

**ENTERPRISE SOLUTION PARTNER  
AGREEMENT**



(Version May 2023)

**ENTERPRISE SOLUTIONS PARTNER AGREEMENT**

**BETWEEN**

**AIRTEL NETWORKS KENYA LIMITED**

**AND**

**WAM APPLICATIONS**

Confidential – Airtel Kenya Enterprise Solutions Partner Agreement

**WAM APPLICATIONS**

**16 AUG 2023**

P.O BOX 23482, 00625 - KANGEMI,

This Agreement ("the Agreement") is made on the ..... 9 ..... day of ..... AUGUST .....  
20..... 23 ..... BETWEEN

**AIRTEL NETWORKS KENYA LIMITED**, a limited liability company incorporated under the provisions of the Companies Act, Chapter 486, Laws of Kenya having its registered office at Parkside Towers, Mombasa Road, Nairobi and of Post Office Box Number 73146 – 00200, Nairobi in the Republic of Kenya (hereinafter referred to as '**Airtel Kenya**' which expression shall where the context so admits, include its successors and assigns) of the one part

AND

..... **WAM APPLICATIONS** .....

and of P. O. Box ..... 33482 ..... (hereinafter referred to as the '**Enterprise Solutions Partner**' or '**ESP**' which expression shall where the context so admits, includes its successors and assigns) of the other part.

**WHEREAS** Airtel Kenya is a licensed telecommunication services provider;

**AND WHEREAS** in furtherance of the objective of the licence, Airtel Kenya provides a wide range of Products and Services;

**FURTHER, WHEREAS** the ESP herein has accepted the offer to conduct business with Airtel Kenya in the Republic of Kenya for ESP and support of such Products and Services as may be made available by Airtel Kenya to the ESP from time to time.

**NOW THEREFORE** in consideration of their mutual promises it is hereby agreed by and between the parties hereto as follows:

The terms and conditions contained in this Agreement shall be referred to as the "**Airtel ESP Agreement**" and should be read in conjunction with the following documents:-

- (i) the Appendices hereto (as varied by Airtel Kenya from time to time); and
- (ii) Any ESP Guidelines published by Airtel Kenya from time to time;

**TERMS AND CONDITIONS OF THE AIRTEL ENTERPRISE SOLUTIONS PARTNER AGREEMENT**

**1. Definitions and Interpretations**

1.1 In these Terms and Conditions the following words and expressions shall unless the context otherwise requires have the following meaning:

**"Agreement"** means this Agreement made between the ESP and Airtel Kenya and includes these Terms and Conditions and any schedules, which Airtel Kenya may vary from time to time;

**"Branding"** means any guidelines issued by Airtel from time to time dealing with the use of its intellectual property and trademarks;

**"Commission"** means the amount of money that may be payable during the term of this Agreement, as advised from time to time, to the ESP, based on the Connections or Promotional items sold by the ESP and connected to the Network and other Products sold;

**"Competitors"** means companies within the country that sell the same or similar products and provide similar services in direct competition with Airtel Kenya;

**"Conditions"** means the Terms and Conditions contained in and forming part of this Agreement, as may be varied by Airtel Kenya from time to time;

**"Connections"** means a service link between Airtel Kenya and the customer;

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**"Customer"** or **"Airtel Kenya Customer"** "means any subscriber applying or requesting for, or using Airtel Kenya's mobile telephony services, and includes any person whom Airtel Kenya believes is acting with the Customer's authority;

**"Churn Rate"** means the percentage of Customers under the ESP's portfolio who unsubscribe or stop to use Airtel Kenya Services in any given three months. Airtel Kenya will use this Rate as an indicator of the customers' dissatisfaction.

**"Date of Commencement"** means the date that this Agreement will come into effect in accordance with Clause 4;

**"Discount"** means such discounts or rebates that may be allowed from time to time to the ESP and payable as determined by Airtel Kenya;

**"ESP"** means ENTERPRISE SOLUTIONS Partner; the duly registered company named herein before with whom Airtel Kenya is entering into this Agreement and includes its successors and permitted assigns;

**"ESPs"** means all companies engaged by Airtel Kenya under contract as enterprise solution partners including the ESP.

**"ESP Guidelines"** means the periodic circular issued and distributed by Airtel Kenya to ESPs detailing Airtel Kenya's business objectives, guidelines and procedures to be followed by ESPs in furtherance of this agreement and such further information as Airtel Kenya may propose for circulation to the ESP;

**"ESP Premises"** means the premises from which the ESP will conduct business for the benefit of this Agreement as provided herein;

**"First-Line Support"** means the initial support provided to the customer in case of service problems, queries, and complaints;

**"Material Breach"** means any act or omission by the ESP in relation of an obligation vested upon the ESP pursuant to this Agreement or any of the documents incorporated by reference;

**"Network"** means the Telecommunication or Data Network operated by Airtel Kenya and covering those areas of the Republic of Kenya as provided for in the Airtel Kenya Licence and as shall be stipulated from time to time;

**"Operating Standards"** means those standards, over and above the ESP obligations, in relation to the ESP's day-to-day business management as issued by Airtel Kenya from time to time and to which the ESP will subscribe to and abide by;

**"Order"** means any order for Products given by the ESP to Airtel Kenya in accordance with this Agreement;

**"Party"** means either the ESP or Airtel Kenya and **"Parties"** shall mean both of them;

**"Post-Paid Service"** means the Airtel Kenya post -paid services or such other post-paid service that may be introduced by Airtel Kenya from time to time;

**"Price List"** means the list of charges, discounts, residuals (if any), recommended prices, and or any other charges as provided for in Appendix A of this Agreement and as shall be amended by Airtel Kenya from time to time;

**"Products"** includes but is not limited to mobile voice and data services, E1 Services, Fixed Data Services and other products and /or Airtel Kenya services as may be supplied by Airtel Kenya from time to time;

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**"Product Integration Tools"** means any material or resource that is used to integrate Airtel Kenya products with other customer applications or systems;

