

TERMS AND CONDITIONS FOR THE SAFARICOM KARIBU POSTPAY BUNDLES

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement:

- (a) **"Application Form"** means the form overleaf indicating your request in writing to be Connected to a particular Price Plan and to the Services;
- (b) **"Agreement"** or **"Terms and Conditions"** means these terms and conditions, the Application Form and the Tariff Guide, which may be varied by Safaricom from time to time;
- (c) **"Charges"** means the amounts payable for the Price Plan and the Services as published in the Tariff Guide or otherwise described in these Terms;
- (d) **"Connection"** means the activation of your chosen Price Plan. The term "Connected" shall have a similar meaning;
- (e) **"Content"** means voice and data transmitted or communicated through the Services;
- (f) **"Force Majeure"** means acts of God, geographical topography, power outages, weather conditions, the refusal or delay by a third party to supply the Services to Safaricom, the imposition of restrictions of a legal or regulatory nature which prevents Safaricom from supplying the Services, an event which could not reasonably have been avoided by a diligent party in the circumstances, which is beyond the reasonable control of a party and which makes a party's performance of its responsibilities hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances and includes, but is not limited to, war, riots, civil disorder, earthquake, storm, flood or adverse weather conditions, strikes, lockouts or other industrial action, confiscation or any other action by government agencies. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder;
- (g) **"Network"** means the network operated by Safaricom, its subsidiary(ies), holding company and/or its third party providers to facilitate the provision of the Services;
- (h) **"Offending Material"** means any Content that is:
 - (i) in breach of any law, regulation or code of practice invoked by Safaricom or industry regulator or any policy adopted by Safaricom with regard to the acceptable use of the Services, or
 - (ii) abusive, indecent, defamatory, obscene, offensive, menacing or a threat to the health and safety of any third party; or
 - (iii) in breach of confidence, intellectual property rights, privacy or any right of a third party.
- (i) **"Parties"** means Safaricom and you;
- (j) **"Price Plan"** means the package you have chosen to receive of bundled minutes, SMS, data and where applicable Price Plan Equipment;
- (k) **"Price Plan Equipment"** means a handset, USB dongle, laptop or other equipment and/or accessories as available from time to time on a selected Price Plan and for which you will pay a set amount monthly over a defined period to cover the cost of the selected Price Plan Equipment;
- (l) **"You"** means you as the subscriber applying for, or using the Services and includes any person who Safaricom believes is acting with your authority. The term "you" shall have a similar meaning;
- (m) **"Your Equipment"** includes your mobile phone handset, USB dongle, or other equipment (not being Price Plan Equipment) which when used together with the SIM Card allows access to the Services;
- (n) **"Services"** means the communication services you receive through the Network and such other services as may be provided by Safaricom from time to time;
- (o) **"SIM Card"** means the Subscriber Identity Module that enables you to access the Services when used with Your Equipment or Price Plan Equipment as the case may be;
- (p) **"Tariff Guide"** means the list of Charges payable to access a Price Plan and other Services as published and varied by Safaricom from time to time or otherwise chargeable by a third party operator with whom Safaricom has a roaming agreement. The current Tariff Guide for our various Price Plan and Services can be viewed at www.safaricom.co.ke

2. THE SERVICE & COMMENCEMENT

- (a) This Service is open to Safaricom Postpay subscribers who are enrolled onto it as at 26th May, 2015.
- (b) Subscribers who opt out of this Service will not be in a position to subscribe back into the Service.
- (c) Subscribers who choose to migrate to other Safaricom published tariffs must fully utilise their resources by 26th May, 2015 failing which such resources will expire. Such resources will not be migrated to other tariffs
- (d) All users of the Safaricom Karibu Postpay Bundles must utilise their accumulated resources by 26th May, 2015 failing which the same will automatically expire and be permanently unavailable. Resources cannot be rolled over, the same will automatically expire after 30 days.
- (e) This Agreement shall be deemed to have commenced on the date you are Connected by Safaricom ("Commencement Date") and shall continue from the Commencement Date until terminated by either party pursuant to the Agreement.

3. SUPPLY OF THE SERVICES AND PRICE PLAN

3.1 Use of the Services

You accept that you shall not utilise and shall ensure that no other person utilising your access to the Services uses the Services:

- (i) for storing, reproducing, transmitting, communicating or receiving any Offending Material; or
- (ii) for fraud or for any criminal purpose or in a manner that is contrary to any regulatory or legal requirement; or
- (iii) to cause annoyance, inconvenience or needless anxiety to any person; or
- (iv) contrary to any other instructions that may be communicated by Safaricom to you from time to time.

