



# NikoRadius Enterprise Terms and conditions

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Dated: January 2020



## NikoRadius Terms and Conditions

By accepting to Register with us, you agree to these our terms and conditions to protect you as our customer and us a business. They also define the terms of our engagement to ensure a smooth relationship between you and us.

(The capitalized terms used in this agreement, in addition to those above, are defined in section [DEFINITIONS].)

### 1. Grant of License to Access and Use Service.

Tambua Technologies hereby grants to **CLIENT BUSINESS**, including to all **CLIENT BUSINESS'S** Authorized Users, a non-exclusive, non-sublicensable, non-assignable, royalty-free, and worldwide license to access and use the **NikoRadius** Internet Billing and Management Software (the "Service") solely for **CLIENT BUSINESS**'s internal business operations (the "NikoRadius Internet Billing and Management Software"), according to Tambua Technologies terms and policies listed at [[www.nikoradius.com](http://www.nikoradius.com)].

## 2. Support Services

### 2.1. Initial Support.

For the 1-month period beginning on the Effective Date, and at Tambua Technologies own expense, Tambua Technologies shall provide **CLIENT BUSINESS**) with

- a. Telephone or electronic support during Tambua Technologies normal business hours in order to help **CLIENT BUSINESS** locate and correct problems with the Service and any related software, and
- b. Internet-based support system generally available seven days a week, twenty-four hours a day.

### 2.2. Renewed Support.

After the initial 1-month support period **CLIENT BUSINESS** may elect to renew Tambua Technologies support services under this paragraph 1 for additional 12-month periods, at Tambua Technologies then-current maintenance service rates.

### 3. Fees

**CLIENT BUSINESS** shall pay Tambua Technologies a one-time system Fee dependent on the plan selected (view plans at <https://nikoradius.com/#pricing>) and thereafter a monthly maintenance fee of the amount per plan selected, **AFTER** the first month of use, for the NikoRadius Internet Billing and Management Software provided under this agreement.

### 4. Payment

**CLIENT BUSINESS** shall pay the System Fee to Tambua Technologies not more than **5** days after receiving the invoice. The monthly support Fee is payable not later than **5<sup>th</sup>** Day of the month.

Failure to pay by 5<sup>th</sup> Day of the month, support will be billed per Demand at a flat rate of **KES. 4500** per Hour of Developers time.

Tambua Technologies holds the rights of pricing and any change will be communicated in not less than **45 days** to the effective date.

All Payments **SHOULD** be made to Tambua Technologies Bank Account through following mode:

a. Direct Bank Payment

Bank Name: Stanbic Bank

Account Name: TAMBUA TECHNOLOGIES LIMITED

Account Number: 0100006859447

b. Mobile Money Payment

MPESA PayBill Number:600100

Account Number: 0100006859447

## 5. Taxes

Payment amounts under this agreement **DO NOT** include any Taxes, and **CLIENT BUSINESS** shall pay all Taxes applicable to payments between the parties under this agreement.

## 6. Interest on Late Payments

Any amount not paid when due will bear interest from the due date until paid at a rate equal to 1% per month or (12% annually) or the maximum allowed by Law, whichever is less.

## 7. Service Levels

### 7.1. Applicable Levels.

Tambua Technologies shall provide the Service to **CLIENT BUSINESS** with a System Availability of at least 99% during each calendar month.

### 7.2. System Maintenance.

Tambua Technologies may

- a. take the Service offline for scheduled maintenances that it provides **CLIENT BUSINESS** the schedule for in writing (though this scheduled maintenance time will not count as System Availability), and
- b. change its schedule of maintenances on [one] month written notice to **CLIENT BUSINESS**.

### 7.3. System Availability Definition

- a. **Percentage of Minutes per Month.** "System Availability" means the percentage of minutes in a month that the key components of the Service are operational.
- b. **Not Included in "System Availability."** "System Availability" will not include any minutes of downtime resulting from
  - i. scheduled maintenance,
  - ii. events of force majeure,
  - iii. malicious attacks on the system,
  - iv. issues associated with **CLIENT BUSINESS** computing devices, local area networks or internet service provider connections, or
  - v. Tambua Technologies inability to deliver services because of **CLIENT BUSINESS** acts or omissions.

## 8. Data Protection

**CLIENT BUSINESS** shall implement reasonable safeguards to prevent unauthorized access to, use of, or disclosure of the disclosing party's Data.

