



access
your world

Master Customer Contract,
General Terms & Conditions and the
Acceptable User Policy

Access Communications Ltd

These General Terms and Conditions and the Acceptable User Policy constitute as read with an order form, any applicable product specific terms or the instructions on any Sim pack, constitute the contract on the basis of which Access provides services to its customers.

Introduction

The Master Customer Terms and Conditions stipulated herein shall form part of the contract between Access Communications Limited (Access) and any customer seeking service from Access. They must be read together with the General Terms and Conditions for the Provision of Services to Customers and the Acceptable Use Policy which are available from any Access office or outlet and website.

These Master Customer Terms and Conditions may be modified by any specific terms and conditions Access may agree with a customer in which case the modification shall specify the extent of the modification.

These Master Customer Contract Terms and Conditions shall be available upon request from any Access office or outlet and on the Access website. Access reserves the right to change or amend these terms and conditions without giving notice to any customer provided that such changes shall be made available to a customer upon request.

APPENDIX 1: ACCESS GENERAL TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

The *agreement* which governs the relationship between *you*, the *customer*, and *Access* comprises (a) these *general terms and conditions*, (b) any *product specific terms*, (c) any *order form* and (d) the *Acceptable Use Policy*.

These *general terms and conditions* are applicable to the supply by *Access* and the use by *customers* of all *services, facilities* and *products*.

Updated copies of these *general terms and conditions* are available on *Access's network* or from *Access's* head office or branch offices during business hours.

1 DEFINITIONS

In these *general terms and conditions*, the following terms will have the meanings given to them below unless the context clearly shows that a different meaning was intended, and similar words and expressions will have similar corresponding meanings:

“**Acceptable use policy**” means the policy which specifies to customers and users of our service/website what activities and online behavior are considered an unacceptable use of the service/website.

“**Access**” means Access Communications Ltd, a company incorporated under Malawi law with registration number 7969;

“**Access's network**” means the communication network and network components owned and/or operated by *Access*;

“**Access's website**” means www.access.mw;

“**Act**” means the Communications Act 1998;

“**affiliate**” means any entity that now or in the future, directly or indirectly, controls, is controlled by or is under common control with a party. For the purposes of this definition, “control” shall mean the ownership of more than 50% (fifty per cent) of the:

voting power to elect the directors of such entity; or

equity or ownership interest in such entity;

“**aggregate fee**” means the *installation fee, reconnection fee, CPE fee, service fee* and *usage fee* and any other charges relating to the *services, access to Access's network, customer premises equipment* and any other *services* provided by *Access*

“**agreement**” means the agreement between *Access* and the *customer* comprising these *general*

terms and conditions, the product specific terms and the order form collectively;

“**Authority**” means the Malawi Communications Regulatory Authority (MACRA), established under section 3 of the Communications Act 1998, or its successor in title and shall include any body which assumes its functions;

“**business day**” means any day other than Saturday, Sunday or a public holiday officially recognized as such in the Republic of Malawi;

“**call centre**” means *Access’s* customer contact centre which can be accessed by dialing 111 or 0212 200 200;

“**content**” means any content, information, game, message or similar service that is supplied to any person by means of *Access’s network* or by means of a third party’s network (whether generated by *Access* or any third party) in the format of text, data, graphics, pictures, video or any other relevant format (other than voice) but excludes the *services*;

“**CPE fee**” or “**device fee**” means the purchase price of any items of *CPE* payable by the *pre-paid customer* and *post-paid customer* to *Access*;

“**customer**” or “**you**” means the person who has ordered *services*, whose name appears on the *order form* and who is liable for the payment of the *aggregate fees* and for compliance with the *agreement* and any successors or assignees;

“**customer premises**” means the location or locations specified by the *customer* to which the *services* are delivered;

“**customer premises equipment**” or “**CPE**” means any device at the customer’s premises used to access the *services*;

“**deposit**” means the amount payable by the *customer* in terms of 10.2;

“**force majeure event**” means any cause beyond a party's reasonable control, including, without limitation, acts of war, acts of God, earthquake, hurricanes, flood, fire or other similar casualty, embargo, riot, sabotage, strikes, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or *regulations*, court orders, failure of the Internet or any other reason of a like nature not resulting from the actions or inactions of a party;

“**general terms and conditions**” means this document, which sets out the standard terms and conditions applicable to the supply of *services* by *Access* to its customers;

“**governmental authority**” means any institution or functionary exercising public power or performing a public function in terms of legislation;

“**installation fee**” means the once-off fee payable, in a lump sum or in installments, as stipulated by *Access*, by the *customer* to *Access* for installing a new *service* on behalf of the *customer*, for

transferring an existing *service* from the *customer* to another customer or from one location to another location, or for installing any item of *customer premises equipment*, as and when applicable;

“**intellectual property**” means, in relation to either party, inventions, patents, utility models, designs, trademarks and service marks, including any trade, brand or business names (whether registered or unregistered), domain names, registered designs, design rights, copyright, rights in the nature of or related to copyright (including any application or registration where applicable in respect of the foregoing) and any rights or forms of protection of a similar nature and having an equivalent or similar effect to any of them which may exist anywhere in the world;

“**licences**” means the *electronic communications service* licences issued to *Access* by the *Authority* on 12 September 2008, as amended, renewed or replaced from time to time;

"**order form**" means the form (including any attachments thereto) made available by *Access* for this purpose or a written request in any other form acceptable to *Access* setting out the particular terms on which *Access* will render the *services* to individual customers;

“**parties**” means either or both of *Access* and the *customer*, as the context indicates;

“**post-paid customer**” means any customer who elects to purchase the *CPE* from *Access* and pay the *service fee* periodically in arrears;

“**pre-paid customer**” means any customer who elects to purchase the *CPE* from *Access* and pay the *service fee* in advance;

“**product**” means any product packages made available to the *customer* under *Access*’s brand through the bundling of any one or more *services* or *customer premises equipment* either alone or together with any *content*, other *services*, facilities, equipment and/or *products*;

“**product specific terms**” means the standard terms and conditions applicable to the supply of any *product* by *Access* to its customers;

“**reconnection fee**” means the once-off fee payable by the *customer* to *Access* for reconnecting any *service* or element thereof that has been suspended in terms of [13](#);

“**regulations**” means all and any regulations promulgated or deemed to be in effect in terms of the *Act*;

“**rental customer**” means any customer who elects to rent pay the *service fee* periodically in arrears;

"**service commencement date**" means, in respect of each service ordered by the customer, the date that *Access* starts supplying the services and the customer begins using the relevant service;

"**service fee**" means the charges for access to *Access*’s *network* and/or using the *services*, as the case may be, charged by *Access* to the *customer* at the rates determined by *Access* which the *customer* can either pay periodically in advance or periodically in arrears;

“**service levels**” means the service levels for the provision of the *services* specified by the *Authority* by way of regulation from time to time;

“**Services**” means any all services which ACCESS may provide to a customer under its licence including Wireless Fixed Line Telephony, high Speed Wireless Internet Services at up to 3.6mpbs, 1x Data Services at up to 153kpbs, Voice & Data Services for Rural Communities, Value Added Services, SMS Services’, Call Conferencing, Wireless FAX Services, upon application in an order form in accordance these general terms and conditions;

“**term**” means the period of time stipulated in the *order form*, during which the *parties* are obligated to perform under these *general terms and conditions*;

“**usage fee**” means the fees charged by *Access* to the *post-paid customer* and *rental customer* once they have reached the limits set by *Access* for the type of *services* contracted for.