**"Promotional Items"** means tools and items that may be availed by Airtel Kenya to ESPs to carry out sales promotion;

**"Recommended Discounting"** means such discounts as recommended by ESP to its sub-ESP and/or agents for the Products, which in any event shall not exceed the percentage or discounting which may be recommended by Airtel Kenya from time to time;

**"Recommended Pricing"** means the pricing for Products and Services given by AIRTEL KENYA to ESP from time to time and which ESP shall be obliged to observe;

**"Rollout"** means operations commencement and expansion;

**"Services"** means the basic service providing telecommunication or data communication via the Network, or any other services made available by Airtel Kenya from time to time;

**"Subscriber ID"** means a Network Card, Service Number, a PIN or Username issued by AIRTEL KENYA for the purposes of uniquely identifying the service provided to the customer and account billing;

**"Term"** means the duration of this Agreement in accordance with Clause 4 hereof;

**"Usage Records"** means data for customer service consumption and account recharge;

- 1.2 Headings are for convenience only and do not affect interpretation or construction of this Agreement;
- 1.3 Reference to money, value and price are to be in Kenyan currency unless otherwise stated;
- 1.4 Reference to a Party includes its successors and permitted assigns;
- 1.5 Reference to any Statute includes amendments, successor legislation and /or re-enactments to that Statute from time to time;
- 1.6 Words importing the singular are to be construed as importing the plural and vice versa;
- 1.7 Where any Party comprises more than one person, the obligation and liabilities of that party under this Agreement are to be joint and several obligations and liabilities of those persons; |
- 1.8 This Agreement together with the documents expressly incorporated by reference contain the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous understandings, commitments, agreements or representations, whether oral or written, express or implied, in relation to the subject matter between them;
- 1.9 This Agreement is made solely and specifically between the Parties for their benefit and is not intended to be for the benefit of or enforceable by any other person, and neither Party can declare itself a trustee of the rights under this Agreement for the benefit of any such person.
- 1.10 In the event of conflict between the provisions of any order or Operating Standards and the provisions of this Agreement, the provisions of this Agreement shall prevail, save to the extent otherwise expressly agreed by the Parties.

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- 1.11 If any of the words or provisions of this Agreement shall be construed to be illegal, void or invalid, that shall not affect the legality and validity of the other words or provisions. If any restriction is held not to be valid but would be valid if the wording were deleted or its extent reduced or modified then such restriction shall apply with such deletion, reduction or modification as may be necessary to make it enforceable.
- 1.12 Save as is hereinafter provided, any variation or amendment of this Agreement shall be valid only if it is in writing and signed by both parties.

## **2. Agreement**

- 2.1 Airtel Kenya grants the ESP a non-exclusive right to sell, promote, distribute and support the Products and Services as per the Terms and Conditions set out herein.
- 2.2 The ESP is appointed to sell, promote and distribute the Products within Kenya with specific reference to the enterprise market.
- 2.3 The ESP shall not describe itself in any communication whether, oral and/or written as the agent or representative of Airtel Kenya except as expressly authorized by this Agreement.
- 2.4 Airtel Kenya is entitled to appoint the ESP to resell or support such other Products and Services that Airtel Kenya may offer from time to time upon such terms as may be indicated in any future communication or guidelines.
- 2.5 Airtel Kenya reserves the right to change the terms, conditions, notices and charges under which it offers its Products and Services as a direct result of new legislation, legislative amendments, statutory instrument, Government regulations or licences, rates of exchange imposition or alteration of government tax, increase in the cost of materials, labour or transport, changes in delivery dates, quantities or specifications as requested by the ESP, or in the event of any delay caused by the ESP, or by any review of Airtel Kenya's business planning, changes within the industry, recommendations from regulatory bodies or similar events. Airtel Kenya shall duly notify the ESP of these changes prior to implementation.

## **3. Non-Exclusivity**

It is agreed between the parties that this Agreement shall not be exclusive.

## **4. Term & Renewal**

- 4.1 This Agreement shall commence on the date of signature by Airtel Kenya.
- 4.2 Subject to the rights of earlier termination as provided in this Agreement, this Agreement shall continue for a period of twenty-four (24) months from the Effective Date of Agreement ("the Initial Term").
- 4.3 ESP shall give Airtel Kenya at least sixty (60) days' notice prior to the Expiry Date of its intention to renew this Agreement.

## **5. ESP's Obligations**

### **5.1 Information and Authority to Agreement**

- a) The ESP warrants that the execution and performance of this Agreement are within its powers and constitute an enforceable liability on the ESP;

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- b) The ESP further warrants that the particulars and information given to Airtel Kenya are complete and accurate and shall notify Airtel Kenya immediately in writing of any change therein. In the event that any information is not complete and accurate then Airtel Kenya may terminate this Agreement immediately by written notice to the ESP without prejudice to any rights or remedies it may be entitled to at law;
- c) The ESP warrants and undertakes that the execution, delivery and performance of this Agreement will not be in conflict with or in breach of any other Agreement or obligation of which it is a party or to which it is bound;
- d) The Parties will ensure that they conform to all the Laws, Rules, Regulations and statutory requirements existing in the Republic of Kenya from time to time. The Party that fails to comply with this Clause ("the Offending Party") shall indemnify the other Party ("the Aggrieved Party") in the event of any liability suffered or incurred by the Aggrieved Party as a result of breach of this Clause by the Offending Party.

