



**MASTER SERVICES AGREEMENT (“MSA”)**

**BETWEEN**

**LIQUID TELECOMMUNICATIONS KENYA LIMITED  
 (“LIQUID” OR “LIQUID TELECOM”)**

**AND**

**CUSTOMER**

## MSA Terms and Conditions

### 1 SERVICES

- 1.1 Pursuant to the MSA, Liquid will provide the Services to the Customer for the Service charges. Customer's signature on the Service Order Form/s or use of the Service or the Liquid Network constitutes its acknowledgement of the terms and conditions of the MSA and to be bound by the MSA.
- 1.2 The MSA consists of one or more Service Order Form/s, these Terms and Conditions, the SLA (if any) and any schedules or addenda. This MSA is incorporated into the Service Order Form by reference, and is therefore duly accepted by Customer as a binding contract between the Parties upon signing of the Service Order Form. Capitalised terms are defined at the end of these Terms.
- 1.3 The Customer may order additional Services or locations through additional Service Order Forms, which will be governed by this MSA. Customer's account must be current in order to make changes to Services or order additional Services.
- 1.4 Liquid shall be entitled to appoint any of its Affiliates to provide the Services, provided that Liquid shall be and remain liable with such appointee for the due and proper performance by it of all of its duties, functions and obligations under the MSA.
- 1.5 Customer shall not be committed to order, to be charged for, or to pay for any Services until the Customer has signed a Service Order Form in respect of the required Services. Liquid shall not be committed to provide any Services until Liquid has accepted and signed the completed Service Order Form in respect of the Services received from the Customer.

### 2 DURATION

- 2.1 The MSA shall commence on the Effective Date and shall continue while any Service Order is in place, subject to the remaining provisions of the MSA.
- 2.2 Each Service's Initial Term is indicated on the applicable Service Order Form and begins as of the Service Commencement Date. The Initial Term will begin on the Service Commencement Date. Unless otherwise indicated on the Service Order Form, at the end of the Initial Term, the MSA will renew for successive Renewal Terms equal in length to the Initial Term unless and until terminated as provided herein.
- 2.3 Termination of one Service shall not affect the term of any other Service Order Form, or the MSA, which shall continue, in full force and effect.

### 3 PROVISION OF SERVICES

- 3.1 In providing the Services to the Customer, Liquid reserves the right to utilise any technology which it has available and which it considers at its discretion as most suitable and reasonable to render Services, unless a specific technology is specified in the Service Order Form.
- 3.2 The Customer shall use the Services and the Liquid Network in accordance with the terms and conditions of the MSA as well as Liquid's AUP.

- 3.3 The Customer shall endeavour to ensure that the Services are not used in a manner which constitutes an infringement of any rights of Liquid or any third party, or for any illegal, fraudulent or unauthorised activities and shall further endeavour to ensure that it, its employees and its customers do not by any act or omission, damage, interfere with or impede the operation of the Service or the Liquid Network. Customer shall do this, inter alia, by exercising appropriate control over Customer's employees and customers, including by inserting a clause to this effect in any MSAs with Customer's customers. In particular the Customer shall not use the Services to provide any telecommunications or related services to third parties unless the Customer is duly licensed.

- 3.4 Where the Customer is aware or reasonably suspects that there is any violation or contravention contemplated in this clause 3, it will co-operate and provide Liquid with the necessary information to assist in identifying, preventing, remedying or rectifying such violation or contravention.

- 3.5 Where the Customer (or the Customer's customer) has a service requirement that is not covered by an existing Service Order Form, the additional or alternate requirement/s will be addressed on a case-by-case basis, provided that this requirement is brought to the attention of Liquid promptly.

### 4 FEES AND CHARGES

- 4.1 The Customer shall pay to Liquid the fees and/or charges, including NRCs and MRCs agreed between the Parties in each Service Order Form in advance and without any set off or other deduction. Unless otherwise agreed by Parties, payments shall be in advance and shall be billed in Kenya Shillings.

- 4.2 a) To the extent that a Service Order Form reflects an indicative cost for installation or other NRCs and a detailed site survey conducted by Liquid indicates a cost that exceeds 10% of the indicative cost (higher cost), Liquid shall advise the Customer accordingly. The Customer shall then have the election to accept the higher cost and proceed with the Service or not to accept the higher cost and to cancel the Service, in which case no penalties shall apply. Liquid shall not be obliged to provide the Service at the indicative cost provided.

