



## Terms and Conditions

### Postpaid Plans

#### 1.0 DEFINITIONS:

In this Agreement unless the context clearly indicates a contrary intention, the words herein below defined shall have the meanings assigned to them and similar expressions shall bear corresponding meanings:

- **“CHARGES”** means the connection charges, monthly service charges, call charges, insurance charges and any other charges pertaining to the provision of the network services, SIM Cards and any other services howsoever described by **MASCOM WIRELESS** to the Subscriber as detailed in the Tariff Schedule from time to time.
- **“CONNECTION CHARGE”** means the charge levied by **MASCOM WIRELESS** on the Subscriber in consideration for activating the Subscriber’s SIM Card.
- **“GSM”** means Global System for Mobile Communication as defined in the “European Standard Institute” structure of specifications.
- **“INSTALLATION”** means the installation of Terminal Equipment, Laptops or any other Hardware to any location specified by the Subscriber.
- **“MONTHLY SERVICE CHARGE”** means the monthly charge levied by **MASCOM WIRELESS** in consideration for the Subscriber’s access to and use of the Network Services, as detailed in the Tariff Schedule from time to time.
- **“MINIMUM TERM”** means the duration period of the Contract from the date of commencement.
- **“MASCOM WIRELESS”** means **MASCOM WIRELESS BOTSWANA (PROPRIETARY) LIMITED**, or any other organization that may succeed it as the assignee of this Agreement.
- **“NETWORK”** means the cellular telephony system operated by **MASCOM WIRELESS** or any other licensed cellular operator in Botswana, by which the Network Services are provided by **MASCOM WIRELESS** to the Subscriber.
- **“NETWORK SERVICES”** means the GSM Telecommunication Network Services provided by **MASCOM WIRELESS** to the Subscriber in terms of this Agreement.
- **“Order”** means an order placed by the Subscriber on **MASCOM WIRELESS** for the provision and/or installation of Terminal Equipment, Laptops or any other Hardware, SIM cards and/or Network Services.
- **“Tariff Schedule”** means the Schedule on which the charges levied by **MASCOM WIRELESS** are recorded, as amended from time to time. The Tariff Schedule is available on request from **MASCOM WIRELESS**.
- **“SIM Card”** means a card or other device which contains the Subscriber’s personal details and which is programmed to allow the Subscriber, using his Terminal Equipment, to access the Network.
- **“Subscriber”** means a member of the public who has been connected to the **MASCOM WIRELESS** Network.
- **“Terminal Equipment”** means GSM Terminal, Terminal Equipment, Laptops or any other Hardware and accessories thereto utilized by the Subscriber to send and/or to receive messages, voice or otherwise conveyed by the Network.
- **“Usage Charges”** means the Charges charged by **MASCOM WIRELESS** to the Subscriber for recorded usage of the Network Services, as published in the Tariff Schedule from time to time.

#### 2.0 COMMENCEMENT AND DURATION:

2.1: The operation of this Agreement shall commence on the date on which the Subscriber enters into an Agreement with **MASCOM WIRELESS** and shall continue for the Minimum Term.

2.2: Thereafter the Agreement shall continue automatically for an unlimited period unless terminated in accordance with the provisions of this Agreement.



2.3: Each SIM Card supplied to the Subscriber in terms of this Agreement and contained herein, provided that if any SIM Card is supplied to the Subscriber and activated at any time subsequent to the execution of a further Agreement between **MASCOM WIRELESS** and the Subscriber which execution occurred subsequent to the execution of this Agreement, then such SIM Card shall be governed by the terms and conditions of such later Agreement.

### **3.0 TERMINATION OF CONTRACT:**

3.1: **MASCOM WIRELESS** may terminate the Subscriber's Contract immediately at any time in respect of any or all the SIM Cards owned by the Subscriber, in whole or in part, by giving the Subscriber written notice if:

3.1.1: the Subscriber fails to pass any credit assessments which we may reasonably consider to be necessary from time to time;

3.1.2: the Subscriber fails to pay any of the bills from **MASCOM WIRELESS** on time;

3.1.3: **MASCOM WIRELESS** has good reason for believing that any information the Subscriber has given **MASCOM WIRELESS** is false or misleading;

3.1.4: the Subscriber becomes insolvent within the meaning of the "Insolvency Act", or bankrupt, or if **MASCOM WIRELESS** has good reason for believing that the Subscriber is unable to pay the Charges.