### **5.2 Scope of Services and Performance**

- 5.2.1 The ESP shall provide the following range of Services to Airtel Kenya Customers, and such other Services as may be advised by Airtel Kenya from time to time with a bias to the enterprise market:
  - a) Acquisition of new customers through reselling of Airtel Kenya Products and Services.
  - b) First-Line and personalized on-site customer support.
  - c) After-sales services.
- 5.2.2 The ESP shall ensure that every new customer signs a contract with Airtel Kenya for a minimum of one (1) year, or such other period as may be advised by Airtel Kenya from time to time and containing such terms and conditions as shall be stipulated by Airtel Kenya from time to time.
- 5.2.3 The ESP will perform this Agreement diligently to meet the sale/market targets set between itself and Airtel Kenya and to ensure that all Customers under its portfolio are satisfied and all their concerns are addressed in such a manner as to ensure that there is no Churn Rate.
- 5.2.4 The ESP shall adhere to all Know Your Customer (KYC) requirements as communicated by Airtel Kenya from time to time. For the avoidance of doubt, the ESP shall be liable and shall indemnify AIRTEL for any non-compliance by its employees and or agents in observing performance of this clause 5.2.4.

### **5.3 The Products and Services**

- a) The ESP acknowledges and agrees that it is responsible for the safe storage of the Products & services and any documents relating to the products and shall ensure that they are stored in accordance with any written instructions or other form of guidance relating to them issued by Airtel Kenya or its duly authorized agents ;
- b) The ESP shall not make any modifications to the Products or their packaging or alter, remove, transfer or otherwise tamper with any of the trade names, trademarks or other means of identification on the Products or their packaging;
- c) In the event that any Products supplied by Airtel Kenya, under warranty, are found to be faulty or defective, the ESP shall refer such Products to Airtel Kenya, its registered service agent or such other third party authorized by Airtel Kenya to carry out repairs from time to time. ESP shall adhere to the terms of the applicable warranty for each Product. It is agreed between the Parties that Airtel Kenya shall not accept and shall not be liable for any faulty or defective Products if the faults or defects to the Product are as a result of

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*[Signature]*  
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the ESP's fault, negligence or carelessness. The ESP is not authorized to carry out any form of repair to damaged or faulty Products without Airtel Kenya's prior written approval; Airtel Kenya shall make every effort to repair or replace the faulty Products within reasonable time. The warranty extended shall only cover manufacture defects for the specified Warranty Period.

- d) During the continuance of this Agreement, the ESP shall not sell outside or export or assist in or be party to the export of the Products or Services from the Republic of Kenya unless prior written consent of Airtel Kenya has been obtained. A breach of this Clause will constitute a material breach of this Agreement.

#### 5.4 **ESP Premises**

- a) The ESP shall at its own cost situate the Premises in such location within the Republic of Kenya as may be agreed by the Parties so as to be convenient and accessible to Customers. Further, the ESP shall be solely responsible for payment of all service charges, municipal rates and other expenses pertaining to purchase / use of the premises.
- b) The ESP undertakes to keep the Premises and Products in good condition.
- c) The ESP shall at all times maintain security in the ESP Premises, insure the Premises against theft, loss and damage and maintain public liability or other third party liability insurance in respect of any injury loss or damage to any persons or property arising out of the exercise of its rights hereunder. The ESP will provide such proof of insurance coverage as shall be requested by Airtel Kenya from time to time.
- d) The ESP must keep updated accounts and records showing all transactions relating to their sales and, in particular, the stock levels of all Products held by the ESP, which must be recorded by the ESP in accordance with instructions given from time to time by Airtel Kenya. Upon Airtel Kenya giving the ESP seven (7) days notice, the ESP shall permit Airtel Kenya to inspect all such records and books of accounts, trade partners' details, and business profiles in connection with the sale and promotion of the Products and Services.
- e) Airtel Kenya shall provide usage records and records of calculation of residual income pertaining to the ESP's accounts on or before the end of the 1<sup>st</sup> week of every month; and not later than the 15<sup>th</sup> day of the month.

#### 5.5 **Marketing and Advertising**

Subject to complying with all reasonable directions given by Airtel Kenya for marketing and advertising the Services (including directions from time to time imposed on Airtel Kenya), and with the terms of this Agreement, the ESP shall seek the entry by potential customers into Agreements with Airtel Kenya in the current standard form for the provision of the Services by using its best endeavors to market and advertise the Services through permitted distribution of advertisements and signs.

#### 5.6 **Branding & Promotional Materials & Intellectual Property rights**

- a) Airtel Kenya shall provide branding and advertising support materials such as Airtel Kenya posters, product collaterals and internal point of sale materials at no cost to the ESP. The ESP shall be responsible for the distribution of such materials to its customers. For the avoidance of doubt, materials that have been supplied to the ESP at no cost shall remain the property of Airtel Kenya. Promotional and advertising material in stock with the ESP that have been supplied at no cost shall be returnable upon demand or upon termination of this Agreement.

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- b) The ESP shall not display any Airtel Kenya Branding alongside the branding of any of Airtel Kenya's competitors. A breach of this clause shall be deemed to be a material breach of this Agreement.
- c) Airtel Kenya may from time to time at its discretion allocate promotional stocks to the ESP at no cost to the ESP or at a subsidized rate.
- d) Nothing in this Agreement shall give the ESP any rights in any trade name, trademark or other intellectual property rights used by Airtel Kenya in relation to the Products, Brands or services where applicable.
- e) The ESP shall not make use of any trade name, trademark or other intellectual property rights used by Airtel Kenya in any of its letterheads, business cards, websites or email communication, any communication or stationery except with the EXPRESS written consent by Airtel Kenya.
- f) The ESP shall promptly notify Airtel Kenya of any actual, threatened or suspected infringement, improper or wrongful use of any trade name, trade mark or other intellectual property rights offered or adopted by Airtel Kenya, or its group of companies or any allegation that the names, titles or wordings on the Products, Brands or the Services infringe any intellectual property rights of any third party, which comes to the ESP's notice.
- g) The ESP shall not make any representations with respect to any trade names, trade mark or other intellectual property rights used by Airtel Kenya, which might be prejudicial to the interests of Airtel Kenya and the ESP shall indemnify Airtel Kenya from any losses it may incur as a result of the ESP making such representations.
- h) ESP shall take all reasonable measures to assist Airtel Kenya to protect and maintain the intellectual rights of Airtel Kenya and shall display at the ESP Premises and on all stationery and literature used the text as stipulated by Airtel Kenya from time to time disclosing to the general public that the ESP is licensed by Airtel Kenya to sell the products and Services and is not a branch or agent of Airtel Kenya. The ESP shall also display at the ESP Premises such other trade or service marks or copyright notices as AIRTEL KENYA may stipulate from time to time.
- i) The ESP agrees that all good will accruing to any of Airtel Kenya's trademark or trade names by virtue of the use thereof by the ESP in accordance with this Agreement shall accrue to the relevant owner pursuant to any Trade and Service Mark Agreement or other Agreement governing the proprietary rights entered into by Airtel Kenya and that the ESP acquires no rights in any of the said trademarks or trade names;
- j) The ESP shall procure that its employees, servants and agents use such trademarks and trade names only in accordance with and for the purposes of this Agreement and that they will not use any trade names or any resemblance thereof or anything so closely resembling them as to be likely to cause confusion.