## 9. Data Privacy

Tambua Technologies may collect, use and process **CLIENT BUSINESS** data only according to Tambua Technologies Privacy Policy, available at [[https://nikoradius.com/privacy\\_policy](https://nikoradius.com/privacy_policy)].

## 10. Back-Up Data

On **CLIENT BUSINESS** 's request and payment of KES. 1000 per copy, Tambua Technologies shall deliver to **CLIENT BUSINESS** a full back-up of **CLIENT BUSINESS** 's Data, in a format the parties agree on in writing.

## 11. Statistical Information.

Tambua Technologies may anonymously compile statistical information related to the performance of the Service for purposes of improving the Service, but only if such information does not identify the data **CLIENT BUSINESS** 's or otherwise include **CLIENT BUSINESS** 's name.

## 12. Representations

### 12.1. Mutual Representations

- a. **Existence.** The parties are corporations incorporated and existing under the laws of the jurisdictions of their respective incorporation.
- b. **Authority and Capacity.** The parties have the authority and capacity to enter into this agreement.
- c. **Execution and Delivery.** The parties have duly executed and delivered this agreement.

- d. **Enforceability.** This agreement constitutes a legal, valid, and binding obligation, enforceable against the parties according to its terms.
- e. **No Conflicts.** Neither party is under any restriction or obligation that the party could reasonably expect might affect the party's performance of its obligations under this agreement.
- f. **No Breach.** Neither party's execution, delivery, or performance of its obligations under this agreement will breach or result in a default under
  - i. its articles, bylaws, or any unanimous shareholders agreement,
  - ii. any Law to which it is subject,
  - iii. any judgment, Order, or decree of any Governmental Authority to which it is subject, or
  - iv. any agreement to which it is a party or by which it is bound.
- g. **Permits, Consents, and Other Authorizations.** Each party holds all Permits and other authorizations necessary to
  - I. own, lease, and operate its properties, and
  - II. conduct its business as it is now carried on.
- h. **No Disputes or Proceedings.** [Except as disclosed in the parties respective Disclosure Schedules] There are no Legal Proceedings pending, threatened, or foreseeable against either party, which would affect that party's ability to complete its obligations under this agreement.
- i. **No Bankruptcy.** Neither party has taken or authorized any proceedings related to that party's bankruptcy, insolvency, liquidation, dissolution, or winding up.



## 12.2. Tambua Technologies Representations

### a. IP Disclosure Schedule

Tambua Technologies Disclosure Schedule lists any exceptions to its representations.

### b. Ownership

Tambua Technologies is the exclusive legal owner of the Service, including all Intellectual Property included in the Service and granted under the NikoRadius Internet Billing and Management Software.

### c. Status of Licensed Intellectual Property

Tambua Technologies has properly registered and maintained all Intellectual Property included in the Service and granted under the NikoRadius Internet Billing and Management Software and paid all applicable maintenance and renewal fees.

### d. No Conflicting Grant

Tambua Technologies has not granted and is not obligated to grant any license to a third party that would conflict with the NikoRadius Internet Billing and Management Software.

### e. No Infringement

The Service does not infringe the Intellectual Property rights or other proprietary rights of any third party.

### f. No Third-Party infringement

To Tambua Technologies Knowledge, no third party is infringing the Service.

## 13. User Obligations

### 13.1. Hardware Obligations

**CLIENT BUSINESS** shall be responsible for

- a. obtaining and maintaining all computer hardware, software, and communications/Network equipment's needed to internally access the Service, and
- b. paying all third-party access charges incurred while using the Service.

### 13.2. Anti-Virus Obligations

**CLIENT BUSINESS** shall be responsible for implementing, maintaining, and updating all necessary and proper procedures and software for safeguarding against computer infection, viruses, worms, Trojan horses, and other code that manifest contaminating or destructive properties (collectively "Viruses").

### 13.3. Use of Services

**CLIENT BUSINESS** shall

- a. abide by all local and international Laws and regulations applicable to its use of the Service,
- b. use the Service only for legal purposes, and
- c. comply with all regulations, policies and procedures of networks connected to the SaaS.