2 INTERPRETATION

In these *general terms and conditions*: -

- 2.1 an expression which denotes:- (i) any gender includes the other genders; (ii) a natural person includes a juristic person and vice versa; (iii) the singular includes the plural and vice versa;
- 2.2 any reference to the date of signature shall mean the date of signing of the *order form* by the last party in time;
- 2.3 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.4 any reference to "days" must be construed as being a reference to calendar days unless qualified by the word "business" in which instance a "business day" will be any day other than a Saturday and a Sunday and/or a public holiday in the Republic of Malawi as published in the Government Gazette. Any reference to "business hours" must be construed as being the hours between 08h00 and 17h00 on any business day;
- 2.5 terms other than those defined within these *general terms and conditions* will be given their plain English meaning, and those terms, acronyms, and phrases known in the information and communication technology industry will be interpreted in accordance with their generally accepted meanings;
- 2.6 where any provision of these *general terms and conditions* requires either party to perform any act in writing, this requirement will only be satisfied if such performance is made in a written printed-paper based form or in an electronic form (such as email) accompanied by electronic signature, and
- 2.7 clause headings are included for convenience only and are not to be used in the interpretation of these *general terms and conditions*.

3 PROCESS FOR ORDERING SERVICES

- 3.1** If *you* wish to order a *service* from *Access* you must submit a completed *order form* to *Access*.
- 3.2** Any order for a *service* will be completed signing the form which shall signify acceptance of these General Terms And Conditions of Service and the Acceptable Use Policy.
- 3.3** In case of a prepaid service, the purchase of the service signifies acceptance of these General Terms And Conditions of Service and the Acceptable Use Policy.
- 3.4** Except where the law provides otherwise, *Access* may refuse to supply any *service* specified in any *order form* without giving any reasons for the refusal. Without limiting the generality of this, *Access* may refuse to provide a *service* if *you* do not meet the conditions of *Access*'s credit referencing procedure and/or fail to meet *Access*'s minimum credit standards.
- 3.5** *Access* may carry out a general credit check on *you* at any time before accepting *your order form*. The purpose of the credit check is to determine whether or not *you* meet *Access*'s credit criteria and to confirm the information supplied in the *order form*. *Access* may also furnish any information relating to the conduct of a *customer*'s account or supplied to it for the purposes of any credit check to any registered credit bureau. *You* agree to give *Access* permission to register this information with any registered credit bureau.

4 INSTALLATION OF THE SERVICES

- 4.1** *Access* will use reasonable endeavors to install each *service* on the date *you* have requested, provided that this is reasonable, and in compliance with any applicable *service levels*. However, *Access* will not be liable for failure to meet the requested installation date for any reason.
- 4.2** *Access* may require *you* to pay an *installation fee* and/or a *deposit* prior to installing the *service* and may delay installing the *service* until *you* have paid the *installation fee* or *deposit*.

5 PROVISION AND MAINTENANCE OF THE SERVICES

- 5.1 Use of the Access SIM card is subject to the terms and conditions stipulated in this agreement and any amendment thereof as may be introduced from time to time. You should not use the SIM card until you have read these terms and conditions. By using the SIM card you agree to be bound by these terms and conditions.
- 5.2 Access shall provide you the Customer the facility to make or receive a phone call (including the ability to send or receive information, for example, from computers); and any other facilities (such as caller display) that Access agree to give you.
- 5.3 The service also includes at least one phone number. Access will put one number (and your details) in the appropriate Access Phone Book and make it available from our Directory Enquiries Service unless you tell us not to.
- 5.4 The service may be affected by geographic, atmospheric or other conditions or circumstances beyond our control.
- 5.5 The service is not available in all parts of Malawi or in all other countries and may be restricted to certain areas within those countries where service is available.
- 5.6 Your phone number is printed on the SIM certificate contained together with your SIM card within this pack.
- 5.7 Airtime and access to Network Services is subject to the Access recharge card credit and validity periods. Access reserves the right to alter recharge denomination and the applicable validity periods at anytime in such a manner as Access deems necessary.
- 5.8 Access reserves the right to vary the Access Prepaid Service as with respect to access to Access's Network Services, the use of recharge cards or any other product/service in conjunction with your SIM card, details of which may be shown on the actual product. Alternatively, such variations shall be communicated to you in such a manner as Access may deem necessary and expedient.
- 5.9 Non-adherence to the Access recharge card periods will result in suspension of services to

you. Services will be automatically restored upon recharge once the subscriber is still within the Access Prepaid extended grace period.

- 5.10 Failure to recharge before the end of the grace period will result in the loss of the Access Prepaid Line. You will then need to purchase a new line in order to use the service again. Access is not obliged to give you your original cell phone number should this occur.
- 5.11 The Access Prepaid Service entitles you to make national and International calls. Per Minute Billing (PMB) will be the main billing plan on Access Prepaid. Call units are debited at intervals of 25 units per minute on the PMB plan.
- 5.12 The cost of calls payable for access to the Access Network is set out in the Access tariff leaflets, which are available in all Access outlets. Access reserves the right to alter the rates and/or the duration of call units by notice, at anytime in such a manner as Access in its sole discretion may deem to be sufficient
- 5.13 Calls received by Access Prepaid customer will not be debited from the credit on your Access Prepaid account. Only the person calling will be charged at the applicable rate of the Network the caller is using.
- 5.14 Access takes no responsibility for calls being cut off when your credit has been used up.
- 5.15 Access will make all reasonable effort to ensure that the Network is available to you whilst there is credit on your account. Access takes no responsibility for a call being cut off or the Network being unavailable for any reason. Factors outside the control of Access may affect the Network Service.
- 5.16 You will only be able to make and receive calls when you are in an area covered by the Access Network.
- 5.17 Access is under no obligation to give you any proof of your itemized bill with regards to calls made from your phone.
- 5.18 The Access SIM card and all accompanying items will be purchased in a sealed pack. Therefore Access takes no responsibility for any item which may be missing from the pack.
- 5.19 Your Access SIM card has been programmed with a four digit generic default PIN number, details of which are on your SIM certificate and the User Guide in your purchased SIM pack. Please note importantly that the Access SIM card's generic four digit default PIN number has been disabled. Accordingly, you are please ADVISED to take immediate steps after purchase to enable the PIN feature and personalize same by activating this feature and following the steps prescribed in the attached User Guide, to protect you against unauthorized

access to your account for which Access shall not be responsible or liable.

- 5.20 If you enter your PIN number incorrectly 3 times in a row, Access reserves the right to suspend services to your cell phone by locking your SIM card. You will then need the PUK on your SIM certificate to unlock your SIM card.
- 5.21 Access takes no responsibility for the loss of your SIM card. You are responsible for insuring this yourself. Should you lose your SIM card, this must be reported to Access immediately. You will only be able to replace your SIM card by purchasing another one.
- 5.22 You may not in any way tamper with your SIM card. Access reserves the right to suspend services to your mobile line, without notice, in the event that it believes or has reason to believe that your SIM card has been tampered with.
- 5.23 You shall indemnify and hold Access harmless from and against any loss, claim, harm and exposure or damages (consequential or otherwise) suffered or sustained by you arising directly or indirectly from the suspension or interruption of Network Services.
- 5.24 By opening the pack, you indemnify and shall keep Access indemnified and hold it harmless from and against any liability arising from any claim made against Access or its agents, employees, dealers or franchisees in connection with the use of your mobile line. You also acknowledge that Access shall not be liable for any loss, damage or injury to yourself or any other person arising from the use of your mobile line.
- 5.25 The Network Services of Access are made available to you on the basis that you, your employees, agents, associates or subcontractors shall not use the Network for any improper or unlawful purpose nor allow others to do so. You shall only use the equipment for approved services and shall comply with all applicable legislation or regulations relating to the use of such equipment and Network Services. You shall also be obliged to comply with any reasonable instruction by Access from time to time and shall do any act or make any omission capable of or likely to be capable of causing injury or damage to any person or property or the Network Services or adversely affecting the quality of the Network Services in any way whatsoever.
- 5.26 You shall be liable for all charges, which are payable or shall become payable in respect of each SIM card purchased by or issued to you whether such SIM card is used by you or any third party.
- 5.27 Provision of any or all Network Services may be interrupted or suspended at any time without notice.
- 5.28 Access reserves the right to levy a reconnection fee for any connection to its Network where

your access to the Network Services had been interrupted or suspended. In such an event, Access reserves the right not to reconnect you to its Network unless you agree to furnish security details or agree to terms, which are acceptable to Access in the circumstances.