#### **5.7 Patent Indemnity**

The ESP shall indemnify Airtel Kenya against all damages, penalties, costs and expenses to which Airtel Kenya may become liable as a result of work done by Airtel Kenya pursuant to the ESP's requirements, specifications or instructions which infringes any letters, patents, copyright or registered design or other intellectual property rights of any third party.

#### **5.8 Bank Guarantee**

- a) Airtel Kenya may at any time during the term of this Agreement and by giving reasonable notice to the ESP require that the ESP's financial obligations to Airtel Kenya under this Agreement be secured by bank guarantee issued by banks and financial

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institutions approved by Airtel Kenya in such a manner and format as Airtel Kenya may require from time to time. Upon failure to provide Airtel Kenya with such Guarantee, or if a demand by Airtel Kenya there under is not satisfied, Airtel Kenya may terminate this Agreement immediately without prejudice to any rights or remedies it may be entitled to at law.

- b) Notwithstanding the termination of this Agreement, the guarantor(s) shall remain responsible for any obligations incurred prior to the date of termination.
- c) The liability of the guarantor(s) shall not be affected by any concession, time or indulgence granted by Airtel Kenya to the ESP or by any other thing that would otherwise operate to discharge or reduce such liability.
- d) Where an ESP has provided a bank guarantee(s) to secure the performance of certain obligations or the payment of money, Airtel Kenya shall duly surrender and return the guarantee(s) after the discharge of the secured obligations or the payment in full of all monies secured.

#### 5.9 Transfers, Charges and Assignment

The ESP shall not assign, mortgage, charge or dispose of any of its rights hereunder or by sub-Agreement or otherwise delegate any of its obligations without Airtel Kenya's prior written consent which consent shall not be unreasonably withheld.

#### 5.10 ESP's Agent

AIRTEL KENYA shall not be liable for acts or omissions of the ESP or the ESP's employees, representatives, and/or agents.

#### 5.11 Conduct of Business

In consideration of the technical, logistical, managerial and other support which Airtel Kenya shall render to the ESP under the terms of this Agreement, the ESP agrees and undertakes to operate and manage its business in all material respects in accordance with such reasonable Operating Standards that Airtel Kenya may issue from time to time. Without prejudice to the generality of the foregoing, the ESP shall undertake the following obligations:-

##### a) Minimum Capital Requirement

To invest during the Preparation Period (set out under Clause 7 herein) such reasonable amounts agreed with Airtel Kenya in a Centre Construction, Furnishings and Equipment Budget including the following:

- (i) Products
- (ii) Any other items/equipment necessary to conduct the business.

##### b) Goodwill

To constantly protect and promote the goodwill attached to the trade and service marks displayed at the ESP Premises and to hold any additional goodwill generated during the Term for the marks, the know-how and methods of business as a trustee for Airtel Kenya and to conduct the business contemplated under this Agreement diligently and to use its best endeavors to achieve the greatest volume of business consistent with good service to the public.

##### c) Staff

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- (i) To make use of such reasonable minimum hiring standards, job descriptions and staffing levels provided by Airtel Kenya.
- (ii) To pay the employees reasonably competitive salaries and to set up appropriate incentive schemes for the staff.
- (iii) To avail its management and operations staff for training as required by Airtel Kenya, failure to which will constitute a material breach of this Agreement; Provided that the training is jointly scheduled by the Parties and reasonable notice is given to the ESP.
- (iv) To avail staff for exchange programmes as recommended by the Airtel Kenya Sales Training section; Provided that the training is jointly scheduled by the Parties and reasonable notice is given to the ESP.
- (v) To consider recommendations made by Airtel Kenya where the performance of staff is found wanting.
- (vi) To at all times keep at **least 5 qualified sales staff** dedicated to sell allocated Airtel Kenya portfolio of Products.

d) **Customer Service**

To set up and maintain dedicated Customer Service and Technical Support Teams at the ESP Premises and ensure competent staff man them so as to provide the above scope of services.

e) **Business Plan**

- (i) To prepare and complete a business plan ("the Business Plan") in accordance with the templates and timeframes provided by Airtel Kenya and submit the same to Airtel Kenya for approval;
- (ii) To review its performance under the Business Plan in conjunction with Airtel Kenya, at least once each month and to undertake such reasonable corrective measures as Airtel Kenya may suggest;
- (iii) To comply with all the laid down guidelines for the management and reselling of the Products and services, including minimum stocking quantities and reorder levels as recommended by Airtel Kenya.

f) **Meetings**

To attend such meetings as Airtel Kenya may on reasonable notice call for the purpose of reviewing the financial and operational aspects of the business.

g) **Independent Audits**

To submit reports of each ESP Outlet relating to the business to Airtel Kenya for independent quarterly audits.

h) **Centre-specific Promotional Activities**

To meet the cost of such periodic center-specific promotional activities as may be recommended by Airtel Kenya separate from and in addition to the promotional activities detailed in the Marketing Plan prepared by Airtel Kenya, showing all advertising and promotional activities for the year as to be financed by Airtel Kenya. The ESP shall carry out in conjunction with Airtel Kenya regular promotional activities in the respective regions.

