meet the availability target due to a service outage (outside of maintenance periods or a planned maintenance outage coordinated with the Customer), the Customer will be eligible to receive service credits in Table 1. Cloud One will advise the Customer at least 48 hours in advance of any scheduled maintenance that will result in a service interruption or outage. However, emergency maintenance will require a much shorter notification period to the customer but not less than one (1) hour.





Table 1: Service Availability and Credits

Table 1 - Voice as a Service				
Band	Service Availability Band Description			Service credits as a % of Monthly Cost
1	> 99.0%			0%
2	<	99.00%	>	98.00%
3	<	98.00%	>	97.00%
4	<	97.00%	>	96.00%
5	<	96.00%		

2.3 Service credits are based directly on those virtual cloud services affected by a qualified cloud downtime event. Products and services or hardware not related to a qualified cloud downtime event do not qualify for a service credit

2.4 In order to be eligible for the Service Availability Credit, the Customer's account with Cloud One must be fully paid up and the Customer must notify Cloud One Business Service Support through the customer interface contacts set out below within six (6) Working Hours of the outage event with verification by Cloud One of the outage. The duration of each Service Outage shall be measured from the opening of the trouble ticket until the Service is restored to the Customer's satisfaction and the time of restoration stamped in the trouble ticket. Such calculation shall, in the absence of manifest error, be conclusive evidence of the service unavailability

2.5 Cloud One will conduct the tests and measurements following the opening of a trouble ticket and if it's reasonably satisfied that service outage is claimed in accordance with the SLA, Cloud One will grant service credits to the customer.

2.6 Nothing in this SLA creates nor implies a warranty. No refunds will be issued, included cases where customers are at the end of their pre-paid term.

2.7 In the event that Cloud One determines upon conduct of the tests and measurements that the outage is caused by an act or omission by the customer then the customer will not be entitled to receive service credits.

2.8 Cloud One will be exempt from extending service credits when:

- a) Downtimes occur during maintenance periods, scheduled or unscheduled. Unscheduled maintenance refers to any temporary corrective action procedures required to remedy conditions that are likely to cause severe service degradation. This may include but not limited to unexpected hardware failure, software corruption, or software exploitation through viruses/worms
- b) the Customer and Cloud One agree on a timescale for performance of Planned Maintenance affecting a Service level as set out in this SLA;



- c) Outages are caused by Customer applications, equipment or facilities;
- d) Outages are caused by acts of omissions of the Customer, or any use or user authorized by the Customer;
- e) Outages are generated by the customer by customer mis-configurations or misuse of the products and services, exploited servers, or traffic in excess of the maximum allowed by contract;
- f) Outages are caused by hackers, sabotage or viruses;
- g) Outages are caused by DNS issues outside Cloud One control;
- h) Customer is unable to access service due to unavailability or degradation of the customer access network connection or internet access point even when such service is provided by Cloud One;
- i) failures are due to denial of service attacks outside the control of Cloud One including
  - i Flooding the network to prevent legitimate network traffic
  - ii. Disrupting the connections between two machines, thus preventing access to a service
  - iii. Preventing a particular individual from accessing a service
  - iv. Disrupting a service to a specific system or individual
  - v. Disrupting the state of information, such resetting of TCP sessions
- j) there is failure of E-mail or webmail delivery and transmission to or from Cloud One including failure of notification of lack of service from the customer;
- k) Outages elsewhere on the internet that hinders access to the services;
- l) Outages are as a result of Force Majeure (including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software (including, without limitation e-commerce software, payment gateways, chat, statistics or free scripts), or inability to obtain raw materials, suppliers, or power used in or equipment needed for provision of this SLA;
- m) the Customer is in breach of any part of the Terms and Conditions or Cloud One suspends the Service or any part of it in accordance with the Terms and Conditions;
- n) the Customer fails to agree or keep an appointment date or work is aborted;
- o) reasonable assistance is required or information is reasonably requested by Cloud One from the Customer, and such assistance or information is not provided or is not provided in a timely fashion;
- p) the failure is due to an inaccurate Service Application Form being submitted or written instructions being issued by the Customer;
- q) a fault is not reported in accordance with the fault reporting provisions as required by Cloud One; or



r) the Customer fails to reasonably respond to a reasonable query raised by Cloud One in relation to the Service; or

s) the Customer has failed to follow any reasonable and clear written instructions issued by Cloud One in relation to the Service.

