



TERMS AND CONDITIONS

THIS INTERNET SERVICE AGREEMENT is made between **MAWINGU** an Internet Service Provider of **Post Office Box Number 3168 10400 Nanyuki**, PIN No. **P051453723X** in the Republic of Kenya (herein called “MAWINGU” which expression shall include where the context admits its successors and assigns) on one part and the recipient of the service as per the details provided in the Application Form (herein after called “The CUSTOMER” which expression shall where the context so admits include his/her/its successors and assigns). **WHEREAS:**

1. The CUSTOMER is desirous of being supplied with an internet service.
2. MAWINGU is willing to supply the same, which consists of infrastructure provision as well as data, conditional on a technical assessment for the purposes of confirming availability of the resources and capacities required to do so, and subject to the covenants, agreements, conditions, restrictions, stipulations and provisions hereinafter contained.

NOW THIS AGREEMENT WITNESSETH

1. The CUSTOMER at his own request and instance shall be supplied with the internet service as per the Package details provided in the Application Form.
2. MAWINGU guarantees that upon payment of the internet service subject matter of this agreement the CUSTOMER shall enjoy the following add-on services and waivers; (i) Remote Troubleshooting and link uptime monitoring (ii) Equipment checks and servicing (iii) Firmware updates
3. MAWINGU’s remote support team will be available to offer customer service 24/7 on the following contacts; 0111 194 000 or email info@mawingu.co
4. Should the CUSTOMER default on payment for the service at any point, MAWINGU may disconnect the CUSTOMER immediately and recover devices installed at the customer’s premises at any point
5. Equipment installed by MAWINGU at the CUSTOMER site will solemnly remain MAWINGU's property and unless agreed otherwise will be collected upon service termination. This does not pertain to any equipment purchased directly by the CUSTOMER.
6. The CUSTOMER agrees that he will hand over the equipment installed by MAWINGU at the CUSTOMER at any point if the network has not been paid for.
7. The CUSTOMER agrees and understands that the installation fee paid for in the first month does not cover the cost of the equipment, and equipment therefore must be handed over upon termination of service.
8. The internet packages are designed to provide speeds up to the maximum value assigned to that package. For Dedicated internet packages, MAWINGU strives to provide the CUSTOMER internet speeds approximating those assigned. For all other internet packages, the CUSTOMER shares internet speeds with other users on the network as per a prescribed sharing ratio. As a result, the actual speeds experienced by the CUSTOMER may vary at any given time as dependent upon the activity of other users sharing the network. MAWINGU, however, designs the network such that the speeds experienced on average are commensurate with normal use for the number of users recommended for your package.

9. To ensure that the maximum number of customers get the best speeds, MAWINGU reserves itself the right to limit the bandwidth of the CUSTOMER if he is deemed to be a network abuser, overusing the network to the expense of other customers' experiences.
10. Breach by the CUSTOMER of any of the special conditions below may result in immediate termination of this agreement and disconnection of the internet service. Should this occur, the CUSTOMER will continue to be liable for any amounts due to MAWINGU pertaining to provision of the service including for any equipment rental fees included within the monthly fee.
11. Any changes to the terms of this agreement will be communicated by MAWINGU to the CUSTOMER with 30 days' advance notice to the effective date

SPECIAL CONDITIONS

1. Accessing the Services

- a. The use of Internet Services is carried out entirely at your own risk.
- b. MAWINGU shall have no responsibility for, or control over, the Internet Services you access and do not guarantee that any services are error or virus free.
- c. MAWINGU has no responsibility for, or control over, the information you transmit or receive via the Service.
- d. It is advisable for the CUSTOMER to have available a systems administrator to resolve
- e. problems specific to computer hardware and networking equipment which may affect the performance of internet service.
- f. Engaging in activities that may disrupt the service is not permitted.
- g. Use of the service to store, reproduce, transmit, communicate or receive any materials is strictly at the CUSTOMER's free will and accord, and MAWINGU has no responsibility to screen or restrict access to such content and shall not be held liable for any action or inaction with respect to any such content on the internet as accessible through the service.
- h. The CUSTOMER shall be responsible for and bear all the risk and consequences for the accuracy, completeness, reliability and/or usefulness of any content available via the service; and all communications that the CUSTOMER sends or receives via the internet service.
- i. MAWINGU does not guarantee the security of any data the CUSTOMER sends or receives via the service and it is the CUSTOMER's responsibility to secure such data
- j. Use of the Services or the Content in any way that MAWINGU in its sole and absolute discretion consider objectionable, inappropriate, likely to cause harm to the company brand and reputation, or otherwise, is not permitted
- k. MAWINGU may rebroadcast a signal from a radio on the premises of the CUSTOMER.

2. Availability of Services

- a. MAWINGU will take reasonable steps to ensure that the service is available to the CUSTOMER at all times, save that MAWINGU cannot guarantee a fault free service. Factors beyond MAWINGU, which may affect MAWINGU services, include but are not limited to acts of God, planned maintenance or rectification work, or equipment failure may interfere with the quality of the service.

3. Intellectual Property Rights

- a. All copyright, trademarks, patents and other intellectual property rights in any material or content contained in or accessible via the service should be respected. The CUSTOMER may only use the service as set out in these terms. All rights are expressly reserved.