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i) **Supervision**

To accord Airtel Kenya's representatives unlimited access to the ESP Premises and ensure that the Supervisor of the ESP takes and acts upon the reasonable directions issued from time to time by such representatives provided that visits to the ESP Premises by Airtel Kenya's representative shall be on reasonable notice and within The ESP's business hours.

jj) **Branding**

To brand the ESP's premises to Airtel Kenya specified standards at the ESP's cost.

k) **Stock**

To stock and sell Airtel Kenya's Products and Services though the ESP may stock complimentary and non-competing third party products including but not limited to Product Integration Tools.

l) **Sales Targets**

To meet sales targets as set and communicated by Airtel Kenya from time to time, by ensuring availability of Products and Services throughout their areas of operation; provided that Airtel Kenya shall at all times meet its obligations to supply the Products.

m) **Reporting**

To send periodical reports to Airtel Kenya for both performance review and market intelligence in the format agreed by the Parties.

n) **Standards**

When ESP is subcontracted to co – undertake a project with Airtel Kenya, the ESP will be expected to meet the project SLAs and standards set out.

## 6. AIRTEL KENYA's Rights and Obligations

### 6.1 Training and Support

Airtel Kenya shall where required, at its cost train the ESP, its supervisor and customer service assistants and technicians and shall provide further support through an ESP Training Manager as shall be reasonably required by the ESP in the preparation and implementation of the Business Plan.

For the avoidance of doubt, Airtel Kenya has the absolute discretion to determine whether training is necessary for the ESP.

### 6.2 Right of Inspection

Airtel Kenya may at any time without notice during the ESP's normal working hours inspect the ESP's Premises for the purpose of ascertaining that the ESP is complying with its obligations under this Agreement. If the ESP is found to be conducting or to have conducted its business in any way that falls below Airtel Kenya standards then Airtel Kenya shall require the ESP to remedy the failure within fourteen (14) days. If the ESP does not remedy such failure, Airtel Kenya may immediately suspend or terminate this Agreement by written notice to the ESP without prejudice to any other rights to which it may be entitled to at law.

### 6.3 Right of Assignment

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Airtel Kenya reserves the right to assign all rights and obligations hereunder to any of its wholly owned subsidiaries, affiliates or partners at any time.

#### 6.4 **Warranty**

In the event that the ESP shall receive a complaint of the purchase of a faulty or defective Airtel Kenya Product then the ESP shall require the Customer to immediately return the Product to the point of sale together with the receipt for the purchase. Airtel Kenya shall only be responsible for the replacement of the Product in the case of manufacturer's defects and undertakes to replace such faulty or defective products under warranty within reasonable time.

Airtel Kenya shall extend to the ESP the benefit of any warranty as given to Airtel Kenya (subject to any limitations and restrictions thereof) by its suppliers. This warranty is the only warranty given by Airtel Kenya and specifies the entire liability of Airtel Kenya including liability for negligence and in particular but without limitation all statutory or other express implied or collateral terms (including those related to but not limited to quality and fitness for purpose of the products and services) Conditions or warranties are excluded to the fullest extent provided by law including but not limited to any warranties and conditions expressed or implied by Sale of Goods Act (Chapter 31 of the Laws of Kenya).

#### 6.5 **Limitation on Liability**

- a) Except as provided herein the parties will not be under any liability (including liability for negligence) for any loss or damage or injury to the other party howsoever arising and will not be under liability in respect of any claim made against the other party by any third party including without limitation liability arising out of any product liability legislation.
- b) Except as provided herein the Parties shall not be under any liability for any direct, indirect, consequential or contingent loss or damage (howsoever arising including without limitation loss of profits, Agreements, anticipated business, savings, use, goodwill or otherwise) costs, expenses or other claims for consequential compensation whatsoever caused by either party, its employees or otherwise howsoever arising and whether foreseeable or not.
- c) Except as provided herein each party shall indemnify the other, and keep each other indemnified, from and against any and all loss, damage or liability, whether criminal or civil suffered, any legal fees and costs incurred by either party resulting from breach of this Agreement by one party including breaches caused by any act, neglect or default of either party's conduct, provided that the liability has not been incurred through any default by either party in relation to its obligation under this Agreement.
- d) In the event that Airtel Kenya is found liable to the ESP for any liability arising in connection with this Agreement, the extent of damages payable by Airtel Kenya to the ESP shall be limited to the amount of money paid by Airtel Kenya to the ESP in the six (6) month period preceding the event giving rise to the liability.

#### 6.6 **Branding and Advertisement**

Airtel Kenya shall develop branding standards to be utilized in the advertisement and promotion of the Products and Services. It shall also be responsible for the advertisement of the Products and Services and their points of presence.

#### 6.7 **ESP Guidelines**

Airtel Kenya shall develop and review ESP engagement guidelines providing for the ESP's operational requirements. Where necessary, the ESP may provide input in the development and review of the guidelines.

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#### **6.8 Customer Service Support**

Airtel Kenya shall ensure that there is quick and efficient response to all service related client needs within Airtel Kenya's responsibility.

#### **6.9 Network Maintenance**

Airtel Kenya shall ensure network maintenance, expansion and optimization to cater for the Services and Products.

#### **6.10 Product Availability**

Subject to the ESP providing accurate information and requests, Airtel Kenya shall guarantee the availability of Products and services to the ESP at all times and shall maintain adequate stock levels or capacities to meet customer demand.

#### **6.11 Discounts, Commissions and Prices**

Airtel Kenya reserves the right to vary any prices of Products sold pursuant to this Agreement, discount and/or commission at any time by giving written notice to the ESP to that effect.