#### b) Acceptance & Testing

- i) Liquid shall provide the Customer with written notice once the Service is deemed ready and available for use. Unless otherwise agreed by the Parties in writing, the Customer shall have three (3) working days from the date of the above notice (the "Testing Period") to test the circuit and notify Liquid in writing if the Service is in material non-compliance with the applicable technical specifications.
- ii) If no written notice is received from the Customer within the Testing Period, the customer shall be deemed to have accepted the Service and the "Service Commencement Date"

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- shall be the date of Liquid's notice. If the Customer delivers notice of material non-compliance within the Testing Period, Liquid shall promptly take such reasonable action as is necessary to correct any such non-compliance in the Services and shall notify the Customer of a new Service Commencement Date upon correction. If the Customer commences commercial use of the Service, notwithstanding any failure to agree upon compliance with technical standards, then such use shall constitute deemed acceptance with effect from the date of first commercial use.
- 4.3 Liquid may make general credit reference, shareholding, directorship, place of business enquiries about the Customer at any time, including checking the correctness of the information supplied by the Customer when applying for a Service. Liquid reserves the right to refuse to provide a Service if the Customer does not pass the credit vetting procedure and/or the shareholding, directorship, place of business check; and shall also be entitled to furnish any information relating to the Customer's account and compliance with the standard conditions to any credit bureau or government agency or other relevant institution.
- 4.4 Liquid may require the Customer to make payment of a deposit, provide an appropriate guarantee and/or a suretyship to be determined by Liquid as a pre-condition for providing a Service or at any stage once a Service has commenced and to serve as security for payment of any amounts due to Liquid by the Customer. Liquid may require that such deposit, guarantee and/or suretyship be increased, decreased or altered during the currency of the MSA as the nature and extent of the Services change. Any deposit provided shall be refunded as soon as reasonably possible and no later than within one calendar month of termination of the Service, after deducting the amounts due.
- 4.5 Should the Customer cancel or modify a Service, including downgrading a Service, so that Liquid incurs costs or suffers a loss relating to such cancellation or modification, the Customer will be liable for such costs determined in accordance with clause 12, which shall be payable on demand.
- 4.6 Liquid shall install the Service, as requested by the Customer against payment of the relevant NRC, if applicable.
- 4.7 Liquid shall be entitled to adjust the monthly fees and charges as a result of any regulatory, or government-imposed Taxes, duties, or other factors that have a direct and demonstrable impact on such fees and charges. Liquid shall provide fourteen (14) days prior notice in writing of such adjustment or such shorter period of notice as may be reasonable in the circumstances.
- 4.8 The Customer agrees that its obligation to pay Service charges and Taxes under the MSA for Services rendered prior to the termination of the MSA shall survive the termination of the MSA.
- 4.9 Unless otherwise agreed by the Parties, all Services shall be offered on a pre-paid basis, and all accounts are payable in full in advance by the end of the month prior to the month of Service.
- 4.10 The Customer may request a detailed monthly statement of account (together with all related tax invoices valid for VAT) setting the amount due and payable by the Customer, however payment shall not be conditional on receipt of such statement.
- 4.11 Liquid may include on any invoice, where necessary and on an episodic basis but not as a routine billing practice, any amount not previously billed for calendar months prior to the current month.
- 4.12 All tax invoices, permitted under applicable law and regulations, shall be due on presentation and shall be payable by the Customer within seven (7) days of the date of such invoice, which payment shall be made by cheque or by electronic funds transfer into a banking account specified by Liquid in writing.
- 4.13 If Customer fails to make any payment due to Liquid under this MSA by the due date for payment, then, without limiting Liquid's remedies under Clauses 10 and 11, Customer shall pay interest on the overdue amount at the rate of 18% per annum.. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Customer shall pay the interest together with the overdue amount.
- 4.14 Invoices shall be provided electronically to the Customer on the same date as the invoice date, or the next following Business Day.
- 5 RETAINED RESPONSIBILITIES**
- 5.1 In connection with any Services provided by Liquid under this MSA, the Customer undertakes to provide to Liquid or retain responsibility for, as applicable, any Customer obligations and requirements detailed in the Service Order Form and listed in the relevant Service Description.
- 5.2 Liquid's non-performance of any obligation under the MSA shall be excused if and to the extent such Liquid non-performance results from the Customer failing to perform its retained responsibilities.
- 5.3 In particular:
- 5.3.1 if the Customer is not the owner of any one or more of the premises where the Service is to be provided, the Customer shall obtain any permission from the owner of such premises that may be required and the Customer hereby indemnifies Liquid against all damages or claims resulting from the failure to obtain such permission relating to the installation and/or removal of the Service;
- 5.3.2 the Customer will, at its own cost and expense, ensure the provision of suitable electrical power supply, accommodation and air-conditioning should this be required for the proper functioning of the Service;
- 5.3.3 the Customer shall allow Liquid free access to the premises during reasonable hours to install,