### 14. Restricted Uses

**CLIENT BUSINESS WILL NOT**

- I. upload or distribute of any files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Service,
- II. modify, disassemble, decompile or reverse engineer the Service,
- III. probe, scan, test the vulnerability of, or circumvent any security mechanisms used by, the sites, servers, or networks connected to the Service,
- IV. take any action that imposes an unreasonably or disproportionately large load on the sites, servers, or networks connected to the Service,
- V. copy or reproduce the Service,
- VI. access or use any other clients' or their users' data through the Service,
- VII. maliciously reduce or impair the accessibility of the Service,
- VIII. use the service to post, promote, or transmit any unlawful, harassing, libelous, abusive, threatening, harmful, hateful, or otherwise objectionable material, or
- IX. transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability.

## 15. Confidentiality Obligations

The parties shall continue to be bound by the terms of the non-disclosure agreement between the parties, where relevant through the acceptance of this agreement. **“All confidential matters thus will be treated confidential between the two parties”.**

## 16. Export Compliance

### 16.1. No Representation by Tambua Technologies

Tambua Technologies makes no representation that the Service is appropriate or available for use outside of the Kenya.

### 16.2. Customer Name Status

**CLIENT BUSINESS** represents and that it is not located in, under the control of, or a national or resident of any country to which the Kenya has embargoed the import or export of goods and services.

## **17. Term**

This agreement begins on the Effective Date, and will continue until terminated (the "Term").

## **18. Ownership of Intellectual Property**

Tambua Technologies will retain all interest in and to the Services, including all documentation, modifications, improvements, upgrades, derivative words, and all other Intellectual Property rights in connection with the Service, including Tambua Technologies name, logos, and trademarks reproduced through the Service.

## 19. Termination

### 19.1. Termination on Notice.

Either party may terminate this agreement for any reason on **7 business days'** notice to the other party.

### 19.2. Termination for Material Breach.

Each party may terminate this agreement **with immediate effect** by delivering notice of the termination to the other party, if

- a. the other party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and
- b. the failure, inaccuracy, or breach continues for a period of 7 Business Days' after the injured party delivers notice to the breaching party reasonably detailing the breach.

### 19.3. Termination for Failure to Pay

Tambua Technologies may terminate this agreement with **immediate effect** by delivering notice of the termination to **CLIENT BUSINESS**) if **CLIENT BUSINESS** fails to pay the System Fee on time **within 7 days** period after delivery of this agreement.

## 20. Effect of Termination

### 20.1. Refund Amounts

Tambua Technologies shall immediately refund to **CLIENT BUSINESS** any prepaid System Fees covering the remainder of the term of all subscriptions after the effective date of termination.

### 20.2. Pay Outstanding Amounts

**CLIENT BUSINESS** shall immediately pay to Tambua Technologies all amounts outstanding as of the date of, and any amounts outstanding as a result of, termination.

### 20.3. Discontinuance of Use

**CLIENT BUSINESS**) shall cease all use of the Service upon the effective date of the termination.

### 20.4. Recovery of Data

**CLIENT BUSINESS** will have 30 days from the date of termination to retrieve any of data that **CLIENT BUSINESS** wishes to keep.

## 21. Indemnification

### 21.1. Indemnification by Tambua Technologies

#### a. Indemnification for Infringement Claims

Subject to paragraph [EXCLUSIONS], Tambua Technologies (as an indemnifying party) shall indemnify **CLIENT BUSINESS** (as an indemnified party) against all losses and expenses arising out of any proceeding

- I. brought by a third party, and
- II. arising out of a claim that the Services infringe the third party's Intellectual Property rights.

#### b. Qualifications for Indemnification

Tambua Technologies will be required to **CLIENT BUSINESS** under paragraph [INDEMNIFICATION FOR INFRINGEMENT CLAIMS] only if

- I. **CLIENT BUSINESS** 's use of the Services complies with this agreement and all documentation related to the Services,
- II. the infringement was not caused by **CLIENT BUSINESS** modifying or altering the Services or documentation related to the Services, unless Tambua Technologies consented to the modification or alteration in writing, and
- III. the infringement was not caused by **CLIENT BUSINESS** combining the Services with products not supplied by Tambua Technologies, unless Tambua Technologies consented to the combination in writing.



## **21.2. Mutual Indemnification**

Each party (as an indemnifying party) shall indemnify the other (as an indemnified party) against all losses arising out of any proceeding

- a. brought by either a third party or an indemnified party, and
- b. arising out of the indemnifying party's willful misconduct or gross negligence.