### **7. Miscellaneous Provisions**

#### **7.1 Sales Targets**

Upon commencement of the business, the ESP shall have quarterly sales targets broken down into monthly targets for each quarter. Airtel Kenya shall conduct a performance management review at the end of every quarter to review the ESP's performance. In the event that an ESP achieves less than half of its sales targets in a quarter, Airtel Kenya will place the ESP on a Performance Improvement Plan (PIP) for a period of three (3) months. In the event that an ESP is placed in PIP for two (2) times in a year then Airtel Kenya will have the right to terminate this Agreement by giving One (1) month's written notice to that effect to the ESP, provided that the failure to meet the sales target is not attributable to Airtel Kenya failing in its obligations under this Agreement.

#### **7.2 Orders**

- a) ESP will place its Orders in such manner as shall be communicated by Airtel Kenya from time to time.
- b) Airtel Kenya will either accept an Order placed by the ESP or may decline any Order in part with notice to the ESP.
- c) The quantity and model description of the Products shall be clearly set out in the Order and any description and illustration contained in any Order shall conform to the Airtel Kenya documents forming part of this Agreement. The ESP is responsible for the accuracy of any order placed and for providing Airtel Kenya with sufficient information to enable Airtel Kenya meet the Order.
- d) Any Order placed by the ESP with Airtel Kenya may be accepted by Airtel Kenya. Once the Order has been accepted the ESP may not cancel it except upon reasonable notice and with the written consent of Airtel Kenya. The ESP shall indemnify Airtel Kenya against all losses, costs, damages and expenses incurred by Airtel Kenya as a result of such cancellation, unless such cancellation is caused by delay on the part of Airtel Kenya.
- e) Airtel Kenya shall be entitled at any time and from time to time to discontinue or alter the range, specification or price of any of the Products and to vary the prices of the Products. Airtel Kenya shall, within reasonable time, notify the ESP from time to time of

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any such amendments. These amendments shall be effective in respect of all future Orders accepted by Airtel Kenya.

- f) Any error or omission in any quotation, Tariff Guide, acceptance of offer, invoice or other document or information issued by Airtel Kenya shall be subject to immediate correction without any liability on the part of ESP; provided that the Product has not been sold to a customer.
- g) The ESP shall adhere to minimum Order quantities that may be set by Airtel Kenya, which may vary from time to time. In the event that the ESP does not place any Order for three (3) consecutive months, then this Agreement may be subject to review and, in the event the ESP takes no remedial action upon written instruction from Airtel Kenya to do so or gives no justifiable reason for the continuation of this Agreement within fourteen (14) days of Airtel Kenya requiring the same in writing, then this Agreement shall stand terminated as provided in Clause 10 here below.

#### 7.3 Pricing

- a) The Price of the Products shall be as set out in Airtel Kenya's Price List prevailing at the date of acceptance of the Order. Unless otherwise stated or agreed in writing by Airtel Kenya and the ESP all prices exclude the cost of delivery to the ESP.
- b) Airtel Kenya reserves the right to alter the Prices at any time prior to payment and upon informing the ESP to increase its prices if following the dates of the Order there is any change in Airtel Kenya Tariff Guide, or in the cost of Products and services, or in the rates of exchange, or in the event of any imposition or alteration of government tax, or any increase in the cost of materials, labor or transport, or any change in delivery dates, quantities or specifications as requested by the ESP, or in the event of any delay caused by the ESP Partner by failing to give Airtel Kenya adequate information or instructions, or if the cost of supplying the Products is increased by any other factor beyond the control of Airtel Kenya.

#### 7.4 Delivery

Unless otherwise agreed, the ESP shall collect, after payment of all applicable charges for the Ordered Product, the Products at such location as communicated by Airtel Kenya from time to time.

#### 7.5 Taxes

All prices and Commissions payable under this Agreement are quoted exclusive of Value Added and Excise Tax, where applicable.

The ESP shall be liable to pay all applicable taxes in respect of products or services purchased and commission earned at the prevailing rate as at the date of Airtel Kenya's invoice.

#### 7.6 Damage or Loss in Transit

In the event that Airtel Kenya delivers any of the Products to the ESP Premises, Airtel Kenya will either refund the cost or replace or repair free of charge any Products that are proved to Airtel Kenya's satisfaction to have been damaged in transit up to the moment of delivery provided that within three (3) days of delivery of the Products in the case of damage, the ESP notifies both the carrier and Airtel Kenya in writing of the damage or loss. Airtel Kenya accepts no liability for delay in transit. Unless the Products are checked on receipt the carrier's documentation should be endorsed "unexamined"

#### 7.7 Risk and Title

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- a) All risks of damage to or loss of the products shall pass to the ESP in the case of Products to be collected at Airtel Kenya premises at the time of collection, or in the case of Products which Airtel Kenya has agreed to deliver at a location other than Airtel Kenya's premises at the time of delivery.
- b) Notwithstanding delivery and the passing of risk in the Products the ESPP shall acquire legal ownership of the products only when Airtel Kenya has received in cash or cleared funds the full payment due to it under any Order provided by this Agreement.
- c) Until such time as the property in the Products shall pass to the ESP, the ESP shall hold the Products in trust for Airtel Kenya and shall keep the Products separate from those of the ESP and third Parties, properly stored, protected, insured and identified as Airtel Kenya's property. The ESP shall have the right to sell or otherwise dispose of the Products, in the ordinary course of its business and shall hold in trust and account to Airtel Kenya for the proceeds separate from all monies or property of the ESP and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- d) The ESP shall meet any costs incidental to the replacement of Subscriber IDs and other Products, whether insured or not held in trust for Airtel Kenya.
- e) Until such times as the property in the Products shall pass to the ESP, Airtel Kenya shall be entitled at any time upon reasonable notice to enter the Premises of the ESP or any third party where the Products are stored to repossess the Products and to terminate this Agreement, upon reasonable notice to the ESP.
- f) The ESP shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products, which remain the property of Airtel Kenya, but if the ESP does so all moneys owing by the ESP to Airtel Kenya shall without prejudice to any other rights or remedies of Airtel Kenya immediately become due and payable.