3.1.5: in addition, **MASCOM WIRELESS** may terminate the Subscriber's Contract at any time after the Minimum Term has expired by giving the Subscriber at least one month's prior notice.

3.2 Termination of Contract after Minimum Term: The Subscriber may terminate this Agreement at any time after the Minimum Term by giving **MASCOM WIRELESS** at least one month's (30 Days) written notice. The Subscriber is free to restore this Agreement throughout the notice period should the Subscriber desires to do so.

3.3 Termination of Contract during Minimum Term:

3.3.1: The Subscriber may terminate this Agreement before the Minimum Term has expired if the Subscriber pays **MASCOM WIRELESS**:

3.3.1.1: all Charges that are due; plus

3.3.1.2: a lump sum equivalent to the total of all the monthly Charges still remaining on the initial Minimum Term Agreement.

3.4 Termination of Contract when **MASCOM WIRELESS** has changed the terms:

3.4.1: The Subscriber may terminate this Agreement if **MASCOM WIRELESS** varies these terms, resulting in an excessive increase in the Charges or changes that alter the Subscriber's rights under this Contract to the Subscriber's detriment. In such cases the Subscriber would need to give **MASCOM WIRELESS** at least 14 days written notice prior to the monthly billing date (and within one month of **MASCOM WIRELESS** telling the Subscriber about the changes). However this option does not apply if:

3.4.1.1: **MASCOM WIRELESS** has increased the Charges by an amount equal to or less than the percentage increase in the "All Item Index of Retail Prices" as published by the "Central Statistical Office in the Statistics" in any 12 month period; or

3.4.1.2: the variations **MASCOM WIRELESS** has made have been imposed on **MASCOM WIRELESS** as a direct result of new legislation, statutory instrument, government regulation or license.

3.5 Termination when **MASCOM WIRELESS** no longer provides Network Services: If **MASCOM WIRELESS** no longer provides Network Services, it will either make arrangements for the Subscriber to be supplied with equivalent Services by another network at no extra cost, or accept written notice from Subscriber to terminate this Agreement.

### **4.0 SALE OF TERMINAL EQUIPMENT, LAPTOPS OR ANY OTHER HARDWARE, SIM CARDS, INSTALLATIONS NETWORK SERVICES AND VOUCHER ISSUANCE:**

4.1: The Subscriber may from time to time place orders on **MASCOM WIRELESS** for the purchase and/or supply of Terminal Equipment, Laptops or any other Hardware, SIM Cards, Installation, voucher and Network Services.

4.2: **MASCOM WIRELESS** shall utilize its best endeavors to promptly comply with any supply and/or delivery and/or installation requirements recorded in any order, but shall not be liable to the Subscriber in the event that such supply and/or delivery and/or installation and the Subscriber hereby indemnifies **MASCOM WIRELESS** against any claim or liability suffered by **MASCOM WIRELESS** by reason of approvals and authorities not having been obtained.



4.3: Ownership of any Terminal Equipment, Laptops or any other Hardware supplied and delivered by **MASCOM WIRELESS** to the Subscriber is reserved until payment of all amounts payable to **MASCOM WIRELESS** in respect of the same is effected in full.

4.4: All risk in and to Terminal Equipment, Laptops or any other Hardware approved by **MASCOM WIRELESS** to the Subscriber shall pass to the Subscriber on delivery.

4.5: If a SIM Card is lost, stolen or damaged, the Subscriber shall immediately notify **MASCOM WIRELESS** in writing and until such notification, the Subscriber shall remain liable for all costs and charges pertaining to such SIM Cards. **MASCOM WIRELESS** shall as soon as reasonably possible, issue and deliver to the Subscriber a replacement SIM Card and may in its discretion, require the Subscriber to effect payment of a charge in respect of the cost of issuing such a replacement. Such loss, theft, or damage and/or the issue and delivery of a replacement SIM Card and/or the allocation of a new MSISDN, shall in no way be deemed to constitute a termination of this Agreement which shall continue to be of full force and effect.