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	inspect, maintain or remove telecommunication facilities or equipment.		statutory), tort or delict (including but not limited to negligence), breach of statutory duty or otherwise):
<b>6</b>	<b>SAFETY AND SECURITY</b>	9.1.1	indirect, incidental, consequential, punitive or special loss or damages whatsoever; or
6.1	Each Party agrees to comply with safety and security procedures notified to them by the other Party.	9.1.2	any loss of profits, advantage, anticipated savings, data or revenues, business, contracts, goodwill, or increased cost of operation, or any wasted expenditure (regardless of whether any of these types of loss or damage are direct, indirect or consequential),
6.2	The Parties shall each at their own cost and expense take whatever steps as are necessary to procure and discharge their respective obligation and rights in terms of the MSA and applicable laws to ensure the health and safety of the other Parties' employees, agents, directors, sub-contractors and members of the public.		even if that Party was aware of the possibility that such loss or damage might be incurred by the other Party.
<b>7</b>	<b>DELIVERY</b>	9.2	Except for the limitation at Clause 9.3 in respect of Clause 9.2.2, nothing in this MSA shall operate so as to exclude or limit the liability of either Party to the other for:
	Liquid shall use its best endeavours to meet all required delivery dates. Liquid specifically notes that delivery dates are dependant on obtaining permissions from relevant authorities and Liquid shall not incur any liability in respect of delays occasioned by such authorities regarding such permissions.	9.2.1	death or personal injury arising out of negligence; or
<b>8</b>	<b>FORCE MAJEURE</b>	9.2.2	(subject to Clause 9.3) damage to real or tangible property caused by either Party's negligence; or
8.1	A Party shall not be liable for a failure to perform any of its obligations in terms of the MSA in so far as it is able to prove that:	9.2.3	a breach of confidentiality;
8.1.1	such failure was due to an impediment beyond its reasonable control;	9.2.4	damages arising out of a Party's gross negligence, fraud or wilful misconduct; or
8.1.2	it could not reasonably have been expected to have taken such impediment and its effects upon such Party's ability to perform into account at the Effective Date;	9.2.5	for any other liability that cannot be excluded or limited by law.
8.1.3	it did all reasonably possible to mitigate the adverse impact on the other Party; and	9.3	Liquid's liability to the Customer for damage to property resulting from Liquid's negligence or the negligence of its employees, agents or sub-contractors shall be limited to the extent of the proceeds paid in terms of any insurance policy held by Liquid, provided that Liquid shall maintain in effect and in good standing insurance coverage for such damage to property and provided further that such coverage shall be legally and actually made available to Customer as and at the time of any such damage. Liquid shall, with Customer's involvement and with continuous information to Customer, investigate each claim on its own merits prior to the insurance company, which holds the insurance policy paying the amount claimed. Payment shall be based on the merits of the claim and shall not be determined by the amount covered by the insurance policy. Subject to the limit set out in Clause 9.4.2, Liquid shall indemnify Customer against any failure or refusal on the part of the relevant insurance company to pay a claim.
8.1.4	it could not reasonably have avoided or overcome the impediment or at least its effects and, for purposes of this clause 8.1, the following events contained in the definition of Force Majeure (which enumeration is not exhaustive)	9.4	Subject to Clause 9.1 and Clause 9.2, the entire aggregate liability of:
8.2	Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date on which the Party seeking relief ("Defaulting Party") gives written and detailed notice of the impediment relied upon and shall terminate upon the date on which such impediment ceases to exist, provided that if the impediment continues for a period of more than 10 (ten) consecutive days, the other Party shall be entitled, at its option, to terminate the MSA by written notice to the Defaulting Party without any penalty, early termination fees or other recourse by the Defaulting Party, and the Defaulting Party shall do all reasonably possible to assist the other Party in procuring substitute Services.	9.4.1	Liquid, and the Customer's exclusive remedy, for damages arising out of performance under the MSA, including for mistakes, omissions, interruptions, delays, errors or defects in the Services, shall in no event exceed the greater of: (i) the applicable service credits specified in the SLA (if one has been entered into by the Parties) as to such Service; or (ii) the pro-rated cost to Customer of the Services not received or received in degraded form for the period of Service during which such mistake, omission,
<b>9</b>	<b>LIMITATION OF LIABILITY</b>		
9.1	Subject to Clause 9.2, neither Party shall be liable to the other for any of the following types of loss or damage arising under or in relation to this MSA (whether arising for breach of contract, misrepresentation (whether tortious, delictual or		