## **8. Force Majeure**

- a) Neither party shall be liable to the other or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Products if the delay or failure was as a result of an act of God, war (whether declared or not), sabotage, insurrection, riot, explosion, acts of terrorism, government control, acts, restrictions, regulations, by-laws, prohibitions, or reasons of any other government, parliamentary or local authority, import or export regulations or embargoes, fire, accident, earthquake, storm, flood, tempest, epidemic, quarantines, drought, famine or other natural catastrophes, inability to obtain equipment, breakdown in machinery, strikes or lockouts, shortage of labor (whether involving employees of either party or of a third party) or any other cause beyond the control of the parties and either party will notify the other if affected by any of the causes referred to in this sub-clause.
- b) In the event that either party is unable to perform its obligations under this Agreement for reason of force majeure for a period of three (3) months either party may at any time after the expiration of such period terminate this Agreement forthwith by giving written notice to that effect to the other Party.

## **9. Suspension**

- a) Airtel Kenya will have the right to temporarily suspend the ESP's rights upon giving not less than Fifteen (15) days' written notice under this Agreement if the ESP and/or its employees are in breach of any of the terms or conditions of this Agreement but in the opinion of Airtel Kenya the violation is not material enough to warrant termination. The notice shall cite the reasons and the duration for such intended suspension and the required remedial action including the period within which the breach should be remedied. The engagement of the parties may be reinstated by written notice once Airtel Kenya is satisfied that the breach has been remedied.

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- b) In the event that the ESP's rights are suspended on three (3) occasions within a period of twelve (12) months then this Agreement shall stand terminated and Airtel Kenya shall be discharged from such further liability that may have accrued as consequence hereto.

#### **10. Termination**

This Agreement may be terminated by either party giving the other thirty (30) days prior written notice.

This Agreement may be terminated by either party immediately by written notice to the other party without prejudice to any claim or right it might otherwise make or exercise and without any liability to the terminating party under summary notice for any loss, costs or expenses thereby incurred if:-

- a) The other party commits a material breach of this Agreement; or
- b) The other party commits a breach other than a material breach of this Agreement and if the breach is capable of remedy, fails to remedy the breach within forty five (45) days of being required to do so; or
- c) The other party is unable to pay its debts or passes a resolution for winding-up (otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations of the other party under this Agreement) or a court shall make an order to that effect, or in the case of a partnership is dissolved, ceases to carry on its business or substantially the whole of its business, or becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors or if a liquidator receiver administrator trustee manager or similar officer is appointed over any of the assets of the other party or any analogous step is taken in connection with the insolvency bankruptcy or dissolution or if a third party seizes or threatens to seize the Products before legal ownership has passed to the other party; or
- d) The ESP is guilty of any conduct which is prejudicial to Airtel Kenya interests;
- e) Airtel Kenya's licence to operate a GSM network in Kenya is revoked or suspended by a relevant regulatory authority; or
- f) If a person who does not have control of the ESP at the date of this Agreement acquires fifty percent (50%) or more of the share capital or voting rights of the ESP or the power to control the affairs of the ESP without prior approval of Airtel Kenya.

#### **11. Consequence of Termination**

- a) The ESP shall at its own risk and expense promptly return all products for which payment has not been made in full;
- b) The ESP may sell Products for which it has Orders from customers prior to the date of termination and Products that Airtel Kenya does not repurchase within fourteen (14) days from the date of termination. The ESP may continue to sell such stock provided that the packaging thereof bears no trademark or branding belonging to Airtel Kenya or the name of Airtel Kenya;
- c) The ESP shall at its own expense return all confidential information, advertising and promotional material in its possession, all other stationery and documents (other than standard correspondence, letters and orders) and any equipment (including hardware and software) supplied to the ESP free of charge by Airtel Kenya provided that where the ESP has made full payment for any branding material, property in such materials shall

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not revert to Airtel Kenya. The ESP hereby undertakes not to use such branding material upon termination of the Agreement;

- d) The ESP shall cease to promote the Products, brands and Service or make any further use of the Brands, trade a marks or trade names belonging to Airtel Kenya or its Group of companies.
- e) The ESP shall forthwith cease to be or to act as an appointed ESP and/or representative of Airtel Kenya and shall forthwith cease to indicate or advertise in any way that it is a ESP for Airtel Kenya or entitled to sell or deal in the Products and /or Services.
- f) Upon termination of this Agreement for any of the reasons above the ESP shall have no claim against Airtel Kenya for compensation for loss of distribution or other rights, loss of goodwill or any similar loss.
- g) Upon termination of this Agreement no commission or residual shall be payable or liable to be paid to the ESP in respect of any period after the date of such termination.
- h) Subject to any provision to the contrary, the termination of the Agreement howsoever caused shall be without prejudice to the continuation of any provision which expressly or by implication comes into operation or continues in force after the date of termination and shall be without prejudice to any rights and liabilities of the parties which may have already accrued prior to the date of termination.

## **12. Restriction on Transfer of Business and Buy Out**

The ESP understands that Airtel Kenya has undertaken an intense prequalification and vetting process before appointing the ESP. The ESP therefore agrees not to transfer or sell the business or control thereof to any other person whatsoever without the prior written consent of Airtel Kenya, and if such consent is given, the transfer to be effected upon the fulfillment of such conditions as Airtel Kenya Shall give, which may include without limitation, reimbursement to Airtel Kenya of all reasonable costs and expenses incurred or to be incurred by it as a result of the transfer.

Notwithstanding the provisions above, Airtel Kenya will be under no obligation to accept any transfer or buy out of the business unless:

- a) A notice of 90 days of the intended transfer and buy out is given to Airtel Kenya;
- b) The new partner brought in as a result of the transfer or buy out is approved by Airtel Kenya; and
- c) The new partner agrees to be bound by terms no less onerous than the terms and conditions of this Agreement.

An acceptance by Airtel Kenya of any transfer or buy out of the business shall be:

- a) In relation to the ESP's existing business, an acceptance for the remainder of the term of the Agreement
- b) In relation to a transfer or buy out occurring at the expiry of the term of the Agreement, an acceptance for a one year term.