5.29 You shall not permit any other person to reverse, engineer, decompile, modify or tamper with the software or any information or data contained within or pertaining to the SIM card. If Access believes or has any reason to believe that any software, information or data contained in any SIM card has been modified or tampered with in anyway other than by Access or its nominee, Access has the right without notice to immediately suspend the provision of Network Services pending an investigation of such belief.

5.30 If Access discovers to its reasonable satisfaction that any software, information or data contained in any SIM card has been modified or tampered with in any way, in contravention of any clause contained in these terms and conditions, Access shall be entitled forthwith without notice, to disconnect such SIM card from its Network without prejudice to any rights or remedies available to Access in law or under these conditions.

5.31 Access reserves the right to vary the terms and conditions applicable to the continued use of any SIM card purchased, subject to notice given at any time and in such manner as Access in its sole discretion may deem to be sufficient.

5.32 If you move home within Malawi and let us know at least five full working days before you do so, Access will continue to provide the service at your new address, provided that Access cannot guarantee that the same number will be available for your use. If Access continues the service at your new address you will be subject to a new minimum period from the date Access provides service at your new address.

5.33 If you are a prepay customer and already owe Access money when you become a customer, you must make sure that there is enough money in your prepay account to make the payments on the due dates under your telephone service agreement form or in line with any other arrangements that Access may agree with you.

5.34 You must make sure that there is enough money in your prepay account to pay the rental charges when they are due, under your telephone service agreement form or with any other arrangements that Access may agree with you.

5.35 In most cases, Access will take usage charges from your prepay account straight away. If the balance of your prepay account falls to K0 you will not be able to make outgoing calls which there is a charge for.

5.36 Access will not send any bills to a prepay customer except a final bill if either of us ends the agreement for the service. You will not be able to see any bills online.

5.37 If you end your agreement for the service Access may refuse to enter into any other agreement with you unless:

- the minimum period for the service has already passed;
- you have paid any outstanding Access in full;
- you have kept the balance of your prepay account in credit during the 12 months immediately before your agreement ended; or
- your bank has made all payments to your prepay account during the 12 months immediately before your agreement ended.

5.38 If your prepay account stays at K0 for 21 days in a row, you will not be able to make calls for which there is a charge or receive calls. Access will also charge you an administration fee, as set out in the price terms. Access will take this fee from your prepay account. If your prepay account does not go above K0 within another seven days, Access will send you a notice to end your agreement. Access will end the agreement seven days after then unless you bring your prepay account back into credit.

6. SERVICE LEVELS

Subject to clause 18.4, Access will make the *services* available to *you* in accordance with the *service levels*.

6.1 A *service* will be deemed to be in good working order until such time as a fault is reported to Access.

6.2 Access will attend to reported faults during business hours. Access will endeavor to restore the *service* within the shortest possible time.

6.3 If Access determines that a fault has been caused by any *customer premises equipment* belonging to *you* or installed at the *customer premises* that is not covered by the warranty provisions, which is set out in the *product specific terms*, Access may charge *you* to repair the fault.

6.4 Access will not be liable if the *service* becomes unavailable as a result of:

- 6.4.1 any person making unauthorized and/or improper use of the *services* with or without *your* knowledge and/or consent;
- 6.4.2 any person causing damage to or stealing any element of *Access's network* with or without *your* knowledge and/or consent; or
- 6.4.3 the occurrence of any of the circumstances referred to in clauses 13 or 14.2.

7 CUSTOMER PREMISES EQUIPMENT

- 7.1 *Access* may, at its discretion, supply, install and/or maintain *customer premises equipment* which is purchased from *Access* where the *customer* requests this.
- 7.2 Where any item of *customer premises equipment* is not provided by *Access*, *you* must supply, install and/or maintain the *customer premises equipment* *you* use, unless *Access* agrees to install it.
- 7.3 *You* will be responsible for the operation, maintenance and repair of any *customer premises equipment*.
- 7.4 *You* must ensure that all *customer premises equipment* that is not provided by *Access* and that is installed at the *customer premises* has been approved by *Access* and the *Authority* in terms of the *Act*. *Access* may suspend the provision of any *service* to *you* where *you* use *customer premises equipment* that has not been authorised by *Access* and the *Authority*, until such time as the *customer premises equipment* has been properly approved or is removed or replaced.
- 7.5 *You* must ensure that any *customer premises equipment* installed at the *customer premises*, which has not been purchased from and/or installed by *Access*, does not interfere with or degrade the operation of *Access's* electronic communication facilities or *Access's network*.
- 7.6 Where the *customer* purchases *customer premises equipment* from *Access*, then except to the extent required by law, the manufacturer's warranty will be the only warranty that will apply to the *customer premises equipment*. All other terms, conditions, warranties and representations are excluded. *Access* will only pay for the costs of repairing the *customer premises equipment* if the *customer* returns the *customer premises equipment* to *Access* and if the damage is covered by the warranty provisions, failing which the *customer* will pay for the cost of the repairs.

8 CUSTOMER PREMISES

- 8.1 *You* must allow *Access* to access and use the *customer premises* to the extent

required by *Access* in order to install, inspect, maintain or remove any facilities or *customer premises equipment* which are necessary to provide *services* to you.

- 8.2 If you are not the owner of the *customer premises* where the *service* is required, you must obtain any permission which may be required from the owner of such premises for *Access* to install, inspect, maintain or remove any facilities or *customer premises equipment* at/from such premises. You indemnify *Access* against damages or claims resulting from the failure to obtain such permission.
- 8.3 You must ensure that there is a suitable electrical power supply as required for the proper functioning of the *services* and/or the *customer premises equipment*. The cost of providing the power supply and all charges for use of power are for your account.
- 8.4 If, in any building where *Access* has agreed to install a *service*, no conduit-pipes are available to install the facilities necessary to provide the *service*, *Access* may at its discretion:
- 8.4.1 refuse to provide the *service* in that building or in any part thereof until such conduit-pipes or other facilities have been so installed; or
 - 8.4.2 provide the *service* and charge the *customer* an *installation fee* for any additional costs incurred in installing the *service*, which in *Access*'s opinion would not have been incurred if conduit-pipes or other facilities had been installed in the building in question.
- 8.5 You must ensure that the *customer premises* are safe for *Access*, its directors, officers, employees, agents, sub-contractors, successors-in-title and affiliates and must comply with all laws and *regulations* relating to occupational health and safety on the *customer premises*.
- 8.6 If you breach any of the provisions of this clause 7, and if *Access* is unable to install or continue to provide *services* as a result, you must pay *Access*:
- 8.6.1 all *aggregate fees* for the time that the *services* are unavailable, even though the *services* were not provided during that time; and
 - 8.6.2 any wasted costs incurred by *Access*.
- 8.7 Except for emergency repairs, which require no advance notice, *Access* will notify you at least five (5) days in advance of any regularly scheduled maintenance that will require *Access* to have access to the *customer premises*.

9 USE OF THE SERVICES

- 9.1 You must comply at all times with all statutory and regulatory provisions and requirements relating to the provision and use of the *services*.