4.6: If **MASCOM WIRELESS** had issued a voucher to the Subscriber at a value equivalent to the amount of the subsidy, the Subscriber shall be bound by the terms and conditions on the voucher itself, and **MASCOM WIRELESS** shall not be liable for any claims of loss or damages from the Subscriber or third parties whatsoever unless the loss was caused by the gross negligence of **MASCOM WIRELESS** or its employees.

4.7: If the Subscriber changes from one "Package Option" to another, **MASCOM WIRELESS** may vary the amount of the subsidy. If the subsidy is reduced, **MASCOM WIRELESS** may require the Subscriber to pay to **MASCOM WIRELESS** the amount of the reduction to allow **MASCOM WIRELESS** to adjust the amount at the time of the sale of the Terminal Equipment or the issuance of a payment voucher equivalent to the amount of the subsidy if the Subscriber had first chosen the "Package Option" to which the Subscriber is changing.

4.8: In the event of early termination of this contract for whatsoever reason, **MASCOM Wireless** shall have the right to claim from the subscriber an amount equal to the amount by which the Terminal Equipment, Laptops, Voucher or any other Hardware was subsidized by **MASCOM Wireless** at the time of sale of the equipment by **MASCOM Wireless** to the subscriber and the Subscriber shall be obliged to effect payment to **MASCOM Wireless** of the amount so claimed, on demand.

#### **5.0 PROVISION OF SERVICES:**

5.1: **MASCOM WIRELESS** shall use its best endeavors to ensure that the Network Services are made available to the Subscriber at all times within the area falling within the range of base stations forming part of the Network.

5.2: The Subscriber hereby warrants and undertakes in favor of **MASCOM WIRELESS** that the Subscriber:

5.2.1: shall not use nor allow the Network Services to be used for any improper immoral or unlawful purpose, nor in any way which may cause injury or damage to persons or property or an impairment or interruption to the Network Services;

5.2.2: shall only use Terminal Equipment, Laptops or any other Hardware approved by **MASCOM WIRELESS**, and comply with all relevant legislation and regulations imposed by any competent authority and all directives issued by **MASCOM WIRELESS** relating to the use of Terminal Equipment, Laptops or any other Hardware, Network Services and SIM Cards;

5.2.3: shall not, nor permit any third party to reverse, recompile, modify or tamper with the software, the MSISDN, or the ICC contained in, or pertaining to, any SIM Card.

5.3 Blackberry® Solution - Overloaded Email Account: **MASCOM WIRELESS** may limit the email account (or otherwise) usage in the BlackBerry® Solution, Equipment and Services and a Subscriber will be required to rent an additional account when the service is found to be overloaded.

5.4 When roaming the following rules will apply to any **MASCOM WIRELESS** Subscriber:

5.4.1: Subscribers should note that roaming charges vary for each destination country and for each mobile operator where **MASCOM WIRELESS** has more than 1 (one) roaming agreement in the country. Also note that while roaming, Subscribers will be charged for both incoming and outgoing calls;

5.4.2 without prejudice to **MASCOM WIRELESS's** rights, the Invoice and/or Statement of Account or a notification of the Subscriber's Call History in cases of Prepaid Roaming, will be sent to the



Subscriber as per this Agreement and it will serve as a notice for an outstanding amount and the due date will apply.

#### **6.0 CHARGES AND PAYMENTS:**

6.1: In consideration for the provision of the Network Services, SIM Cards and any other services supplied by **MASCOM WIRELESS** to the Subscriber, the Subscriber shall effect payment to **MASCOM WIRELESS** of the applicable Charges, as detailed in the Tariff Schedule, and whether or not the Network Services have been, or are being utilized by the Subscriber, **MASCOM WIRELESS** shall utilize its best endeavors to ensure that its Connection Charges, Monthly Service Charges and call rates payable by the Subscriber at no time exceed the Charges and rates recommended by the Network.

6.2: Monthly Rentals will continue to be charged on blocked lines and temporarily deactivated accounts until such time that the particular line and/or contract are cancelled or are permanently deactivated. Any amount overdue on accumulated rentals in this regard will be payable on demand.