### **3. Customer incident management and support**

#### **3.1. Working Days and Working Hours**

Cloud One Customer service and incidents management will be available to the Customer on a twenty-four hours a day, seven days a week three hundred and sixty-five days a year (24/7/365) basis.

#### **Business Working Days & Business Working Hours are**

Monday to Friday 0800-1700 Hours Saturday 0900-1300 Hours.

Sunday & Public Holidays: Closed

3.2. Support Tickets will be opened immediately a customer contacts the support desk to report a failure on the service

**Table 2 - Helpdesk and Support Contact**

Escalation	Function Level	Contact
1st Level	Customer Support	Phone: +254 20 790 0100 Email: <a href="mailto:support@cloudone.co">support@cloudone.co</a> <a href="#">Online Ticketing System for Support</a>

3.3. Response Times Cloud One will respond to the trouble Incident within 30 minutes and will endeavour to restore services with the view of meeting the service level commitments in Table 1

#### **3.4. Escalation**

**Table 3a: Escalation Levels and Contacts – Maintenance & Technical Support**

Problem Appearance	Name	Email	Phone Number
Level 1	Support Department	<a href="mailto:support@cloudone.co">support@cloudone.co</a>	+254 20 790 0100
Level 2	Network Management Centre	<a href="mailto:nmc@cloudone.co">nmc@cloudone.co</a>	+254 20 790 0200
Level 3	Network Director	<a href="mailto:nd@cloudone.co">nd@cloudone.co</a>	+254 20 790 0002
Level 4	C.E.O	<a href="mailto:ceo@cloudone.co">ceo@cloudone.co</a>	+254 20 790 0003



**Table 3b: Escalation Timeframe – Maintenance & Technical Support Escalation chart**

Problem Appearance	Acknowledge Time – Minutes	Max. Resolution Time (hrs) Business Working Hours	Max. Resolution Time (hrs) After Business Working Hours
Low	30	4	24
Medium	30	4	8
High	30	1	4

**Table 4: Other Contacts**

Department	Function Level	Contact
Customer Service	General Enquiries	Phone: +254 20 7900000 Email: <a href="mailto:hello@cloudone.co">hello@cloudone.co</a> <a href="#">Online Ticketing System for General Enquiries</a>
Presales	New Orders, Upgrades and Sales Inquiries	Phone: +254 20 7900000 Email: <a href="mailto:presales@cloudone.co">presales@cloudone.co</a> <a href="#">Online Ticketing System for Presales</a>
Billing	Payment, Invoice and Accounting Inquiries	Phone: +254 20 7900000 Email: <a href="mailto:billing@cloudone.co">billing@cloudone.co</a> <a href="#">Online Ticketing System for Billing</a>



## SCHEDULE 3

### ACCEPTABLE USE POLICY (AUP) FOR CLOUD SERVICES

This Acceptable Use and Privacy Policy ("the AUP") states the minimum acceptable standards for use of the Services and the System.

#### 1. Definitions & Interpretation In this AUP

Unless otherwise indicated, capitalized terms have the same meaning as defined in the Agreement.

**"Third Party User Network"** means the computer and internet system belonging to any person other than the Customer, including that person's account on the System

**"User Network"** means the Customer's computer and internet system and networks.

#### 2. Authority to access the System or the Services

**2.1 Age Restriction** You must be eighteen (18) years of age or above in order to register or subscribe for any Services. If you are below eighteen (18) years of age, you may browse the Cloud One cloud services web pages with the consent of your parents, guardians, educational or other training institution.

#### 2.2 Registration, Passwords and Account Security

a) You agree that you will provide Cloud One with accurate details regarding your identity, your postal and physical address for the purposes of registration or subscription for any Service or if so required as a pre-condition for granting you access to the System. Any information you provide to Cloud One will be handled in accordance with Cloud One's privacy policy and the Governing Law.

(b) All Users will, unless otherwise notified by the Customer to Cloud One, be deemed to be accessing the Services or the System with the full authority of the Customer. You agree that you will be responsible for the acts and omissions of all Users in connection with the Service. You are responsible for ensuring each User complies with the provisions of this Acceptable Usage Policy. You agree that you will be solely responsible to Cloud One for all activities that occur under your account or which are performed from the User's Network.