- 9.2 You may not resell capacity on any *facility* obtained from *Access* or cede or assign its rights to use a *facility*, or sublet or otherwise part control of it, without *Access*'s written consent.
- 9.3 *Access* will not be liable to *you* or any other person for interruption of *service* or for any other loss, cost or damage caused or related to improper use or maintenance of the facilities by *you*, or third parties to whom *you* have provided access to the facilities.
- 9.4 The risk of loss or damage to any *customer premises equipment*, facilities or other equipment purchased or rented from *Access* by the *customer* in connection with the *services* passes to the *customer* upon its delivery or installation and shall at all times vest exclusively with *you*. Notwithstanding the passing of the risk, the ownership of facilities or equipment rented from *Access* remains vested in *Access*.
- 9.5 You must:
- 9.5.1 comply with any instructions issued by *Access* which concern *your* use of the *services*, *customer premises equipment*, facilities or matters related thereto, and which may be required to ensure the satisfactory provision of the *services*, to protect the integrity of *Access*'s *network*, or to deal with emergencies; and
 - 9.5.2 provide *Access* with all information relating to *your* use of the *services*, *customer premises equipment*, facilities or matters related thereto that *Access* may reasonably require from time to time.
- 9.6 *Access* is required, in terms of its *licences*, to provide a directory service which will consist of *your* details. In the event that *you* do wish your details to be included in the directory service, *you* are required to notify *Access* thereof in writing.

10 NUMBERING

- 10.1 *Access* reserves the right to change any number within the existing numbering plan, code, password, user identity or name allocated by *Access* from time to time for use in connection with the *services* and *Access* is not liable for any loss or damage (including consequential damages) arising from such change however arising.
- 10.2 You do not own the phone number we give; you are therefore not allowed to transfer it to anyone else or try to do so.

11 CHARGING AND BILLING

11.1 Fees

- 11.1.1 You must pay *Access* all the *aggregate fees* shown on the account which *Access* will send to the address *you* have given in the *order form*.

11.1.2 *Access* may charge you any or all of the following *aggregate fees*:

11.1.2.1 the *installation fee*;

11.1.2.2 the *reconnection fee*;

11.1.2.3 the *CPE fee*;

11.1.2.4 the *service fee*;

11.1.2.5 the *usage fee*;

11.1.2.6 *any other fees, charges, or taxes which may be levied in accordance with any law.*

11.1.3 In addition, *Access* may charge you a fee for rendering any other miscellaneous services you have requested as agreed between the *parties* from time to time.

11.1.4 *Access* may also, at its discretion, charge you for any wasted costs associated with a technician visiting your premises at an agreed time and not being able to again access.

11.1.5 The rates at which the *aggregate fees* are levied can be obtained from *Access's* offices.

11.1.6 *Access* may change the rates at which the *aggregate fees* are levied from time to time

11.1.7 Any amount which is due and payable by you to *Access* which is not paid on or before the due date indicated on the account, will bear interest up to a maximum of base lending rate +5%, compounded monthly, calculated from the date of issue of the account until date of actual payment of the outstanding amount.

11.1.8 Unless we agree otherwise, we will bill you upfront (in advance) for any rental charges for the service. We will bill you later for any other usage charges after the event which the charges relate to. If possible, charges will appear on your next bill, but sometimes there may be a delay.

11.1.9 We will send your first bill shortly after we have provided the service to you for the first time. After that, we will send bills regularly. However, we may sometimes send you a bill at a different time, for example if the amount of money you owe us is considerably higher than expected.

11.2 Deposit

11.2.1 *Access* may request *you* to pay a *deposit* in the form and manner specified by *Access* either before *Access* will accept the *order form* you have submitted; or in order for *Access* to continue to supply any *services* to you if you have not complied with the payment terms set out in these *general terms and conditions*; or in order for *Access* to restore any *services* that have been suspended or terminated in terms of these *general terms and conditions*.

11.2.2 The *deposit* will be held by *Access* as security for payment of the *aggregate fees*. *Access* may draw upon the *deposit* at any time to recover any amounts in respect of *aggregate fees* which are due and unpaid. Where this happens, *you* will be required immediately to pay the amount deducted from the *deposit*. If *you* do not do so, *Access* may suspend the provision of *services* until *you* pay the amount deducted. *Access* shall not be deemed to have given up (waived) any of its rights or remedies by drawing upon the *deposit* to recover overdue or unpaid amounts.

11.2.3 If any *service* for which *you* have paid a *deposit* is terminated, the amount of the *deposit* will be credited to *your* account and any remaining credit balance will be refunded to *you* within 90 (ninety) days of such termination.

11.2.4 If *you* do not comply with any of the provisions of this clause 10.2, *you* will have committed a material breach of these *general terms and conditions*.

11.3 Taxes and regulatory fees

All *aggregate fees* are exclusive of applicable taxes and regulatory fees levied on *Access* by any *governmental authority*, unless otherwise stipulated by *Access*.

11.4 Disputed accounts

You are responsible for checking the account sent to *you* by *Access*. The account will be deemed to be correct unless *you* raise a dispute or other query within ten (10) days of receiving it. If *you* dispute or query *your* account *you* must submit a written claim for the disputed amount, fully documenting the basis of the claim and with sufficient evidence and documentation to support it. *You* agree that *you* will give up (waive) the right to dispute or query any charges that *you* do not dispute or query within this time frame. If *you* dispute or query any portion of *your* invoice, *you* must still pay the portion of the account which is undisputed or not subject to a query (unless the *parties* otherwise agree in writing).

12 OBLIGATIONS OF THE PARTIES

12.1 Customer's Obligations

You must:

12.1.1 use the *services* in accordance with:

12.1.1.1 these *general terms and conditions*;

12.1.1.2 the *product specific terms*; and

12.1.1.3 the *acceptable use policy*.

12.1.2 not violate the *Act* or any other applicable law, rule or regulation or any applicable manufacturer's specifications in relation to *customer premises equipment* or otherwise unreasonably interfere with the use of the *services* or *Access's network* by any other *customer* of *Access*.

12.2 **Obligations of Access**

Access must:

12.2.1 provide the *services* and perform its obligations in terms of these *general terms and conditions*;

12.2.2 not violate the *Act* or any other applicable law, rule or regulation.

13 COMMENCEMENT AND DURATION OF THE AGREEMENT

13.1 The *agreement* between you and *Access*, in respect of any particular *services* you have ordered and which *Access* has agreed to provide, will start on the *service commencement date* and will continue, subject to clause 14 below -

13.1.1 for the *term* specified in the *order form* (if the *term* is specified in the *order form*) or until the *agreement* is terminated in terms of clause 14 (whichever is the earlier);

13.1.2 indefinitely (if there is no fixed term stipulated in the *order form*).

13.2 If you choose to enter into the *agreement* in respect of particular *services* for a fixed term which is specified in the *order form*, as provided for in clause 12.1.1, and if *Access* permits you to continue using the *services* after the end of that term, then the *agreement* in respect of each of the *services* will be automatically renewed for successive 1 (one) year periods (the "renewal term"). You may terminate the *agreement* with regard to particular *services* at the end of the *term* or any renewal term by providing written notice of such termination to *Access* at least 60 (sixty) days prior to the expiry of the *term* or renewal term.

14 SUSPENSION

14.1 *Access* may suspend the *services* provided to you and, at its discretion, disconnect your *customer premises equipment* from *Access's network* in any of the following circumstances:

14.1.1 for modifications to, or planned maintenance of *Access's network*. *Access* will use its reasonable endeavours to inform *you* and other customers of any planned interruption to *services*, and to restore the *services* as soon as is practicable;

14.1.2 if *you* fail to pay any *aggregate fees* to *Access* by the date on which the amount becomes due and payable, in which case *Access* may only suspend the particular *service* to which the non-payment relates, except if *you* have failed to make payment by the due date on three (3) occasions in any period of three (3) consecutive months and/or in the case of fraud, in which case *Access* may suspend any or all of the other *services* being provided to *you*, and not only the *service* for which payment has not been made; or

14.1.3 upon the occurrence of any of the circumstances in clause 6.4 and/or 10.2.4.

14.2 If *you* have not paid any *aggregate fees*, *Access* will give *you* at least 15 (fifteen) days written notice to pay the outstanding amount/s before suspending the *service* for which the *aggregate fees* have not been paid.

14.3 Even where a *service* has been suspended, *you* must still pay for and will remain liable for all charges and fees due under these *general terms and conditions* throughout the period during which the *service* is suspended.