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- interruption, delay, error or defect in the Services occurred or occurs; and
- 9.4.2 in respect of all other claims, losses or damages, each Party's entire liability to the other Party (however arising) under or in relation to this MSA, including liability for breach of contract, misrepresentation (whether tortious, delictual or statutory), tort or delict (including but not limited to negligence), breach of statutory duty or otherwise shall not exceed the total of the fees paid by the Customer for the Service under the applicable Service Order Form in respect of the 12 (twelve) month period immediately preceding the date on which the liability arises.
- 9.4.3 The Customer shall only institute a claim against Liquid arising out of or connected to this MSA, service order or SLA during the term of this contract or within one year of the expiry or termination of this contract.
- 9.5 These limitations and exclusions on liability apply to the benefit of the Parties, their Affiliates and third parties whose networks are affected.
- 9.6 The Customer agrees to indemnify, defend and hold Liquid, its officers, directors, employees, agents and contractors harmless from and against all loss, damage, liability, cost and expense (including reasonable attorney's fees and expenses) by reason of any claims or actions by third parties for (i) bodily injury or death or damage, loss or destruction of any real or personal property (including without limitation the property of Liquid), which third party claims arise out of or relate to the Customer's negligence or willful misconduct, (ii) infringement or misappropriation by the Customer of any Intellectual Property Rights under this MSA, or (iii) the Customer's or its customer's use of the Services, including without limitation, defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity, or spamming or any other tortious, delictual or illegal conduct.
- 9.7 The Parties agree that the limitation of liability provisions set out in this Clause 9 shall survive the termination of the MSA.
- 9.8 Except as otherwise expressly provided in this MSA, Liquid does not make, and hereby disclaims, any and all warranties or conditions, express or implied, including but not limited to any and all warranties or conditions of merchantability, satisfactory quality or fitness for a particular purpose.
- 10 SUSPENSION OF SERVICES**
- 10.1 Subject to Clauses 11 and 13 and pursuant to immediate written notice identifying the cause by Liquid to Customer as soon as the cause is known to Liquid, in the case of Clause 10.1.1 and on no less than one (1) Business Day's written notice in the case of Clauses 10.1.2 and 10.1.3, detailing the alleged breach, and where a request for Arbitration has not been made by either Party, Liquid may lawfully suspend or withdraw all or part of any Service under any Service Order Form at any time until further notice to the Customer if, in Liquid's reasonable discretion:
- 10.1.1 the continued provision of the Service will cause Liquid to breach any applicable law or contravene its licence;
- 10.1.2 the Customer is in material and continuing breach of any of the provisions of the MSA including, without limitation, due to any delay or failure by the Customer to make any payment in terms of the MSA; and
- 10.1.3 any overdue invoice for charges billed by Liquid to the Customer remains unpaid.
- 10.2 The exercise of Liquid's right to suspend the Services under this clause 10 is without prejudice to any other remedy available to Liquid under the MSA and does not constitute a waiver of Liquid's right to subsequently terminate the MSA.
- 10.3 Where Liquid has suspended the Services in terms of clause 10.1, Liquid may
- 10.3.1 refuse to reconnect the Services unless precluded by any law or order of court; and
- 10.3.2 if it agrees to reconnect the Services, require the Customer to pay a reconnection fee in advance as a pre-condition to making the Services available again or require the payment of a deposit or other security for payments;
- 10.3.3 continue to invoice the Customer for MRCs and minimum usage charges (if any) during the period of suspension of any Service/s;
- 10.3.4 credit the Customer with all charges for the period during which any Service/s have been suspended, should it transpire that the suspension of the Customer was erroneous.
- 11 TERMINATION**
- 11.1 Either Party may terminate a Service either at the end of an Initial Term or during any Renewal Term by providing the other Party with at least one (1) calendar month written notice. Either Party may terminate this MSA once all Services have expired or been terminated, by providing the other Party with at least one (1) calendar month written notice.
- 11.2 Without prejudice to any rights and remedies that may have accrued, either Party may (without prejudice to such rights as the aggrieved Party may have at law, including the right to claim damages or to enforce the relevant provisions of the MSA) terminate the MSA by providing the other Party with 30 (thirty) days written notice of its intention to do

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- so, if the other Party suffers any of the following (or any local legal equivalent):
- 11.2.1 ceases to trade (either in whole, or as to any part involved in the performance of the MSA);
  - 11.2.2 becomes insolvent, has a receiver, administrator or manager appointed of the whole or any part of its assets or business; or
  - 11.2.3 makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, is unable to pay its debts under any applicable law relating to bankruptcy or the relief of debtors.
- 11.3 To the extent that the Customer has been afforded a discount on, or waiver of, the installation fee or other NRC, such discount or waiver shall be contingent on the Customer not terminating the Service prior to the expiry of the period set out in the Service Order Form.
- 11.4 If a Service is terminated by Liquid in terms of Clause 11.2 or by the Customer prior to the expiry of the Initial Term, the Customer shall pay Liquid the Early Termination Fee as well as refunding to Liquid the value of any discount or waiver afforded to the Customer, within 7 days of such termination.
- 11.5 Customer acknowledges that because actual damages to Liquid caused by early termination of a Service order are uncertain and would be difficult to determine, the Early Termination Fee is a reasonable liquidated damage and is not a penalty.
- 11.6 If Customer defaults in any of its payment obligations under the MSA, Customer agrees to pay Liquid's reasonable expenses, including but not limited to legal and collection agency fees, incurred by Liquid in enforcing its rights. All termination notices by Customer must be sent separately for each Service (including terminating one Service location after a Service is switched to a new Service location).