(c) **Customer Account Credentials** You agree to comply with the following conditions with regard to the Customer Account Credentials:

(i) you will change the Customer Account Credentials upon receipt of the initial Customer Account Credentials from Cloud One. You agree to use reasonable steps to keep the Customer Account Credentials confidential and to disclose the Customer Account credentials only to authorised persons.

(ii) where Customer Account Credentials cannot be changed by the Customer and a security token is issued, you will keep the security token in safe custody and restrict



access to the security token to authorized personnel only.

(iii) the username you choose must not be obscene, threatening, menacing, racist, offensive, derogatory, defamatory or in violation of any intellectual property or proprietary rights of any third party. If we consider in our sole and absolute discretion that the username selected by you is inappropriate, we reserve the right to reject and prevent your use of such user name.

(d) You agree to take reasonable measures, including but not limited to encryption and/or User authentication mechanism to secure any personally identifiable data, sensitive, confidential or proprietary information or data transmitted through or stored on the System. Cloud One accepts no liability or responsibility for loss, corruption or leakage of any personally identifiable data, sensitive, confidential or proprietary information except where such loss, corruption or leakage has occurred as a result of breach or non – observance by Cloud One of the System security policies and in such event Cloud One’s liability for the loss, corruption or leakage of data or information shall be limited to the amounts (if any) set out in the Agreement or Service Schedule.

(e) You agree that Cloud One may suspend, restrict access, block or delete any Content stored on or transmitted through the System if the data is corrupted or infected with a virus.

### **3. Prohibited Activities**

#### **3.1 Abuse of System Security**

(a) You shall not or attempt to access or modify the System, the Services or any Third Party User Network through any unlawful or illegitimate means. For the avoidance of doubt, this restriction extends to the use of Customer Account Credentials acquired legitimately to access Personally Identifiable Data or other Content which You do not have authority to access or view.

(b) You shall not or attempt to circumvent, override, bypass, disable or otherwise interfere with the security and User authentication controls on the Services, the System or a User Network. You shall not probe, scan or test or attempt to probe scan or test the vulnerability of the System or a Third Party User Network.

(c) You shall not engage in any activity that interferes with, impairs, degrades, interrupts, obstructs or disrupts the operation of the Services, the System or User Network.

(d) You shall not conceal or disguise your identity or send any “pop up” messages with the intention to carry out a fraudulent act such as but not limited to impersonating or misrepresenting who you are (including caller ID) and fraudulently acquiring personally identifiable data. You shall not send “Pop-up” messages to any person with the intention of defrauding such person

(e) You shall not use or distribute any software that covertly gathers or transmits information about the System.

(f) You shall not make calls deemed as nuisance calls. This may include, but is not limited to; Silent calls, abandoned calls, abusive calls, hoax calls.



(h) You shall not use the Services, the System or User Network contrary to the Communication Authority of Kenya policies and regulation. This may include but not limited fraudulent activities as phishing, location number fraud, revenue sharing fraud, SIM Boxing.

### **3.2 Third Party Software**

(a) Where Cloud One has supplied Third Party Software to You, you shall not or permit other persons to:

- (i) copy, alter or in any way modify the Third Party Software or engage in any acts of piracy in relation to the Third Party Software;
- (ii) translate, decompile, disassemble, reverse compile, reverse engineer, interrogate, or decode the Third Party Software;
- (iii) bypass or delete any security methods or systems, including but not limited to hacking, that are intended to prevent unauthorized copying , use of or access to the Third Party Software; or
- (iv) distribute, transmit, sell, sub-license, market, rent the Third Party Software.

(b) You shall promptly notify Cloud One in writing of any unauthorized use of the Third Party Software, or any claim or proceeding involving, the Third Party Software of which You become aware

### **4. Remedies**

4.1 Cloud One reserves the right to suspend your access to the Services or the System without prior notice to You if Cloud One has reasonable grounds to believe that you have committed a violation or abuse of this AUP.

4.2 Cloud One will, if so required by the Governing Law and Cloud One's governance guidelines report any violation or abuse of this AUP that is in violation of the Governing Law.

4.3 The above remedies are in addition to any other remedies that may be available to Cloud One or any other third party under the Governing Law for breach or abuse of the AUP by a User.

### **5. The Agreement**

This AUP is hereby incorporated into the Agreement