15 TERMINATION

15.1 Termination by the customer

You may terminate the *agreement* in respect of a particular *service* upon 20 (twenty) business days' written notice to *Access* if *Access* breaches a material provision of these *general terms and conditions* and, if such breach is capable of remedy, *Access* fails to remedy the breach within 30 (thirty) business days after receipt of written notice from *you* asking *Access* to do so.

15.2 Termination by Access

15.2.1 Subject to clauses 14.2.2 and 14.2.3, *Access* may terminate the *agreement* in respect of a particular *service* or *services* upon 20 (twenty) business days written notice (without any liability to *you*) if:

15.2.1.1 *you* breach any provision of these *general terms and conditions*;
or

15.2.1.2 *you* have contravened:

15.2.1.2.1 any notices or rules communicated by *Access* to *you* from time to time relating to the use of, access to or security measures relating to the *services*;

15.2.1.2.2 the *Act*, any regulation or any other law, rule, regulation or policy of any *governmental authority* relating to the *services* or to the *your* use thereof;

15.2.1.2.3 *Access* determines that *you* have engaged in conduct that has caused or may cause damage to *Access's* electronic communication facilities, *Access's network* or any third parties;

15.2.1.2.4 any bankruptcy, insolvency, administration, liquidation, receivership or winding-up proceeding are commenced against the *you* or any of *your* affiliates; or

15.2.1.3 *Access* receives any direction, notification or instruction from any *governmental authority* to suspend or terminate the provision of the *services* to *you* or generally (where the reason for this is not due to the fault or negligence of *Access*).

15.2.2 In the circumstances specified in clauses 14.2.1.1 and 14.2.1.2 above only, *Access* will give *you* at least 20 (twenty) business days' advance written notice to remedy the breach before terminating the *agreement* in respect of any particular *service* in terms of this clause 14.2. This will not apply if *Access* determines that the breach is interfering with, or has the potential to interfere with the operation or maintenance of *Access's network* or *Access's* electronic communication facilities or with *Access's* other customers' use thereof, in which case *Access* may terminate the *agreement* in respect of any particular *service* immediately without further notice to *you*.

15.2.3 If the reason for the termination relates to non-payment in terms of clause 14.2.1.1, then *Access* must give *you* at least 20 (twenty) business days' advance written notice to make payment before terminating the *agreement* in respect of a particular *service*. *Access* will only terminate the particular *service* to which the non-payment relates, where applicable, except that if *you* have failed to make payment by the due date on three (3) occasions in any period of three (3) consecutive months and/or except in the case of fraud, then *Access* may terminate the *agreement* in relation to any or all of the other *services* being provided to the *customer*, and not only the *service* to which the non-payment relates.

16 CONSEQUENCES OF TERMINATION

16.1 If *you* have entered into an agreement for a particular *service* for a fixed term, and *you* cancel the *agreement* prior to the expiry of the fixed term or *Access* terminates the

agreement in respect of a particular *service* prior to the expiry of the term in terms of these *general terms and conditions* you will be required to pay any or all of the following amounts to *Access*, as applicable:

16.1.1 the *aggregate fees* payable for any *service* provided to *you* up to the date of termination of the *agreement* in respect of that *service*;

16.1.2 any fees or charges relating to any *customer premises equipment* supplied, installed or maintained by *Access* that are due and payable as at the date of termination of the *service*; and

16.1.3 any additional expenses not specified in this clause which have been incurred by *Access* in connection with the provision of the *services* to *you* up to and including the date with effect from which the *services* were suspended or the *agreement* in respect of the *services* was terminated.

16.2 If *you* are a *pre-paid customer* and the *agreement* in respect of any particular *service* is terminated for any reason in terms of these *general terms and conditions*, *you* will forfeit any credits on *your* pre-paid account in respect of the *agreement* that is terminated.

16.3 If *you* are a *post-paid customer* and the *agreement* in respect of any particular *service* is terminated for any reason in terms of these *general terms and conditions*, *you* are required to pay the balance outstanding for CPE in respect of the *agreement* that is terminated.

16.4 After termination of the *agreement* in relation to a particular *service* for whatever reason:

16.4.1 *Access* may enter the *customer premises* to remove facilities of *Access*; and

16.4.2 *you* must pay on demand all charges and/or costs outstanding at the date of termination, or accrued thereafter as a result of the termination.

17 LIABILITY AND INDEMNITY

17.1 Liability

17.1.1 In the course of performing its obligations under these *general terms and conditions*, *Access* will take all reasonable precautions to ensure the safety of the *customer*, and the *customer's* property against damage as a result of the provision of the *services*, and/or installation or maintenance of facilities and/or *customer premises equipment*.

17.1.2 Any work in connection with the provision, installation or maintenance of any *facility* or *customer premises equipment* will be carried out by *Access* in such a way as to avoid, as far as reasonably possible, loss or

inconvenience to the *customer* or the public, and, on completion of such work, any property of the *customer* or land which may have been disturbed shall be restored to the same condition as that in which it was before the provision of the *services* or installation or maintenance of facilities or *customer premises equipment*.

17.1.3 *Access* will not incur any liability for any loss or damage to the property of the *customer* or injury to the *customer*, arising out of the provision of the *services* or installation or maintenance of facilities or *customer premises equipment*, whether direct or indirect, consequential or contingent and in particular shall not be liable for any financial loss or loss of profits, income, contracts, business or goodwill.

17.1.4 *Access* shall not be liable for any costs arising out of the use of the *services* or for any cost incurred by the *customer* or its clients as a result of a modification to *Access's network*, a *service* or any element thereof, or for an interruption to the *service*, for any reason whatsoever, nor shall *Access* be liable for any costs or damages arising out of the termination of the *agreement*.

17.1.5 *Access* assumes no responsibility for the integrity, correctness, retention or *content* of information transported via *Access's network* and will not be liable.

17.1.6 *Access* is not liable for any damages or loss suffered as a result of any entry, incorrect entry or omission of an entry in any directory or directory enquiry facility. *Access* will, however, use its best endeavours to ensure that a corrected entry is made in the directory or directory enquiry facility, as soon as reasonably possible after receipt of a written request from the *customer*, at no charge to the *customer* at the earliest available opportunity.

17.1.7 *Access* reserves the right to modify *Access's network* at any time and will not bear any liability to *you*, for any claim for damages, or the cost of changes to, or replacement of any *customer premises equipment* or any portion thereof, that may be necessitated by such modification to *Access's network*. *Access* will, however, use its best endeavours to notify the *customer* of any modification to *Access's network* which could affect the *customer*.

17.2 Indemnity

You agree to indemnify and hold *Access* harmless against any losses, damages, expenses and/or costs that *you* may incur as a result of claims and/or actions by third parties (including dependants, clients, employees, agents and for any loss sustained by such third parties) arising from the provision of the *services* and the installation and maintenance of any *facility* and/or *customer premises equipment* in

terms of these *General Terms And Conditions For Provision Of Services and The Acceptable Use Policy*.

18 CUSTOMER CARE AND DISPUTE RESOLUTION

18.1 Customer centre and complaints desk

18.1.1 *You* may direct any queries and/or problems that *you* may have in connection with the *services* or any item of *customer premises equipment* that has been supplied, installed or maintained by *Access* and/or the *products* or report any faults to *Access* by contacting the Access contact centre, 24 hours a day, seven days a week, by:

18.1.1.1 dialing 0212 000 000 or 0212 200 200 or 111 ; or

18.1.1.2 sending an e-mail to switch@access.mw

18.1.2 The *Access* complaints desk has (14) business days to resolve the case depending on the nature of the case.

18.1.3 If *Access* does not resolve a complaint to *your* satisfaction within the period referred to in clause 17.1.2, then *you* may refer a complaint to the *Authority*, or, *you* may refer the dispute to arbitration in terms of clause 17.2.