6.3: **MASCOM WIRELESS** shall send the monthly accounts ("bill") to the Subscriber at the address in the application form. The Subscriber shall check the bill in order to ensure that the contents thereof are correct. Unless a query is raised in respect of the contents of a bill within 30 days from the date thereof, it shall be deemed correct. Any queries after this period will not be entertained.

6.4: **MASCOM WIRELESS** may, by written notice to the Subscriber, vary future Charges, either in whole or in part, with effect from the date specified in such notice.

6.5: Unless otherwise agreed to by **MASCOM WIRELESS** in writing, the Subscriber shall effect payment to **MASCOM WIRELESS**:

6.5.1: for the supply and delivery of Terminal Equipment, Laptops or any other Hardware, Installation and SIM Cards in full, on presentation of invoice and against such delivery of Monthly Service Charges in advance, and all other Charges, Monthly in arrears in either event in full, within 30 (THIRTY) days from date of relevant invoice.

6.6: **MASCOM WIRELESS** may at any time on a reasonable written notice to the Subscriber vary its invoicing and payment procedures and requirements.

6.7: All prices and charges set out in this Agreement and any Tariff Schedule are exclusive of Value Added Tax and any other applicable Tax or Duty, the liability for which shall vest with the Subscriber.

#### **7.0 SUSPENSION:**

7.1: **MASCOM WIRELESS** may at any time, without notice to the Subscriber and in any manner whatsoever, suspend its provision of Network Services to the Subscriber in the event that:

7.1.1: any modification, maintenance or remedial work is required to be undertaken pertaining to any manner whatsoever to the Network Services or the Network;

7.1.2: the Subscriber fails to perform any of the obligations or breaches the terms of this Agreement;

7.1.3: the Subscriber at any time exceeds the Credit Limit which **MASCOM WIRELESS** may give at its absolute discretion or fails to pay the outstanding invoice on due date.

7.2: **MASCOM WIRELESS** reserves the right to require the Subscriber to effect payment of any applicable reconnection Charges pursuant to the restoration of Network Services suspended in the circumstances contemplated in the Agreement.

#### **8.0 LIMITATION OF LIABILITY:**

Without detracting from any of the other provisions of this Agreement, **MASCOM WIRELESS** shall not be liable to the Subscriber for any loss or damage suffered by the Subscriber, and whether same is direct or consequential, in the event that:

**8.1:** **MASCOM WIRELESS** fails for any reason whatsoever to supply and/or provide installation of any Terminal Equipment, Laptops or any other Hardware or Sim Cards, either on the required date, or at all: and/or the Network's services are interrupted, suspended or terminated, for whatsoever reason and/or such loss or damage was caused by any negligent act or omission on the part of **MASCOM WIRELESS**, its employees or its agents;

**8.2:** The Company has no obligations to exhaust the archiving system on services already rendered.

#### **9.0 BREACH:**

9.1: In the event that the Subscriber breaches any term of this Agreement, or any warranty given by it hereunder, or fails to fulfill any obligation resting upon it, including the failure to pay any amount owing to **MASCOM WIRELESS** on due date, then without prejudice to **MASCOM WIRELESS**'s other rights in terms of this Agreement or the Common Law, **MASCOM WIRELESS** may forthwith and without notice to the Subscriber either terminate this Agreement or call for specific performance of



all the Subscriber's obligations, and immediate payment of all sums of money owing by the Subscriber whether or not then due, in either event without prejudice to **MASCOM WIRELESS's** right to seek such damages as it may have suffered by reason of such breach or failure;

9.2: Notwithstanding the foregoing, and pending **MASCOM WIRELESS** election of this Agreement, **MASCOM WIRELESS** shall not be obliged to perform any of its obligations under this Contract and the Subscriber shall remain liable for the payment of all amounts owing by the Subscriber in terms of this Contract, whether or not such are then due.

9.3: **MASCOM WIRELESS** shall be entitled to forthwith without notice terminate this Agreement in the event that the Subscriber is sequestered, liquidated or placed under judicial management, whether provisionally or finally and whether voluntarily or compulsory.

