



AFRIMAX

SALE TERMS & CONDITIONS



DEFINITIONS

In these Terms, unless the context otherwise requires, the following definitions shall apply:

"Access Devices" means all and any devices prescribed by Afrimax as the medium through which the Services are provided to the end customer, including indoor customer premises equipment, CPE (or Wireless Access Point, WAP, or Router) and outdoor CPE (or Antenna).

"Advertisement(s)" means any illustrative, text, image, video or other marketing or promotional material sent or made available to you about Afrimax products and services and/or third-party products and/or services.

"Afrimax", "we" or "us" means Afrimax Limited and its successors and or permitted assigns.

"CPE Right-to-Use" means the right-to-use Access Devices or CPE supplied and installed by Afrimax, for delivery of the Services for the duration in which you hold a valid, and therefore prepaid, subscription to the Services.

"CPE Right to Use Charge" means the charge made by Afrimax for the right to use CPE supplied and installed by Afrimax, for delivery of the Services.

"Minimum Subscription Prepayment (MSP)" means the amount to be prepaid by a customer, together with the CPE Right to Use Charge, at the time of their initial subscription. The MSP is non-refundable and will be held as advance payment for subscription to your chosen Data Plan and will be disbursed by Afrimax in this connection.

"Network" means the telecommunications network operated by us and covering those geographic areas as stipulated by us from time to time.

"Services" means the provision of Internet data services by us.

"Data Plan(s)" means the Unlimited Data Plan or Fixed Data Bundle chosen by you and indicated on the Sales Order Form.

"Sales Order Form" means the Electronic Sales Order (or ESO) or pro Forma Invoice (PFI) to which these Terms are attached.

"Subscription Charges" means the charges payable by you for use of the services, as set forth on the Sales Order Form.

"Terms" means these terms and conditions, as amended from time to time in accordance with the provisions set forth herein.

"You" means the customer identified on the Afrimax electronic Sales Order Form.

1. Commencement and Implementation

- a. By signing the Sales Order Form or by submitting your electronic Sales Order (via www.afrimax.net) and the Installation Acceptance Report, you agree that these Terms constitute a binding and legally enforceable agreement between you and Afrimax. These Terms are attached to, and form an intrinsic part of, the Sales Order Form and the Installation Acceptance Report.
- b. These Terms shall take effect immediately upon you signing the Sales Order Form or upon you accepting these Terms when submit your electronic Sales Order (via www.afrimax.net).

2. Skill and Care

- a. Afrimax shall use its best endeavours to supply you with the services according to the standard of skill and care expected of a competent Internet Service Provider in Malawi.
- b. Our services are only available in our coverage area. Details of our coverage area are available on request.
- c. You acknowledge that due to the nature of the relevant technology, it is impossible to provide fault-free services as these will be affected by factors outside the control of Afrimax. We will use our best efforts to promptly resolve any service outage or query from you. We shall not be responsible for any failure due to force majeure.
- d. If you encounter any problem with the services you will contact us through the relevant contact telephone numbers and/or email to: hello@afrimax.net.

3. The Services

- a. We will connect your services to the network as soon as it is reasonably practicable after your submission of the Sales Order Form and full settlement of the required prepayments. We will use all reasonable efforts to maintain the service while you comply with these Terms.
- b. The actual speed you experience depends on a number of factors, including your equipment, the quality and location of your antennae (including how far your connection is from the serving base station), the applications you are using, the capacity and speed of our systems, the systems of our suppliers, and the internet generally. For these reasons, you should not expect your actual speed to be at or near the theoretical maximum.
- c. We may change or withdraw the services or part thereof at any time, with or without notice and without any liability to you. Where possible, we will give reasonable notice of these changes.
- d. Please note that the confidentiality of communications made via the network is not guaranteed. You are advised that, for reasons beyond our control, there is a risk that your communications may be unlawfully intercepted or accessed by persons, entities or organizations other than the intended recipient. We will not accept liability for any loss, injury or damage whatsoever, whether direct or consequential or otherwise, arising out of any such compromise of confidentiality.
- e. Access to the services may be controlled from time to time by limiting the volume or speed or duration of downloads to facilitate fair access to the services by all customers.
- f. We may send you advertisements in respect of services or products of other third parties from time to time and, where possible, we will give you an opportunity to opt out of such advertisements.
- g. For your own protection, you must keep confidential all personal identification or security numbers used with the services.
- h. Our liability for any allegedly defective service provided under this Agreement shall not exceed the monthly Service Fee or portion thereof paid by you to us.
- i. The Service provided to the you shall be considered to have been accepted unless shall provide written notice detailing the portion or portions of the Service alleged to be defective or inadequate to Provider no later than two (2) months after the day the allegedly defective or inadequate services were furnished by Provider.