18.2 Arbitration

18.2.1 If *you* have referred a complaint to *Access* and are not satisfied with the manner in which the complaint has been resolved, *then either party may declare a dispute* by delivering the details of the dispute to the other party, and may request that the dispute be referred by the *parties*, with or without legal representation, to arbitration by a single arbitrator, to be appointed by both *parties* and failing such agreement by an arbitrator to be appointed by the president of the Malawi Law Society.

18.2.2 Every reasonable effort will be made to ensure that the arbitrator has the necessary skills to enable him or her to adjudicate the dispute in a satisfactory manner.

18.2.3 The arbitration will be held in accordance with procedures, and at a date and time to be determined by the arbitrator. The arbitration must be conducted in an informal and summary manner and shall be held as quickly as possible with a view to this being completed within 20 (twenty) days of the appointment of the arbitrator.

18.2.4 The award of the arbitrator will be final and binding on the *parties*.

18.2.5 The provisions contained in condition 17.1.1 will constitute the irrevocable consent of the *parties* to the arbitration proceedings in terms hereof, and neither of the *parties* shall be entitled to withdraw therefrom or to claim at any such arbitration proceedings that they are not bound by the arbitration provisions.

19 MISCELLANEOUS

19.1 Privacy

19.1.1 *Access* will store any personal information relating to its customers in a secure place.

19.1.2 *Access* may need to disclose certain of *your* personal information to *Access's* service providers, including credit card verification providers and credit bureaus (in order to perform credit checks), banks (to process transactions), consumer research companies (that assist *Access* to understand consumer interests by conducting surveys), and collection agencies (if the *customer* has not paid any account on time). *Access* may also be required to disclose *your* personal information by law, including to law enforcement agencies (as provided for in any legislation that is applicable to *Access*). Where this happens, *Access* will only disclose the personal information to the extent required by any third party receiving the personal information, unless *you* give *Access* *your* consent to disclose it for any other reason.

19.1.3 *You* must notify *Access* in writing immediately if there is any change to *your* personal information, or to correct any errors in *your* account or *customer* information.

19.1.4 We may monitor and record calls relating to customer services and telemarketing. We do this for training purposes and to improve the quality of our customer services. We also record all calls to the 111 or 997 emergency services.

19.2 Content on the Internet and on Access's network

19.2.1 If you have an internet access service from us, you accept that you are using the internet at your own risk. You are responsible for making sure any equipment you use to access the service is protected against viruses.

19.2.2 If the service gives you content or software licensed by others who ask you to accept their terms of use, you must keep to these terms.

19.2.3 You are responsible for properly using any user IDs, personal identification numbers (PINs) and passwords needed for the service, if any, and must take all necessary steps to make sure that you keep these confidential and secure,

use them properly and do not make these available to unauthorized people.

19.2.4 *Access* provides only access to the Internet. *Access* does not operate or control *content* on the Internet. *You* will have no claim against *Access* relating to any *content* on the Internet or relating to any information, *product, services* or software ordered through or provided over the Internet.

19.2.5 *Access* will not be liable to *you* for any *content* on *Access's network* in any circumstances.

19.2.6 *Access* is not responsible for monitoring *content* on *Access's network* or on the Internet. However, *Access* may take measures to ensure security and continuity of the *services* on *Access's network* within *Access's* discretion, including the identification and blocking or filtering of Internet traffic.

19.2.7 *You* are responsible for maintaining the security of *your* internal network from unauthorized access through the Internet. *Access* will not be liable for unauthorized access to *your* network or other breaches of the *customer's* network security.

19.3 **Third party networks**

Access does not own or control other third party networks outside of *Access's network*. *Access* is not responsible for any filtering or access restrictions imposed by such networks or for the performance (or non-performance) within such networks or within interconnection points between *Access's network* and other third party networks.

19.4 **Force majeure events**

Except for the *customer's* payment obligations under the *agreement*, neither party will be liable in any way to the other party for any performance that is prevented or hindered due to a *force majeure event*. If *Access* is unable to provide the *services* for a period of more than thirty (30) consecutive days on account of a *force majeure event*, then either party may cancel the affected *agreement* upon written notice to the other party, and both *parties* shall be released from any further future liability under that *agreement*.

19.5 **Governing law**

The *agreement* will be governed by Malawi law. Other than in the circumstances specified in clause 16, the *parties* consent to the jurisdiction of the magistrate's court in respect of any dispute and/or claim arising between them, even if the claim or amount in dispute or the value of the matter in dispute exceeds the jurisdiction of such court.

19.6 **Severability**

Should any provision of these *general terms and conditions* be held by a court to be invalid, void or unenforceable, the offending provision will be struck out of these *general terms and conditions* but the remainder of these *general terms and conditions* shall remain legal, valid and binding.

19.7 **Waiver**

The failure by either party to exercise or enforce any right conferred by these *general terms and conditions* will not be deemed to be a waiver of any such right not to operate so as to bar the exercise or enforcement of any such or other right on any later occasion.

19.8 **Cession and assignment**

You may not cede or assign *your* rights and obligations under these *general terms and conditions* to a third party without first obtaining *Access's* written consent. *Access* may allow its rights or obligations under these *general terms and conditions* to be exercised or performed in whole or in part by a third party at any time.

19.9 **Notices**

Any notice or communication required or permitted to be given in terms of these *general terms and conditions* may be delivered by hand, sent by post by or facsimile (with confirmation of delivery) at the addresses given in the *order form* or at such other address as may hereafter be furnished. Such notices or communications will be deemed to have been received at the time of delivery (in the case of hand deliveries or transmissions by facsimile) or within two (2) weeks after the date of posting (in the case of postal deliveries). Chapter III of the *Electronic Communications and Transactions Act* will not apply to these *general terms and conditions*

19.10 **Relationship of parties**

These *general terms and conditions* will not establish any partnership, joint venture, employment relationship, franchise, agency or any like relationship between the *parties*.

19.11 **Language**

Unless otherwise reasonably requested by the *customer*, these *general terms and conditions* and all documents, notices, correspondence and legal proceedings arising from or relating to it will be drawn up in English.

19.12 **Entire agreement**

20The *agreement* constitutes the sole agreement of the *parties* relating to the subject matter hereof. All prior written or oral agreements, understandings, communications or practices between the *parties* are hereby superseded insofar as they relate to the subject matter hereof.

20.1 **Modifications to the agreement**

20.1.1 *Access* can amend or replace these *general terms and conditions* and/or any *product specific terms* as it may deem necessary in its sole and absolute discretion. All and any such modifications to the *general terms and conditions* will be promptly posted on *Access's network*. In addition,

Access will use reasonable endeavours to notify customers of any such modifications that affect them by placing a notice in a daily newspaper, by sending an electronic message to the *customer* and/or by any other means designated by *Access* within the period permissible at law.

20.1.2 *You* may terminate the *agreement* if *you* do not accept any amendments or changes made by *Access* to the *general terms and conditions*, within thirty (30) days of the amendment or change being posted on *Access's network*. This does not apply in the case of any changes to the rates charged by *Access* in respect of any *aggregate fees*.

20.1.3 Any amendments to the *order form/s* must be agreed to in writing and signed by both the *parties*.

20.2 **Conflict of agreements**

- In the event of any conflict between the documents comprising the *agreement*, precedence shall be given to the documents in the following order:
 1. the *order form*;
 2. the *product specific terms*;
 3. these *general terms and conditions*;
 4. *acceptable use policy*.

APPENDIX II: ACCESS ACCEPTABLE USER POLICY

1. Purpose

The purpose of this Acceptable Use Policy (AUP) is to comply with the relevant laws of the Republic of Malawi (“the Republic”); to specify to customers and users of our service/website what activities and online behaviour are considered an unacceptable use of the service/website; to protect the integrity of Access’s network and to specify the consequences that may flow from undertaking such prohibited activities

2. General Notice

2.1. By accessing this website, or by contracting with Access for service, the User agrees, without limitation or qualification, to be bound by this policy and the terms and conditions it contains, as well as any other additional terms, conditions, rules or policies which are displayed to you in connection with this service/website;

2.2. Access has the right to monitor the use of its network and resources and through this policy reserves the right to bar or restrict access to its network or resources by any person or entity that may violate, contravene or abuse this policy;

2.3. This AUP is set to prohibit the User from utilizing the network in an improper or abusive manner and to provide enforcement and penalty mechanisms, where there are violations.