9.4: Without detracting from any of the other provisions of this Agreement, in the event that in breach of the provisions of this Agreement, the Subscriber prematurely terminates this Agreement, alternatively breaches this Agreement, and **MASCOM WIRELESS** elects to cancel same, then the Subscriber shall be liable to effect payment to **MASCOM WIRELESS** of the Monthly Service charges which would have been payable to **MASCOM WIRELESS** in respect of the remainder of the period of the Agreement.

#### **10.0 GENERAL:**

10.1: Services will be rendered through the address given on this "Connection Agreement Form". Should there be no written complaints or changes to that effect, all services rendered through the address given will be deemed to have been validly given on the 3<sup>rd</sup> day of posting.

10.2: The rights and obligations of the Subscriber in terms of this Agreement may not be ceded or delegated by it to any third party.

10.3: The rights and obligations of MASCOM WIRELESS in terms of this Agreement may be ceded and delegated by it to any other party.

10.4: No alteration, consensual cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by the duly authorized representatives of both Parties.

10.5: This document contains the entire Agreement between the Parties regarding the matters contained herein irrespective of whether such undertakings representation or warranties have been made by any dealer or purported agent of MASCOM WIRELESS.

10.6: No indulgence, leniency or extension of time which MASCOM WIRELESS may show to the Subscriber shall in any way prejudice MASCOM WIRELESS or preclude MASCOM WIRELESS from exercising any of its rights in the future.

10.7: This Agreement and all matters or disputes arising there from or incidental thereto shall be governed and construed in accordance with the laws of the Republic of Botswana.

10.8: A Certificate under the hand of any manager of MASCOM WIRELESS certifying the amount of any amount owing by the Subscriber to MASCOM WIRELESS shall be prima facie proof of its contents and sufficient proof for the purpose of enabling MASCOM WIRELESS to obtain any judgment or order against the Subscriber.

10.9: In the event of any one or more of these terms and conditions being unenforceable, same will be deemed to be severable from the remainder of this Agreement, which will nevertheless be binding and enforceable.

10.10: The Subscriber hereby authorizes MASCOM WIRELESS to disclose the Subscriber's name and address for the purpose of enabling the Network to provide emergency Network Services to the Subscriber, or directory services and information to network users generally.

10.11: Each of the Parties choose domicillium citandi et executandi ("domicillium") for the purpose of the giving of any notice, the serving for any purpose arising from this agreement at their respective addresses set forth in this Agreement.

10.12: Each of the Parties shall be entitled from time to time by written notice to the other to vary its domicillium to any other address within Botswana which is not a Post Office Box or Poste Restante.

10.13: Any notice given and any payment made by any party to the other ("the addressee") which is delivered by hand during the normal business hours of the addressee at the addressee's domicillium for the time being shall be presumed unless the contrary is proven by the addressee, to have received by the addressee at the time of delivery; is posted by prepaid registered post from an address within Botswana to the addressee at the addressee domicillium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee on the 3<sup>rd</sup> (third) day after date of posting.



10.14: Where in terms of this Agreement any communication is required to be in writing, the term “writing” shall include communication by telex and/or facsimile. Communication by telex and/or facsimile shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 48 hours (forty eight) hours after the time of transmission.

**11.0 COLLECTION:**

11.1 In the event of the Subscriber failing to effect payment of any amount owing by it to MASCOM WIRELESS on due date, then without derogating from MASCOM WIRELESS rates in terms of this Agreement, the Subscriber shall be liable to effect payment of interest to MASCOM WIRELESS on the amount so owing at the Prime Rate plus 3% (three percent), from due date of payment.

11.2: In the event that a Subscriber fails to pay for invoice/s 30 days after the date of the Invoice and/or Statement of Account, network Services may be disconnected temporarily 60 days after the date of the Invoice and/or Statement of Account, Network Services may be disconnected permanently.

11.3: Should there be no written queries on record, the amount stated outstanding will be deemed accurate and correct and necessary action may be taken to recover this debt without any notice.

11.4: Accounts already handed over to Attorneys or Debt Collectors: The fees charged by Attorneys and Debt Collectors are according to their Terms and Conditions and MASCOM WIRELESS has no right to alter, suggest or adjust collection and legal fees. Accounts already handed to Attorneys and Debt Collectors will under no circumstances be withdrawn to be settled at MASCOM WIREL