## **21.3. Notice and Failure to Notify**

### **(a) Notice Requirement**

Before bringing a claim for indemnification, the indemnified party shall

- I. notify the indemnifying party of the indemnifiable proceeding, and
- II. deliver to the indemnifying party all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding.

### **(b) Failure to Notify**

If the indemnified party fails to notify the indemnifying party of the indemnifiable proceeding, the indemnifying will be relieved of its indemnification obligations to the extent it was prejudiced by the indemnified party's failure.

#### **21.4. Exclusive Remedy.**

The parties' right to indemnification is the exclusive remedy available in connection with the indemnifiable proceedings described in this section [INDEMNIFICATION].

### **22. Limitation on Liability**

#### **22.1. Mutual Limit on Liability**

Neither party will be liable for breach-of-contract damages suffered by the other party that are remote or speculative, or that could not have reasonably been foreseen on entry into this agreement.

#### **22.2. Maximum Liability**

Tambua Technologies liability under this agreement will not exceed the fees paid by **CLIENT BUSINESS** under this agreement during the 12 months preceding the date upon which the related claim arose.

## 23. General Provisions

### 23.1. Entire Agreement

The parties intend that this agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this agreement and refer to this agreement,

- a. represent the final expression of the parties' intent relating to the subject matter of this agreement,
- b. contain all the terms the parties agreed to relating to the subject matter, and
- c. replace all of the parties' previous discussions, understandings, and agreements relating to the subject matter of this agreement.

### 23.2. Amendment

Tambua Technologies may amend the terms and conditions of this agreement at any time by reasonable notice, including without limitation by posting revised terms on its website at the [www.nikoradius.com](http://www.nikoradius.com)

### 23.3. Assignment

Neither party may assign this agreement or any of their rights or obligations under this agreement without the other party's written consent.

## 24. Notices

### (a) Method of Notice

The parties shall give all notices and communications between the parties in writing by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid [, (iv) fax][, or (v) electronic mail] to the party's address specified in this agreement, or to the address that a party has notified to be that party's address for the purposes of this section.

### (b) Receipt of Notice

A notice given under this agreement will be effective on

- i. the other party's receipt of it, or
- ii. if mailed, the earlier of the other party's receipt of it and the [fifth] business day after mailing it.

### 24.1. Governing Law

This agreement shall be governed, construed, and enforced in accordance with the laws of the State of Kenya Laws, without regard to its conflict of laws rules.

## 24.2. Severability

If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

## 24.3. Waiver

### a. Affirmative Waivers

Neither party's failure or neglect to enforce any rights under this agreement will be deemed to be a waiver of that party's rights.

### b. Written Waivers

A waiver or extension is only effective if it is in writing and signed by the party granting it.

### c. No General Waivers

A party's failure or neglect to enforce any of its rights under this agreement will not be deemed to be a waiver of that or any other of its rights.

### d. No Course of Dealing

No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

#### **24.4. Force Majeure**

Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.

### **25. Relationship of the Parties**

#### **25.1. No Relationship**

Nothing in this agreement creates any special relationship between the parties, such as a partnership, joint venture, or employee/employer relationship between the parties.

#### **25.2. No Authority**

Neither party will have the authority to, and will not, act as agent for or on behalf of the other party or represent or bind the other party in any manner.

## 26. Cooperation

You will reasonably cooperate with any of the Videojet's investigation of Service outages, security problems, and any suspected breach of the Agreement. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld.

### 26.1. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

## 27. Definitions

"Client Business" means the business (Company, partnership or sole proprietorship) that engages NikoRadius in its business.

"Authorized Users" means the list of Persons authorized to use the Services under this agreement, fully listed in the [ATTACHMENT], attached to this agreement.

"Business Day" means a day other than a Saturday, a Sunday, or any other day on which the principal banks located in Nairobi; Kenya are not open for business.

"Confidential Information" has the same meaning in this agreement as the term has under the Non-Disclosure Agreement between the parties, dated **CLIENT BUSINESS** referenced in section [CONFIDENTIALITY OBLIGATIONS] and attached to this agreement.

"Data" means all of the data **CLIENT BUSINESS** creates with or uses with the Service, or otherwise related **CLIENT BUSINESS** 's use of the Services.



"Disclosure Schedule" means the schedules delivered, before the execution of this agreement, by each party to the other party which list, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision of this agreement or as an exception to one or more of the representations or warranties made by the party, or to one or more of the covenants of the party.