4. No liability for content

- a. We accept no responsibility for any content or services you may view through the use of our services to access the Internet.
- b. You acknowledge that Afrimax exercises no control over the form, content or nature of data, images, information, material or anything of whatever nature passing through the connection (hereafter collectively referred to as "Data") between the customer and Afrimax or obtained from any data base maintained by Afrimax or others.
- c. You assume the entire risk that may arise from the use or transmission from, through or to itself of any data, which may include sexually explicit material or material offensive to some persons.
- d. Afrimax shall have no duty or obligation to advise you of any risk that may arise from the availability, use, possession or transmission of data or provide any information relating thereto, even if at any time we should attempt to do so.
- e. Should Afrimax become aware of data which, it, in its sole discretion, deems to be in violation of this Agreement, unacceptable or undesirable, it may remove or refuse to post the Data.

5. Services Use

- a. The services are not for general commercial use, re-sale, rent or lease and any such use thereof is prohibited absolutely.
- b. You must comply with any instructions that we may give you from time to time regarding the use of the services.

6. Lawful Use

- a. Afrimax strictly prohibits the misuse the services, including but not limited to:
 - i. dishonestly obtaining the services;
 - ii. possessing or supplying equipment that may be used to obtain such services dishonestly or fraudulently;
 - iii. using the services to generate spam or other forms of abuse either for business or any other purpose. Such forms of abuse include, but are not limited to: threats and/or harassment, privacy issues, redistribution of services (ftp, www, etc.), copyright and trademark issues, hacking, port scanning, spreading viruses, denial of service attacks, password cracking and unauthorized access, credit card fraud, publication and transmission of pornography, product/ service fraud, financial solicitation, make money fast chain letters, general fraud or theft, other illegal activities etc.
 - iv. sending or spread information, using messages or emails or any other medium, that are abusive, fraudulent, criminal, obscene, threatening, a nuisance, or which are otherwise contrary to applicable laws or regulations, or
 - v. selling all or any part of the services to any other person.
- b. If you violate any of the above terms, we reserve the right to disconnect the services and suspend or terminate the account permanently and in our sole discretion without prejudice to any other action under the laws of Malawi or any other jurisdiction.
- c. You are solely responsible for any transmitted material and/or communication which is classified as illegal, defamatory, misleading or which breaches any person's right(s) and you shall indemnify us for any claims and expenses against us in respect thereof.

7. Fair Usage Policy

- a. Use of the Services is subject to the following fair usage policy ("FUP"):
 - i. You must use the Services in a reasonable manner. We reserve the right to monitor and control Service

usage and/or types of traffic transmitted on the Network. In certain circumstances, for example consistent heavy use of the services, we may limit access bandwidth and network resources in our endeavour to provide best possible broadband Internet experience to all our customers.

- ii. FUP is applicable to all Data Plans in force now or in the future, as offered by us, unless specifically withdrawn, excluded or modified at our sole discretion.
- iii. Despite the above, if you are found intentionally violating FUP, for example through unreasonable levels of use, we reserve the right to increase the charges or suspend or terminate your account immediately, without prior notice and without prejudice to any other rights available under these terms.

8. Access Devices or Customer Premises Equipment (CPE)

- a. You will arrange suitable access to your premises to allow us to install the CPE (where necessary) and to undertake any required maintenance work from time to time. You will arrange suitable and stable power for the installed CPE at your premises and will ensure that proper earthing is in place at all times at the premises hosting the CPE.
- b. If you have purchased CPE from us or acquired CPE via Afrimax's CPE Rent-to-buy or Right-to-use scheme that is found to be faulty or defective, you are required to return the CPE to us, within seven (7) days of purchase, failing which we shall not take any responsibility for the defect.
- c. You are responsible for the actions of anyone who uses the CPE after it is installed on your premises.
- d. Any damage to the CPE caused by power surge, lightning, vandalism, theft or any force majeure shall be your responsibility.
- e. You are advised to read and understand any manufacturer's instructions for use of the CPE. Subject to the applicable laws, we will not accept liability for any malfunction of the CPE, injury, loss of data or damage to the CPE or to your own hardware or software.