## 12 SERVICE VARIATIONS

- 12.1 If Customer wishes to make a change, modification or adjustment (including upgrades, downgrades and moves) to any element of any Service, the following procedure will apply:
- 12.1.1 Customer will forward a change request to Liquid, setting out the details of the change request;
  - 12.1.2 Liquid will investigate the feasibility, cost implications and impact of the change request on the Services and provide such study to the Customer ("Impact Study").
- 12.2 If the Customer makes a decision to proceed with the change request after considering the Impact Study, the Customer shall give Liquid a written instruction to proceed with that change on the basis set out in the Impact Study. That instruction shall be binding on the Parties and the MSA shall be deemed to be amended accordingly.
- 12.3 If the Parties cannot agree upon the necessary amendments, the change request will not be implemented.

## 13 DISPUTE RESOLUTION

- 13.1 In the event of any Dispute arising between the Parties under the MSA or any Service Order Form, the Parties will act in good faith to attempt to settle the Dispute through discussions between senior representatives (which shall to the extent reasonably possible include the respective CEO's or equivalent office bearers) of the Parties within 30 (thirty) days of a Party giving the other Party notice of the issue in dispute.
- 13.2 Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, and which cannot be resolved under clause 13.1 above, shall be referred to and finally resolved by arbitration under the Arbitration Act of 1995. The number of arbitrators shall be one (or as otherwise agreed by the Parties). The seat, or legal place, of arbitration shall be Nairobi, Kenya. The language to be used in the arbitral proceedings shall be English.
- 13.3 The arbitration shall be conducted by a single arbitrator to be appointed by the Parties jointly. Failing agreement by the Parties within Fifteen (15) Business Days, arbitrator shall be appointed at the request of any Party to the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch. Except as otherwise provided in this MSA, the Rules of the Chartered Institute of Arbitrators, Kenya Branch are deemed to be incorporated into this clause.
- 13.4 Each Party shall pay its own fees and expenses with regard to the Arbitration and the Parties shall share equally the fees and expenses of the arbitrator/s unless and to the extent the rules of any arbitration provider selected allow for the arbitrator/s to order the fees of the winning Party to be paid by the losing Party. In such case, the losing Party shall pay the fees and expenses of the winning Party, if and as the same may be mandated or apportioned in the discretion of the arbitrator/s. The arbitral award shall be final and binding on the Parties.
- 13.5 The Parties hereby submit to the subject matter and personal jurisdiction of any court of competent jurisdiction for interim remedies, including injunctive relief, and for the enforcement of the arbitral award.
- 13.6 Nothing in this Agreement shall be deemed to bar any party from electing to refer a Dispute to a tribunal of competent jurisdiction as provided in the Consumer Protection Act or the Kenya Information and Communications Act 1998 provided that a Party or its successors or assigns may not refer the dispute to more than one forum.

## 14 CONFIDENTIALITY

- 14.1 Subject to clauses 14.2 to 14.4, each Party must
- 14.1.1 only use the other Party's Confidential Information for the purposes of the MSA and must keep confidential and not disclose to any person the other Party's Confidential Information; and

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- 14.1.2 not make press or other public announcements or issue press releases about the Services, the MSA or the transactions related to it without the written approval of the other Party ("Announcement").
- 14.2 Clause 14.1.1 does not apply to Confidential Information that is in the public domain, unless such information has entered the public domain as a result of a breach of the MSA or any other obligation of confidence.
- 14.3 A Party may disclose the Confidential Information of the other Party if that disclosure is to the employees, contractors or professional advisers of that Party or its Affiliates who have a need to know that information in relation to provision of the Services and who have agreed in writing to keep it confidential.
- 14.4 A Party may disclose Confidential Information of the other Party or make an Announcement that is required by any applicable law.
- 14.5 This clause shall survive the termination or expiry of this contract or specific service order

**15 INTELLECTUAL PROPERTY RIGHTS**

Nothing contained in the MSA shall be construed to confer or be deemed to confer on either Party the Intellectual Property Rights of the other Party.