2.4. This document contains a number of legal obligations which you are presumed to be familiar with. Access encourages you to read this document thoroughly and direct any queries to access@inet.mw or Tel: 0212 000 000 or 111;

2.5. This AUP forms part of Access’s Standard Terms and Conditions of Service.

3. Code of Conduct

Access confirms that it adheres to a code of conduct.

4. Conditions of Usage

4.1. Access respects the rights of our customers and users of our services to freedom of speech and expression; access to information; privacy; human dignity; religion, belief and opinion in accordance with the constitution.

4.2. Access undertakes not to interfere with any of those rights unless required to do so by law; unless those rights are exercised for unlawful purposes; or unless the exercise of those rights threatens to

cause harm to another person or affect the integrity of Access's network;

4.3. The User acknowledges that Access is unable to exercise control over the data passing over Access's infrastructure and related resources, including but not limited to any websites, electronic mail transmissions, news groups or other material created or accessible over its infrastructure. As such, Access is not responsible for data transmitted over its infrastructure;

4.4. Access will take all necessary action against any contravention in order to protect the integrity of the network or any of Access's resources.

4.5. All users are notified that Access is legally obliged to assist any Law Enforcement Agency to provide access to and assist in the investigation and prosecution of an offence, under a legal directive

4.6. As Access's network and related resources may be used to link into other networks anywhere in the world, the User agrees to conform to and is bound by the AUP's of such other networks;

4.7. Where any user resides outside of Malawi, permanently or temporarily, such user will be subject to the laws of the country in which s/he is currently resident and which apply. On presentation of a legal order to do so, or under obligation through an order for mutual foreign legal assistance, Access will assist foreign law enforcement agencies (LEA) in the investigation and prosecution of a crime committed using Access's network and related resources, including the provisioning of all personal identifiable data.

5. Unlawful Use of the Network and Related Resources

5.1. Access's network, services or resources may only be used for lawful purposes and activities. Access prohibits the use of its network, services or resources including the transmission, storage and distribution of any material or content using Access's network that violates any law or regulation of Malawi. This includes, but is not limited to:

5.1.1. The creation and transmission of offensive, obscene or indecent images or documents;

5.1.2. The violation of domestic or international laws that prohibit any of the acts stated above including child pornography, bestiality, pornography that sexualizes rape and/or violence, hate speech and discrimination based on race, gender or religion;

5.1.3. Any activity designed to defame, abuse, stalk, harass or physically threaten any individual in Malawi or beyond its borders; including any attempt to link to, post, transmit or otherwise distribute any inappropriate or defamatory material

5.1.4. Any violation of intellectual property laws, copyright, trademark and/or trade secrets including the use of torrent clients.

5.1.5. Any unlawful use of any multimedia content accessed through the search facility

provided by Access's network, or otherwise available through access to Access's network, whether for commercial or non-commercial purposes;

- 5.1.6. Any violation of an individual's right to privacy, including any effort to collect personal data of third parties without their consent including but not limited to phishing;
- 5.1.7. Any fraudulent activities whatsoever, including illegal financial schemes and practices as well as any impersonation of any other person without their consent; or any attempt to enter into a transaction with Access on behalf of another subscriber without their consent;
- 5.1.8. A violation of exchange control laws of Malawi;
- 5.1.9. Any activity that results in the sale, transmission or distribution of illegal or pirated software;
- 5.1.10. Failing to respond to a request by a recipient of unsolicited mail to be removed from any mailing or direct marketing list and continuing to send unsolicited mail following such a request for removal.

6. Network Security

- 6.1. Any activity whatsoever, whether intended or unintended, that threatens the functioning, security and/or integrity of Access's network or related resources is unacceptable and may result in criminal liability.
- 6.2. Access will investigate incidents involving such violations and will co-operate with law enforcement officials/agencies if a criminal violation is suspected. Access reserves the right to take any steps whatsoever to prevent activities of this nature.
- 6.3. In the interests of all users and to ensure the integrity and safety of its network, Access reserves the right to prevent and restrict improper or excessive usage of its network or related resources. This includes, but is not limited to:
 - 6.3.1. unlawful or unauthorized access to the network that may in any way compromise the security of the network, including unauthorised access to or use of data, systems or networks;
 - 6.3.2. circumventing any authentication or security measure of any host, device, network or account ("hacking or cracking");
 - 6.3.3. forging any TCP-IP packet header ("spoofing") or any part of the header information in an email or newsgroup posting;
 - 6.3.4. Any unsolicited mass mailing activity including direct marketing; spam and chain letters for commercial or other purposes, without the express consent of the recipients of those mails;

- 6.3.5. Any interference with service to any user, device, host or network including, without limitation, mail bombing, flooding, torrenting, deliberate attempts to overload a system and broadcast attacks.
- 6.3.6. Any attempt to access use through another user without the consent of the said user or attempt to gain access to another person's computer, software or data without the knowledge and express consent of such person;
- 6.3.7. any activity which threatens to disrupt the service offered by Access through "denial of service attacks"; flooding of a network, torrent usage, or overloading a service or any unauthorized probes ("scanning" or "nuking") of other's networks or improper seizing and abuse of operator privileges ("takeovers");
- 6.3.8. unlawfully monitoring any information, traffic or data of any user, host, account without the express, written authorization of Access;
- 6.3.9. Any activity which in any way threatens the security of the network by knowingly posting, transmitting, linking to or otherwise distributing any information or software which contains a virus; Trojan horse; worm, lock, mail bomb, cancelbot or other harmful, destructive or disruptive component.
- 6.4. All references to networks, related resources and systems under this section includes the Internet (and all those systems and/or networks to which the User is granted access through Access) and includes but is not limited to the network and infrastructure of Access itself.
- 6.5. Online activity will be subject to the available bandwidth, data storage and other limitations of the service provided, which Access may, from time to time, revise at its own discretion and without prior notice to the customer.

7. Access to Third Party Content and the Public Domain

- 7.1. The User acknowledges that Access is unable to control the content of the information passing over the Internet and its applications, including e-mail; chat rooms; news groups or other similar fora or the User's ability to access such content.
- 7.2. This includes, but is not limited to, third party content contained on or accessible through the Access's network websites and web pages or sites displayed as search results or contained within a directory of links on the Access network.
- 7.3. The User acknowledges that Access's network is merely a conduit or means of access and

transmission. As such, Access cannot be held liable or responsible, directly or indirectly, for any of the abovementioned content, in any way for any loss or damage of any kind incurred as a result of, or in connection with the User's use of or reliance on, any such content.

7.4. The onus is on the User to review and evaluate the content of any information, including that of chat rooms and third party websites, accessible through the Access network or related resources

7.5. All risk associated with the access to, use of, or reliance on, such content detailed above, rests with the User.

7.6. Access to public Internet spaces, such as bulletin boards, Usenet groups, chat rooms and moderated forums is entirely voluntary and at your own risk.

7.7. Access employees do not moderate any of these services, or your communications, transmissions or use of these services. Access does not undertake any responsibility for any content contained therein, or for any breaches of your right to privacy that you may experience as a result of accessing third party content or the public internet.

8. Unsolicited, Spam and Junk Mail

8.1.1. Spam and unsolicited bulk mail poses a threat to network security. Access reserves its rights to take any steps necessary against the User in contravention of the relevant provisions of the Act and this AUP. The following acts are explicitly prohibited:

8.1.2. Sending unsolicited bulk mail messages ("junk mail" or "spam") of any kind (commercial, marketing, advertising, political, religious, announcements, etc) to any person or entity that has not consented to the receipt of such mail;

8.1.3. Operating and maintaining any form or type of mailing list without the express consent/permission of all recipients listed;

8.1.4. Failing to remove from the list invalid or undeliverable addresses or the names and addresses of recipients that no longer wish to receive such communication; Using Access's service to collect responses from unsolicited e-mail sent from accounts on other Internet hosts or e-mail services, that violate this AUP or the AUP of any other Internet service provider;

8.1.5. Including Access's name in the header or by listing an IP address that belongs to Access's in any unsolicited email whether sent through Access's network or not;

8.1.6. Failure to secure a customer's mail server against public relay as a protection to themselves and the broader Internet community.