9. Charges and Payment

- a. The purchase price (if applicable), CPE Right-to-buy (RTB) charge or CPE Right-to-use (RTU) charge, for Afrimax CPE shall be payable by you in advance of Afrimax accepting your Sales Order Form for the supply/installation of the CPE and provision of the services.
- b. The CPE RTB deposit, being a one-time charge, shall be payable by you in advance at the time of the acceptance of your Afrimax Sales Order for the supply of Afrimax CPE via the RTB scheme.
- c. The CPE RTB charge shall be payable by you in advance on a 30-day or 91-day basis and then subsequently, at the end each prepaid CPE RTB subscription period for a total of 12 (twelve) 30-day prepayments or 4 (four) 91-day prepayments.
- d. On the completion of 12 (twelve) 30-day prepayments or 4 (four) 91-day prepayments of the CPE RTB charges, the CPE's ownership will revert to you and CPE RTB charges will be ceased and the CPE RTB deposit will be absorbed by Afrimax and no longer refundable.
- e. If your CPE RTB subscription lapses, before the completion of 12 (twelve) 30-day or 4 (four) 91-day RTB payments, then all services associated with that subscription, including your Afrimax data plan, will be blocked until the CPE RTB subscription is restored, by making a further prepayment. In the event that associated services are blocked, with a lapse of your CPE RTB subscription, no refund will be made for any unused portion of the prepayment for those services.
- f. The CPE RTU charge shall be payable by you in advance on a 30-day or 91-day basis at the time of the acceptance of your Afrimax Sales Order and then subsequently, at the end each prepaid CPE RTU subscription period.
- g. If your CPE RTU subscription lapses, then all services associated with that subscription, including your Afrimax data plan, will be blocked until the CPE RTU subscription is restored, by making a further prepayment. In the event that associated services are blocked, with a lapse of your CPE RTU subscription, no refund will be made for

any unused portion of the prepayment for those services.

- h. The applicable Subscription Charges shall be payable by you in advance, at the time of your completion of the Sales Order Form, for the whole validity period defined by your chosen Afrimax Data Plan and, for subsequent renewals, no later than the expiration date of that Data Plan ("Due Date").
- i. Afrimax shall endeavour to deliver an invoice to you seven (7) days prior to your Data Plan's expiration date. Invoices shall be sent to the email address set forth on the Sales Order Form, and shall be payable in accordance with the instructions set out on the invoice. Any dispute in relation to your invoice must be notified by you to Afrimax within five (5) days of receipt.
- j. The Subscription Charges for your elected Data Plan are set forth in the Afrimax Sales Order. These Subscription Charges may be varied by us from time to time. We will provide you with notice of any variation to the Subscription Charges. Unless otherwise provided therein, the Subscription Charges include Excise Duty and Value Added Tax (if and where applicable) but may also be subject to other applicable levies and taxes at the prevailing rates, as amended from time to time.
- k. In the event of an incorrect invoice being issued by Afrimax to you, we reserve the right to recover subsequently from you the correct amounts due, as soon as practicable for Afrimax after the error is detected but no later than six (6) months after the issuance of the incorrect invoice.

10. Termination

- a. Subject to paragraph 12, we will continue to supply the service(s) to you until the expiration date of your chosen Data Plan or until any prepaid funds placed in your Afrimax account are exhausted, whichever is the later date, in accordance with these Terms. You therefore consent to the application of excess funds in your Afrimax account to the renewal of your Afrimax Data Plan's subscription.
- b. If, before the completion of 12 (twelve) 30-day or 4 (four) 91-day CPE RTB prepayments, you elect not to renew your Afrimax Data Plan subscription for a period of seven (7) days, or more, or if your Data Plan subscription ends for any other reason, then the CPE RTB will end without further notice, whether or not the prepaid period for your CPE RTB subscription has elapsed. Afrimax will then exercise the right, at its own expense, to recover the CPE and to refund your CPE RTB deposit. You agree to be held liable for any losses, in excess of the prepaid CPE RTB Deposit, arising from Afrimax's inability to recover its CPE in full working order if the CPE RTB ends for whatever reason, before the completion of 12 (twelve) 30-day prepayments or 4 (four) 91-day prepayments.
- c. If you elect not to renew your Afrimax Data Plan subscription for a period of seven (7) days or if your subscription ends for any other reason, then the CPE RTU will end without further notice, whether or not the prepaid period for your CPE RTU subscription has elapsed. Afrimax will then exercise the right, at its own expense, to recover the CPE. You agree to be held liable for any losses arising from Afrimax's inability to recover its CPE in full working order whenever, and for whatever reason, the CPE RTU ends.