**16 NOTICES AND DOMICILE**

- 16.1 The parties choose as their respective domicile for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of the MSA, the addresses set out on the Service Order Form. A Party may change its domicile to any other physical address and its address for the purposes of notices to any other postal address or email address by written notice to the other Party to that effect. Such change of address will be effective seven days after receipt of notice of the change of domicile.
- 16.2 All notices to be given in terms of the MSA will -
  - 16.2.1 be given in writing;
  - 16.2.2 be delivered or sent by prepaid registered post, or by electronic mail;
  - 16.2.3 if delivered be presumed to have been received on the date of delivery;
  - 16.2.4 if sent by prepaid registered post be presumed to have been received within three business days of posting unless the contrary is proved;
  - 16.2.5 if sent electronic mail be presumed to have been received on the first business day following the date of sending of the electronic mail unless the contrary is proved.
- 16.3 Notwithstanding the above, any notice actually received by the Party to whom the notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions of this clause 16.3.

**17 CESSION, ASSIGNMENT AND SUB-CONTRACTING**

The MSA shall be binding on the parties hereto and their respective successors and assigns. Neither Party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of the MSA without the prior written consent of the other Party except that Liquid may assign its rights and obligations under the MSA without the approval of the Customer to an Affiliate or to an entity which acquires all or substantially all of the assets of Liquid; provided that in no event shall such assignment relieve Liquid of its obligations under the MSA.

**18 SEVERABILITY**

Each provision of the MSA is severable from the other provisions. Should any provision be found by a court of competent jurisdiction to be invalid or unenforceable for any reason, the parties will consult with one another in good faith in order to agree, if possible, an alternative provision in accordance with the intent and tenor of the MSA. The remaining provisions of the MSA shall nevertheless remain binding and continue with full force and effect.

**19 BENEFIT OF THE MSA**

The MSA will inure for the benefit of and be binding upon the successors in title and permitted assigns of the parties hereto or either of them.

**20 WHOLE MSA**

- 20.1 This MSA constitutes the entire agreement between the parties in relation to its subject matter. It replaces and extinguishes all prior agreements, draft agreements, arrangements, collateral warranties, collateral contracts, statements, assurances, representations and undertakings of any nature made by or on behalf of the parties, whether oral or written, in relation to that subject matter.
- 20.2 Each Party acknowledges that in entering into this MSA it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other party in relation to the subject-matter of this Agreement at any time before its signature (together "Pre-Contractual Statements"), other than those which are set out in this MSA.
- 20.3 Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.
- 20.4 Nothing in this clause shall exclude or restrict the liability of either party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.
- 20.5 No variation, addition, deletion, or cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly authorised representatives.

**21 WAIVER**

No waiver of any of the terms and conditions of the MSA shall be binding or effectual for any purpose

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unless expressed in writing and signed by the Party hereto giving the same, and any such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

### 22 SURVIVAL

Any provision of the MSA, which contemplates performance or observance subsequent to any termination, or expiration of the applicable MSA shall survive any termination or expiration of the applicable MSA and continue in full force and effect.

### 23 COVENANT OF GOOD FAITH

Each Party agrees that it shall at all times act in good faith, in its respective dealings with the other Party under or in connection with the MSA.

### 24 COSTS

Each Party shall bear its own costs of or incidental to the drafting and execution of the MSA.

### 25 RIGHTS OF THIRD PARTIES

The MSA is made solely and specifically between and for the benefit of the Parties, and is not intended to be for the benefit of, and shall not be enforceable by, any other person under the Contracts (Rights of Third Parties) Act 1999, Consumer Protection Act No. 46 of 2012 or otherwise. No person who is not a party to this MSA shall have any rights to enforce or enjoy the benefit of any term of this MSA.

### 26 APPLICABLE LAW

26.1 The MSA and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including any dispute or claim relating to non-contractual obligations) shall be governed by and construed in accordance with Kenyan law.

26.2 Subject to Clause 13, the Parties irrevocably agree that the courts of Kenya shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

### 27 DATA PROTECTION

27.1 Both parties agree that they will duly observe all their obligations under any applicable data protection and privacy legislation which arise in connection with this MSA.

27.2 Liquid will have in place adequate technical and organizational security measures so that the confidentiality of this processing complies with the applicable data protection and privacy legislation, and Customer will:

27.2.1 comply with, and its acts or omissions will not cause Liquid to be in breach of the data protection and privacy legislation or other applicable law or regulation as they may be amended from time to time;

27.2.2 obtain adequate consents from its customers and employees, including for transfers of personal data; and

27.2.3 be responsible for the instructions it may give to Liquid regarding the processing of personal data. Liquid will act on those instructions as reasonably necessary for the provision of Service.

27.3 For the purposes of this Clause "personal data", "data processor" and "processing" shall have the meanings ascribed to them under the applicable data protection and privacy legislation.