"Effective Date" is defined in the introduction to this agreement as the day the customer registers and checks the ACCEPT TERMS AND CONDITIONS CHECK BOX

"Governmental Authority" means

- a. any federal, state, local, or foreign government, and any political subdivision of any of them,
- b. any agency or instrumentality of any such government or political subdivision,
- c. any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that its rules, regulations or orders have the force of law), and
- d. any arbitrator, court or tribunal of competent jurisdiction.

"Intellectual Property" means any and all of the following in any jurisdiction throughout the world

- a. trademarks and service marks, including all applications and registrations, and the goodwill connected with the use of and symbolized by the foregoing,
- b. copyrights, including all applications and registrations related to the foregoing,
- c. trade secrets and confidential know-how,
- d. patents and patent applications,
- e. websites and internet domain name registrations, and
- f. other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys' fees for past, present, and future infringement, and any other rights relating to any of the foregoing).

"Law" means

- a. any law (including the common law), statute, bylaw, rule, regulation, order, ordinance, treaty, decree, judgment, and
- b. any official directive, protocol, code, guideline, notice, approval, order, policy, or other requirement of any Governmental Authority having the force of law.

"Legal Proceeding" means any claim, investigation, hearing, legal action, or other legal, administrative, arbitral, or similar proceeding, whether civil or criminal (including any appeal or review of any of the foregoing).

"[License Grant]" is defined in section [GRANT OF ACCESS AND USE OF SERVICE].

"Order" means any decision, order, judgment, award, or similar order of any court of competent jurisdiction, arbitration panel, or Governmental Authority with jurisdiction over the subject matter, whether preliminary or final.

"Permits" means all material licenses, franchises, permits, certificates, approvals, and authorizations, from Governmental Authorities necessary for the ownership and operation of the party's business.

"Person" includes

- a. any corporation, company, limited liability company, partnership, Governmental Authority, joint venture, fund, trust, association, syndicate, organization, or other entity or group of persons, whether incorporated or not, and
- b. any individual.

"Service" is defined in section [GRANT OF ACCESS AND USE OF SERVICE].

"Subscription Fee" is defined in section 4.

"System Availability" is defined in [section [SERVICE LEVELS] / the Service Levels Agreement, attached to this agreement as Exhibit A

"Taxes" includes all taxes, assessments, charges, duties, fees, levies, and other charges of a Governmental Authority, including income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added and all other taxes of any kind for which a party may have any liability imposed by any Governmental Authority, whether disputed or not, any related charges, interest or penalties imposed by any Governmental Authority, and any liability for any other person as a transferee or successor by Law, contract or otherwise.

"Term" is defined in section [TERM].

"Viruses" is defined in section [USER OBLIGATIONS].

## **1. Premium Service Support**

Premium Services Support ("Premium Support") services entitles the Customer to the following:

- a. Telephone or electronic support in order to help the Customer locate and correct problems with the Software.
- b. Bug fixes and code corrections to correct Software malfunctions in order to bring the Service into substantial conformity with the operating specifications.
- c. All extensions, enhancements and other changes that the Company makes or adds to the Service and which the Company offers, without charge, to all other Subscribers of the Service.
- d. Up to 2 dedicated contacts designated by the Customer in writing that will have access to support services.

## 2. Response and Resolution Goals

### 2.1 Severity 1:

The Production system / application is down, seriously impacted and there is no reasonable workaround currently.

Upon confirmation of receipt, the Company will begin continuous work on the issue, and a customer resource must be available at any time to assist with problem determination.

Once the issue is reproducible or once we have identified the Software defect, the Company support will provide reasonable effort for workaround or solution within 24 hours.

### 2.2 Severity 2:

The system or application is seriously affected. The issue is not critical and does not comply with the Severity 1 conditions. There is no workaround currently available or the workaround is cumbersome to use.

The Company will work during normal business hours to provide reasonable effort for workaround or solution within 7 business days, once the issue is reproducible.

### 2.3 Severity 3:

The system or application is moderately affected. The issue is not critical and the system has not failed. The issue has been identified and does not hinder normal operation, or the situation may be temporarily circumvented using an available workaround.

The Company will work during normal business hours to provide reasonable effort for workaround or solution within 10 business days, once the issue is reproducible.

### 2.4 Severity 4: Non-critical issues.

The Company will seek during normal business hours to provide a solution in future releases of the Service.