4. Liability

- a. MAWINGU shall not be liable for any loss of use, profits or data or any indirect, special or consequential damages or losses, whether such losses or damages arise in contract, negligence or tort, including without limitation to the foregoing any losses in relation to:
 - b. Your use of reliance upon or inability to use our Service and/or Content;
 - c. The deletion with or without notice or cause of any of your data or information stored on the Service;

- d. Any loss of your data or material resulting from delays, non-deliveries, missed deliveries, service interruptions or failure, suspension or withdrawal of all or part of the Service at any time;
- e. The removal from the Service of any material sent or posted by you on or via the Service and/or the blocking or suspension of your access to the Service or any part of it in accordance with these terms.

5. Indemnity by the CUSTOMER

- a. The CUSTOMER irrevocably agrees to indemnify MAWINGU and keep MAWINGU indemnified fully against and to hold MAWINGU and/or any of the indemnified persons harmless on demand from all losses, costs, proceedings, damages, expenses (including reasonable legal costs and expenses) or liabilities howsoever incurred by the CUSTOMER as a result of any claim by a third party resulting from CUSTOMER's use of the Service (or use of the Service by anyone who accesses the Service via the CUSTOMER's access credentials) in breach or non-observance of these terms. MAWINGU shall notify the CUSTOMER of any claim MAWINGU and/or any of the indemnified persons receives and The CUSTOMER hereby agrees to provide MAWINGU and/or any of the indemnified persons with full authority to defend or settle such claims and shall provide MAWINGU and/or any of the indemnified persons with all reasonable assistance necessary to defend such claims, at the CUSTOMER's sole expense.

6. Acceptable Use Policy: The CUSTOMER agrees not to use the Internet to:

- a. Transmit any material that is unlawful, threatening, abusive, harassing, tortious, defamatory, obscene, libelous, and invasive of another's privacy, hateful or racially, ethnically or otherwise objectionable;
- b. Harm, or attempt to harm, minors in any way;
- c. Impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
- d. Forge headers or otherwise manipulate identifiers in order to disguise the origin of any material transmitted through the service;
- e. Transmit any material that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under non-disclosure agreements);
- f. Transmit any material that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party;
- g. Transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes" or any other form of solicitation;
- h. Transmit any material that contains software viruses, or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- i. Interfere with or disrupt the service or servers or networks connected to the service, or disobey any requirements, procedures, policies or regulations of networks connected to the service;
- j. Intentionally or unintentionally violate any applicable local, state, national or international law, or any regulations having the force of law; k)"stalk" or otherwise harass another;
- k. Collect or store, or attempt to collect or store, personal data about third parties without their knowledge or consent;
- l. Resell the service and equipment not bought without written authorization from MAWINGU; and
- m. Use the service System for high volume data transfers, especially sustained high volume data transfers, hosting a web server, IRC server, or any other server.

7. Collection of Personally Identifiable Information

- a. We collect personal information (name, email address, mobile number, location etc.) from you when you set up an account with us. We do use your contact information to send you offers based on your previous orders, interests and searches on our website. We automatically collect and store certain types of information about your use of internet services, including information about your interaction with content and services available through internet services.

8. Release of Devices

- a. The Devices which may be listed in the application form, which may include the internet router, will be released to you upon approval of these Terms and Conditions.
- b. Risk in the devices will pass to you upon collection of the Devices from MAWINGU or delivery of the devices to the CUSTOMER's premises. For the avoidance of doubt MAWINGU will not be responsible for any loss or damage to the Devices upon collection or delivery of the Devices to the CUSTOMER's premises. Title to the Devices will pass to you upon payment of the Devices in full.
- c. Devices are sold subject to the manufacturer's limited warranty which is packaged together with the Devices and is also available from MAWINGU upon written request. If You find that the Device is faulty or defective, you should immediately, not later than three days, return it to MAWINGU together with the receipt for the purchase. All faults will be handled in accordance with the manufacturer's limited warranty. For the avoidance of doubt MAWINGU will not be liable for any fault in the Devices outside the manufacturer's warranty. Any logistical expense reasonably incurred by MAWINGU in extending such benefit shall be held to Your account. This warranty is the only warranty given by MAWINGU and specifies its entire liability including liability for negligence and but without limitation all statutory or other express, implied or collateral terms. Conditions or warranties are excluded to the fullest extent provided by law. You are hereby advised to take note of any limitations and restrictions thereof and to examine the features of the device prior to signing the Application Form.

9. Dispute Resolution

- a. **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.
- b. **Arbitration:**
 - i. Save as may otherwise be provided herein, all questions in dispute arising between the Parties and all claims or matters in such dispute not otherwise mutually settled between the Parties.
 - ii. In the event that the parties fail to settle the dispute within fourteen (14) days of the dispute being referred to the parties, then the matter shall be referred to arbitration by a single arbitrator to be appointed by agreement between the Parties or in default of such agreement, the arbitrator shall be appointed within fourteen (14) days upon application by either Party to the Chairman for the time being of Kenya Branch of Chartered Institute of Arbitrators of the United Kingdom. The arbitration proceeding shall take place in Nairobi.
 - iii. Every award made under this clause shall be made in accordance with the provisions of the Arbitration Act 1995 (Act No. 4 of 1995) or other Act or Acts for the time being in force in Kenya in relation to Arbitration. To the extent permissible by law the determination of the Arbitrator shall be final and binding upon the Parties.
 - iv. Notwithstanding these arbitration provisions, the Parties shall not be precluded from seeking urgent injunctory relief, in which case the Parties submit to the exclusive jurisdiction of the High Court of Kenya.