### 28 ANTI CORRUPTION AND COMPLIANCE

28.1 It shall be a condition of this MSA that each Party shall at all times:

28.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption ("Relevant Requirements");

28.1.2 have and shall maintain in place throughout the term of this agreement its own policies and procedures to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and

28.1.3 promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by a Party in connection with the performance of this MSA.

28.2 Neither Party shall do any act, or omit to do anything which would cause the other Party to commit an offence under the Relevant Requirements.

28.3 Each Party will indemnify the other against any loss or damage suffered or incurred by the other as a result of breach of clause 28.

28.4 Breach of clause 28 will constitute a material breach of this MSA.

28.5 This clause 28 shall apply to each Party regardless of the jurisdiction in which they are located or operating in.



## DEFINITIONS AND INTERPRETATION

Affiliate	With respect to Liquid means any other entity which (i) is a subsidiary or holding company or a subsidiary of the holding company of Liquid and shall include any foreign entity which falls within the ambit of such term; and/or (ii) controls, is controlled by or is under common control with Liquid; and/or (iii) in which Liquid or any Affiliate of Liquid has a direct or indirect equity interest;
AUP	Liquid's Acceptable Use Policy, as may be amended from time to time, such amendment being notified to the Customer by the publication of such revised policy on the Internet web site of Liquid
Confidential Information"	Means any information or data which by its nature or content is identifiable as confidential and/or proprietary to either Party and/or any third party, or which is provided or disclosed in confidence, and which a Party or any person acting on its behalf may disclose or provide to the other Party or which may come to the knowledge of the other Party by whatsoever means;
Customer	The Party identified as such on the Service Order Form
Early Termination Fee	<p>The liquidated damages agreed on for termination of a Service Order Form before the end of an Initial Term, calculated as follows:</p> <ul style="list-style-type: none"> <li>▪ In the event that a Service is terminated prior to the Service Commencement Date thereof, a pre-commencement cancellation fee: equal to the higher of the documented actual costs incurred by Liquid in fulfilment of the applicable Service or the NRC, plus 1 (one) month of the MRC for the applicable Service;</li> <li>▪ In the event that a Service is terminated subsequent to the Service Commencement Date thereof and the remaining term set out in the Service Order Form for the applicable Service is 12 (twelve) months or less: 50% of the fees and charges for remaining months in the initial term for the applicable Service;</li> <li>▪ In the event that a Service is terminated subsequent to the Service Commencement Date thereof and the remaining term of the Service Order Form for the applicable Services is greater than 12 (twelve) months: 50% of the fees and charges for the applicable Service for the first 12 (twelve) months of the remainder of the initial term, and 25% of the fees and charges for the applicable Service for each month thereafter of the initial term.</li> </ul> <p>The amounts referred to in above shall be in addition to all fees for any other Services that continue unchanged, as at the effective date of termination.</p>
Effective Date	Means the date of signing of the first Service Order Form by the Customer and more particularly the commencement of business on that day;
Force Majeure	<p>Means impediments beyond the control of each of the Parties, namely:</p> <ul style="list-style-type: none"> <li>▪ war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage;</li> <li>▪ natural disasters such as violent storms, cyclones, earthquakes, floods and destruction by lightning;</li> <li>▪ acts of authority, whether lawful or unlawful, apart from acts for which the Party seeking relief has initiated or assumed risk; and</li> <li>▪ acts and omissions of any third party telecommunications provider or any utility provider, other than where such party is a subcontractor, agent, contracted party or affiliated company;</li> <li>▪ causes beyond a Party's control, including but not limited to: acts of God; fire; explosion; vandalism; cable cut; any law, order, regulation, direction, action or request of any government, including federal, state, provincial, municipal and local governments claiming jurisdiction over a Party or the Service, or of any department, agency, commission, bureau, corporation, or other instrumentality of any such government, or of any civil or military authority;</li> <li>▪ national emergencies;</li> <li>▪ unavailability of materials or rights-of-way; insurrections; riots, terrorist acts or strikes, lock-outs, work stoppages, or other labour difficulties, supplier failures, shortages, breaches or delays.</li> </ul>
Initial Term	Initial length of term for a particular Service as indicated on the Service Order Form
Intellectual Property Rights	Means and includes:

- rights in and in relation to any patent, design, trade mark, trade or business name (including all goodwill associated with any trade mark, or any trade or business name), copyright, database, domain name, circuit topography design, and/or utility model, and including the benefit of all registrations or applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable;
- all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may subsist anywhere in the world