8.1.6.1. For the avoidance of doubt, public relay occurs when a mail server is accessed by a

third party from another domain and utilised to deliver mails, without the authority or consent of the owner of the mail-server.

8.1.6.2. Access reserves the right to examine Users' mail servers to confirm that no mails are being sent from the mail server through public relay and the results of such checks can be made available to the User.

8.1.6.3. Access also reserves the right to examine the mail servers of any users using Access's mail servers for "smarthosting" (when the User relays its mail via a Access mail server to a mail server of its own or vice-versa) or similar services at any time to ensure that the servers are properly secured against public relay. All relay checks will be done in strict accordance with Access's privacy policy.

8.1.7. Where relevant, Access reserves the right to examine incoming or outgoing mail to the extent necessary to determine if it is classified as spam.

9. Webmail

9.1. Webmail and/or other web based email services made available by Access are provided on an "as is" basis without representations, warranties or conditions of any kind, and the customer acknowledges and agrees that Access shall have no responsibility for, or liability in respect of, any aspect of the Webmail services, including without limitation for any lost or damaged data or any acts or omissions of Access. As webmail storage space is limited, some Webmail messages may not be processed due to space constraints or message limitations.

9.2. Webmail is provided to individuals and for personal use only. Any unauthorised commercial use of the Webmail service, or resale of the Webmail service is expressly prohibited.

10. Usenet Newsgroups

10.1 The customer is responsible for determining, familiarizing himself or herself with the written policies of a given newsgroup before posting to it and must comply with such written policies at all times which can be obtained from other users of the newsgroup upon request, or from the group's administrators/moderators.

10.1. The following are prohibited practices with regard to Usenet newsgroups and Access reserves the right to delete and/or cancel posts which violate the following conditions:

10.1.1. Excessive cross-posting of the same article to multiple newsgroups;

10.1.2. Posting of irrelevant or off-topic material to newsgroups ("USENET spam");

10.1.3. Posting binaries to a non-binary newsgroup;

10.1.4. Posting adverts, solicitations, or any other commercial messages unless the guidelines of the newsgroup in question explicitly permits them.

11. Privacy & Confidentiality

Access respects the privacy and confidentiality of customers and users of our service in accordance with the Constitution of Malawi and related Legislation. It is the responsibility of the User to review and be familiar with Access's [privacy policy](#) contained on our website.

12. Responsibilities of the User

- 12.1. The User is responsible for any misuse of Access's services that occurs through the customer's account and the User should ensure that no third party is allowed unauthorized use of his/her account;
- 12.2. Access cannot be held liable where Users access or reply to any form of unsolicited mail or spam. Engaging in such activity may result in the user being listed or added to the database of "bulk mailing list", resulting further in "spam";
- 12.3. Access cannot be held responsible for any consequences whatsoever arising of the User providing unauthorized access to his/her account by a minor, including any misuse by the minor or the consequences of any transactions entered into by the minor;
- 12.4. The user is solely responsible for any business transactions or dealings that the user may engage in using the Access network or related resources and services to gain access to third parties, over the Internet. This includes any vendors or advertisers found on, or through Access's network. Access shall not be reliable for any charges or fees arising from such transactions where the User has made purchases by using the service.
- 12.5. The User is obliged to ensure compliance with all custom and exchange control legislation applicable to all electronic transactions.

13. Notice and Take-Down Procedures

- 13.1. Access confirms that it has a procedure in place for the notice and take-down of illegal material.

14. Complaints and Procedure

- 14.1. It is the User's responsibility to be familiar with the procedure set out below.
- 14.2. Any violation or contravention of this policy may at any time be reported to access@inet.mw
- 14.3. In order to enable Access to fully investigate the nature and cause of the complaint, the complainant is required to provide full and detailed information of the alleged misuse, abuse or

contravention of this policy, in writing, including information pertaining to:

- 14.3.1. the origin of abuse or offence, including the website, full mail headers, relevant logfile extracts etc;
- 14.3.2. any contact details for the source of the complaint;
- 14.3.3. a brief explanation why the incident is considered to be an offence.
- 14.4. Access discourages anonymous complaints and urges complainants to supply their name and contact details. Such information will not be released, except where required by law enforcement. Anonymous complaints will however be acted upon as long as sufficient detail as outlined above is supplied.
- 14.5. In the event that a User is found to be non-compliant or the Users actions amount to a contravention of this policy, depending on the nature and seriousness of the contravention, any of the provisions stipulated below under clause 10.

15. Contravention and Enforcement

15.1. In the event of a violation of the AUP, Access shall be entitled to invoke any one of the following measures dependant on the severity of the contravention:

- 15.1.1. In the case of individual users, issue written or verbal warnings; suspend the User's account or the User's entire network and/or revoke or cancel the User's network access privileges completely;
- 15.1.2. In the case of a network, inform the user's network administrator of the incident and

require the network administrator or network owner to deal with the incident according to this AUP;
- 15.1.3. Charge the offending parties for administrative costs as well as for machine and human time lost due to the incident;
- 15.1.4. In severe cases suspend access of the user's entire network until abuse can be prevented by appropriate means;
- 15.1.5. Assist other networks or website administrators in investigating credible suspicions of any activity listed in this AUP;
- 15.1.6. Take such action as may be necessary to protect the integrity of the system, including, but not being limited to, system monitoring, as well as protocol management and shutting down of ports affected by viruses, worms or other malicious code.
- 15.1.7. Implement appropriate technical mechanisms in order to prevent usage patterns that violate this AUP.

- 15.1.8. Share information concerning the incident with other Internet access providers, or publish the information, and/or make available the users' details to law enforcement agencies;
- 15.1.9. Institute civil or criminal proceedings.

16. Interception

The User acknowledges that Access is lawfully required to intercept communications in accordance with the provisions of the Malawi Communications Act 1998 (“the Act”). Any interception of communications shall be strictly in accordance with the requirements of the Act, as and when required under the Act.

17. Reservation and Non-Waiver of Rights

- 17.1. Access reserves the right to add, delete or modify this policy at any time, without notification to the User, effective upon posting this notification on Access’s website;
- 17.2. Access reserves the right to take action against any individuals, entity or organizations that violate any of the prohibited activities set out herein, or engage in any illegal or unlawful activity while accessing Access’s network and services, to the fullest extent of the law.
- 17.3. Access further reserves the right to act against any other abuse that is not specifically stated in this policy, but which amounts to an illegal act being committed over the Access network.
- 17.4. In order to protect the integrity and safety of its network, Access reserves the right to suspend, revoke or terminate a user’s access to the network, where such use presents a threat or may constitute damage to its property.
- 17.5. Access reserves the right to suspend, revoke or cancel Access’s services to the customer/user if the safety and integrity of Access’s resources are placed at risk in continuing to provide service to the subscriber/user.
- 17.6. Access reserves the right to remove any information or materials in whole or in part, that, in Access’s sole discretion, is deemed to be offensive, indecent, or otherwise objectionable.
- 17.7. Access does not undertake to guarantee the security of any data passing through its networks. Although Access will provide a "best effort" service, including regular updates on computer viruses and other threats to security of data, it is the responsibility of the communicating parties to safeguard their data, and Access cannot be held liable for any loss or damage arising as result of the failure to do so.
- 17.8. Access does not waive its right to enforcement of this AUP at any time, or prejudice its right to take subsequent action, should Access fail, neglect or elect not to enforce a breach of the AUP at any time.