11. Suspension and Disconnection of Services

- a. We may suspend (block), restrict or terminate the provision of services, in whole or in part, without any liability whatsoever (although, where possible, we will endeavour to inform you that such action may be or has been taken) in any of the following circumstances:
 - i. If we are aware or have reason to believe that your Access Devices or the services are being used in an unauthorized, unlawful or fraudulent manner or in any manner that is not permitted under these Terms (or has been so used previously);
 - ii. If you do not comply with any of the conditions relating to any part of the Services (including these Terms);
 - iii. If we believe you are sending data which is classified in our sole opinion as being illegal, a nuisance, abusive, a hoax, menacing or indecent;
 - iv. Without prejudice to any other remedy we may have, if we are aware or have reason to believe that you have paid any Charges and/or invoice by using any fraudulent or illegal means, including but not limited to

paying or attempting to pay using a stolen or otherwise barred or false debit or credit card or if the debit or credit card transaction is at some time charged back to us;

- v. If you do anything (or allow anything to be done) with your Access Devices which we think may damage or affect the operation or security of the network or services;
 - vi. If we are required to do so by any law or regulation;
 - vii. For reasons beyond our control.
- b. Where we have suspended, blocked or restricted access to the services for any of the above reasons, reconnection will be in our discretion, and a reconnection fee may be charged.

12. Variations

- a. We may make changes to these Terms from time to time for any reason, including, but without limitation, to introduce new terms from time to time to reflect changes to the law or to the terms of our telecommunications license. The current Terms in force at any given time will be available on our website at: www.afrimax.net.
- b. By continuing to use the services, or any part thereof, you shall be deemed to have agreed to any changes, amendments, additions and/or modifications contemplated in paragraph 3 (c) above. If you do not wish to accept such changes, amendments, additional and/or modifications, you must not use the Services and you must end your subscription in accordance with paragraph 10.

13. Notices

- a. Any notices that we wish to send to you from time to time (including but not limited to variations to these Terms, modifications or variations to the Services or Tariffs, any promotions and other information) will be published on our website or delivered to you at the email addresses specified on the Sales Order Form. You shall be deemed to have been duly notified regardless of whether or not the notice has actually come to your attention.

14. Indemnity, Liability and Exclusions

- a. You agree to indemnify us for and against all claims, expenses, losses, liabilities and costs incurred as a result of you (a) breaching any provision of these Terms, and (b) using the Access Devices and accessing the Network.
- b. Except for as set forth in paragraph 16 (e) below, we shall not be liable to you in any manner whatsoever, including for any losses or liabilities relating to:
- c. Our supply and provision of the services.
- d. Any failure to provide all or any of the services because of any event outside our control.
- e. To the maximum extent permitted by law we hereby exclude representations and warranties of all kinds, whether express or implied.

15. Miscellaneous

- a. Afrimax may transfer, assign and/or novate our agreement with you, including these Terms, and all its rights, benefits and (to the extent permitted by law) its obligations thereunder, to any other person or entity at any time in its sole discretion.
- b. If a provision or part of a provision in these Terms is illegal, invalid or unenforceable, that provision or part provision shall be treated as having been modified to the minimum extent necessary to make it valid, legal and enforceable and to ensure it achieves the intended commercial result of the original provision. If modification is not possible, the relevant provision or part provision shall be deleted. Any modification or deletion shall not affect the validity of the rest of these Terms.
- c. The Sales Order Form together with these Terms (as may be amended from time to time) represents the entire

agreement between us and you relating to the subject matter and supersedes any previous agreement relating to the subject matter. You have not relied on any warranty, representation, understanding, statement or other communication whether written or otherwise other than as expressly set out herein.

- d. Afrimax shall not lose any right under these Terms if it fails to use that right or in using it.
- e. For the avoidance of doubt, these Terms will not affect any rights that you may have under applicable laws and which we are legally unable to exclude by agreeing so with you.

16. Governing Law and Jurisdiction

- a. The Sales Order Form (either paper or electronic), Installation Completion Acceptance Report and these Terms are governed and shall be construed in accordance with the laws of Malawi.
- b. The Courts of Malawi shall have exclusive jurisdiction over the Sales Order Form and these Terms.



Afrimax Limited | Registered company No.: 11731 | Chayamba Building, Victoria Avenue, Blantyre, Malawi