It is understood by the ESP that it is in Airtel Kenya's absolute discretion to either accept or reject a request from the ESP on a proposed transfer or buy out of the business. Airtel Kenya will not be held liable for any direct or indirect loss, loss of profits, business or goodwill arising from the exercise of this discretion.

In the event that Airtel Kenya does not give its consent to a proposed transfer or buy out of the ESP's business, the ESP may either continue with the business or issue notice of termination as per the terms of this Agreement.

## **13. Forwarding Instructions**

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The ESP, where required shall provide forwarding instructions, not later than three (3) working days after being advised that the Products are ready for dispatch. If no forwarding instructions are received within this period Airtel Kenya shall have the right thereafter to deliver the Products to the ESP's last known address and to charge the ESP in accordance with its Price List.

#### **14. Waiver**

Any failure to exercise or delay in exercising a right or remedy provided by this Agreement, or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

#### **15. Costs and Expenses**

Save as expressly provided in this Agreement, each party shall be responsible for all costs and expenses it may incur in relation to this Agreement.

#### **16. Right of Set-off**

Airtel Kenya shall have the right to off-set any sums owed to it by the ESP hereunder against any sums due and owing to the ESP under this Agreement.

#### **17. Notice**

- a) Any notice required to be given to Airtel Kenya shall be deemed to have been given if it is posted by registered mail or delivered by hand or courier service to:

Airtel Networks Kenya Limited  
Parkside Towers, Mombasa Road  
P.O. Box 73146 - 00200  
Nairobi, KENYA

Marked for the attention of: The Chief Executive Officer.

- b) Any notice required to be given to the ESP shall be deemed to be so given if it is addressed to the ESP at its last known address and posted by registered mail or e-mail or delivered by hand or a courier service to the ESP.
- c) Such notice shall be deemed to have been received seven (7) business days after posting or if delivered by hand or courier upon receipt by the duly authorized officer.

#### **18. Arbitration**

- a) Any dispute arising out of or in connection with this Agreement shall first be referred to negotiation between the parties provided that where no Agreement is reached between the Parties within fourteen (14) days from the date of notification of the dispute, the same shall be referred to arbitrations follows:
- b) The dispute shall be referred to arbitration by a single arbitrator to be appointed by Agreement between the parties provided that where no Agreement between the Parties is reached or in default of such Agreement within fourteen (14) days of the notification of a dispute, upon the application of either party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators.

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- c) Such arbitration shall be conducted in Nairobi, Kenya in accordance with the Arbitration Act, Act No. 4 of 1995 or such statutes amending or replacing the same.
- d) To the extent permissible by law, the determination of the Arbitrator will be final and binding upon the Parties. For the avoidance of doubt, the parties shall have a right of appeal on points of law.
- e) Notwithstanding the Arbitration provisions, the Parties shall not be precluded from seeking urgent injunctive relief, in which case the Parties submit to the exclusive jurisdiction of the High Court of Kenya.

#### 19. Governing Law

These Terms and Conditions of Agreement shall be interpreted, governed and construed in accordance with the Laws of the Republic of Kenya.

**IN WITNESS** whereof the parties have caused this Agreement to be executed on the day, month and year herein above written.

SIGNED by the duly authorized signatory of

The **Enterprise Solutions Partner**

By signing this Agreement, I/We confirm to have read and understood the terms and conditions and all the Appendices.

) *Samson Karau Mwangi*  
 ) .....  
 ) Name & Signature  
 ) ((of authorized signatory)  
 ) **WAM APPLICATIONS**  
 ) .....  
 ) .....  
 ) .....  
 ) .....  
 ) .....  
 ) P.O BOX 23482, 00625 - KANGEMI.  
 )

**16 AUG 2023**

SIGNED on behalf of  
**AIRTEL NETWORKS KENYA LIMITED**

DIRECTOR

Confidential – Airtel Kenya Enterprise Solutions Partner Agreement

**APPENDIX A**

COMMISSION STRUCTURE FOR ENTERPRISE SOLUTION PARTNERS  
(to be provided separately for signing)

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P.O BOX 23482, 00625 - KANGEMI,

**APPENDIX B**

CODE OF CONDUCT FOR BUSINESS ASSOCIATES



Code of Conduct  
Business Associates.

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P.O BOX 26462, 00625 - KANGEMI,

APPENDIX C

BHARTI THIRD PARTY SECURITY POLICY



Bharti Third Party Security Policy.pdf

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P.O BOX 23482, 00625 - KANGEMI, KENYA

[www.kra.go.ke](http://www.kra.go.ke)

**Certificate Date :** 19/03/2018  
**Personal Identification Number**  
A011840872X

This is to certify that taxpayer shown herein has been registered with Kenya Revenue Authority

### **Taxpayer Information**

<b>Taxpayer Name</b>	SAMSON KARAU MAINGI
<b>Email Address</b>	MAINGIKARAU123@GMAIL.COM

### **Registered Address**

<b>L.R. Number :</b>	<b>Building :</b> gatongora
<b>Street/Road :</b> gatongora	<b>City/Town :</b> ruiru
<b>County :</b> Kiambu	<b>District :</b> Ruiru District
<b>Tax Area :</b> Ruiru	<b>Station :</b> Thika
<b>P. O. Box :</b> 23482	<b>Postal Code :</b> 00625

### **Tax Obligation(s) Registration Details**

<b>Sr. No.</b>	<b>Tax Obligation(s)</b>	<b>Effective From Date</b>	<b>Effective Till Date</b>	<b>Status</b>
1	Income Tax - Resident Individual	19/03/2018	N.A.	Active

The above PIN must appear on all your tax invoices and correspondences with Kenya Revenue Authority. Your accounting end date is 31st December as per the provisions stated in the Income Tax Act unless a change has been approved by the Commissioner-Domestic Taxes Department. The status of Tax Obligation(s) with 'Dormant' status will automatically change to 'Active' on date mentioned in "Effective Till Date" or any transaction done during the period. This certificate shall remain in force till further updated.