Licence	Means the Telecommunications license issued to Liquid and any renewal, amendment, re-issue or equivalent thereof authorising Liquid to provide the Services;
Liquid	The subsidiary or Affiliate of Liquid Telecommunications Holdings Limited, as identified in the MSA cover page and/or applicable Service Order Form
Liquid Network	The telecommunication network and network components owned and operated by Liquid or its Affiliates, including points of presence ("PoP"), but does not include customer equipment (modems, routers etc) unless such customer equipment is provided by Liquid and management thereof is specified as a Service, or any networks or network equipment not owned or controlled by such Liquid Network
MRC	Monthly Recurring Charge, being the monthly charges for the Services as set out in applicable Service Order Form;
MSA	The entire Master Service Agreement between Liquid and the Customer for provision of the Service, consisting of one or more Service Order Form/s, these Terms and Conditions, the SLA (if any) and any schedules or addenda hereto
NRC	Non-Recurring Charge, being the installation and other related fee for the Services and any applicable deposit as set out in the applicable Service Order Form
Service Order Form	Means the form constituting part of the MSA and to which these Terms and Conditions are attached, through which the Customer makes application for Services, setting out the details of the Services requested such as quantities, fees and charges payable
Party	Means either Liquid or the Customer and "Parties" means both of them collectively and shall be deemed to mean and include their respective successors and permitted assigns
Renewal Term	Subsequent length of term for the Services after completion of the Initial Term
Service Commencement Date	Means the date on which the Service is activated by Liquid, as notified to Customer or as deemed from date of first commercial use, as set out in Clause 4.2(b).
Service Description	Means a schedule containing the detailed description of the nature and type of each different Service requested by the Customer, which is provided by Liquid;
Service(s)	Services provided by Liquid under the MSA / Means the telecommunication and related services described in the Service Description
SLA	Means a comprehensive service level agreement in respect of the provision of the Services and all or any other service level agreement in respect of additional services which the Parties may enter into and a copy of which will form an additional Schedule to the MSA
Taxes	All taxes arising in any jurisdiction, including without limitation all: sales, use, excise, gross receipts, value added, access, bypass, franchise, telecommunications, property (for co-location customers), consumption, or other taxes, fees, duties, charges or surcharges (however designated) which are imposed on or based on the provision, sale or use of the Service(s), including such taxes imposed directly on Liquid or for which Liquid is permitted to invoice Customer in connection with Liquid's performance under the MSA. Taxes do not include Liquid's income taxes

## INTERPRETATION

- In the MSA and in the annexes to the MSA -
  - clause headings are for convenience and are not to be used in its interpretation;
  - unless the context indicates a contrary intention an expression which denotes -
  - any gender includes the other genders;
  - a natural person includes a juristic person and *vice versa*;

MSA Terms and Conditions

- the singular includes the plural and *vice versa*.
- Words and expressions defined in any clause shall, for the purposes of that clause, bear the meaning assigned to such words and expressions in such clause.
- If any provision is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect will be given to it as if it were a substantive provision in the body of the MSA.
- In the MSA and the annexes the word "**MSA**" refers to the MSA and the words "**clause**" or "**clauses**" or "**annexe**" or "**annexes**" refer to clauses of or annexes to the MSA.
- Any reference to "**days**" shall be construed as being a reference to calendar "**days**" unless qualified by the word "**business**" in which instance a "**business day**" shall be any day other than a Sunday and/or a public holiday in the relevant country from time to time. Any reference to "**business hours**" shall be construed as being the hours between 08h30 and 17h00 on any business day.
- The words "**include**", "**includes**", and "**including**" means "**include without limitation**", "**includes without limitation**", and "**including without limitation**". The use of the word "**including**" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it.
- Terms other than those defined within the MSA will be given their plain English meaning, and those terms, acronyms, and phrases known in the information technology and telecommunications industries will be interpreted in accordance with their generally accepted meanings.
- Defined terms appearing in the MSA in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their ordinary meaning and shall, unless the context otherwise indicates, include the term as defined.
- In the event of ambiguity or conflict between any of the constituent parts of the MSA, the order of precedence in the interpretation of the MSA shall be:
  - the Service Order Form;
  - the Terms and Conditions of this MSA;
  - the SLA (if any).
- The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract shall not apply.
- Any reference to an enactment is to that enactment as at the Effective Date and as amended or re-enacted from time to time.
- If any provision in a definition is a substantive provision imposing rights or obligations on any Party effect shall be given to it as if it were a substantive provision in the body of the MSA.
- When any number of days is prescribed in the MSA, same shall be reckoned exclusive of the first day and inclusive of the last day unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding Business Day.
- Reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s.
- A law shall be construed as any law (including common law) or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any legislative measure of any government, local government, statutory or regulatory body or court.

**SIGNED BY:**

**OFFICIAL STAMP OF CUSTOMER:**

**Full Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

**Signature:** \_\_\_\_\_