3.2 **No Warranties, Availability and Supply of the Services**

Although we will take all reasonable steps to ensure that the Services are available to you at all times, we cannot guarantee a continuous fault free service. The quality and availability of the Services may be affected by factors including, but not limited to, Force Majeure planned maintenance or rectification work on the Network, or Your Equipment may interfere adversely with the quality and provision of the Services. Furthermore we do not warrant that the Service provided by us (including our third party providers) will meet your needs, perform at a particular speed, bandwidth or data throughput rate, or will be uninterrupted, error-free, or secure, or free of viruses, worms, disabling code or conditions, or the like. It is agreed that your inability to use the Services or Content by reason of failure of Your Equipment shall not relieve You from payment of any of the Charges due under this Agreement.

3.3 **Other Safaricom Services**

In the event that the Services are used in conjunction with other Safaricom or third party provider services you accept that you will comply with the terms and conditions of such other services while utilising the same in addition to the terms and conditions set out in this Agreement.

3.4 **Price Plan**

- (a) The Price Plans available are shown in the Table below:

Resources	Postpay Bundle 1000 (Kshs)	Postpay Bundle 2,500 (Kshs)
On-net Voice (Minutes)	900	2,200
Off-net Voice (Minutes)	100	300
SMS	100	250
Data (MBs)	100	250
Bonga Points	100	250

- (b) The Bundles are valid for one (1) month equivalent to 30 days.
- (c) All unutilised resources will expire after 30 days and be unavailable for use. The resources cannot be rolled over.
- (d) These resources cannot be transferred (sambaza)
- (e) The prevailing published PostPay charges are applicable for all international calls and messaging
- (f) On full utilisation of the bundle resources before 30 days, subscribers can top up using airtime under the published Safaricom tariffs and terms on data, voice, SMS and Bonga
- (g) All bills must be settled to facilitate issuance of resources. Only accounts that are fully settled will be credited with resources.
- (h) Resources will not be allocated to subscribers who fail to settle their bills (i) Safaricom reserves the right to change, vary, modify or withdraw these Price Plans at any time. In any of these events, notice will be given via media advertisements (including at Safaricom's discretion on the Safaricom website www.safaricom.co.ke) and will be effective immediately or as at the date referred in such notifications.
- (j) Resources for lines that are disconnected for lack of payment will be purged and will not be available upon reconnection

4. **CHARGES, TAXES AND DEPOSIT**

- 4.1 Charges applicable for the Price Plan or the Services are set out in the Tariff Guide or such other charges as are otherwise chargeable by a third party operator in the event that you are roaming (roaming means the use of telecommunication services while you are in other countries but using a Safaricom SIM Card).
- 4.2 All Charges payable under this Agreement are inclusive of VAT and excise tax but remain subject to other applicable levies and taxes at the then prevailing rates including applicable variations to VAT and excise tax
- 4.3 You will not be able to use the bundled SMS and minutes to access premium rate services. Any unused minutes, SMS or data in your chosen Price Plan bundle will expire after 30 days and will not be rolled over.
- 4.4 Where a deposit is payable under your chosen Price Plan we will use this deposit to pay any Charges due over the set limits in your chosen Price Plan. If this deposit is exhausted you will be unable to access additional Services until you have paid the required Charges to access your chosen Price Plan including replenishing your deposit.
- 4.5 When this Agreement comes to an end, we will repay any deposit you have given to us less any money you may owe us within a period of fifty (50) days from the date of termination. We will not pay any interest on any deposit we take from you.
- 4.6 Where your Price Plan includes a bundled Price Plan Equipment you will be required to pay the monthly instalments due for the cost of the Price Plan Equipment within a period of fifteen (15) days from the date of Safaricom's invoice. If payment has not been received by Safaricom within this period, then Safaricom may:
 - (a) Suspend your access to the Services until receipt of payment in full; and/or;
 - (b) charge interest on the unpaid amount at a rate of 2% above the base rate of Barclays Bank of Kenya Limited from time to time (or such lower rate as may be required by law), accruing on a daily basis and being compounded quarterly until payment is actually received in full; and/or

- (c) refer the debt to a collection agent and/or institute debt recovery proceedings for the recovery of the debt. You will be liable for all pre and post judgment collection costs reasonably incurred in pursuing any debt collection claim against you until payment is received in full.
- 4.7 By entering this Agreement you authorise Safaricom to at any time, without notice to you to obtain from and/or submit to credit referencing agencies information about your credit profile.
- 4.8 All Charges shall be calculated in accordance with Safaricom records.
- 4.9 Without prejudice to any other right or remedy, we reserve the right to set off any amount you may owe us at any time against any amount payable by us to you under this or any other agreement.
- 5. SIM REGISTRATION AND USE OF PERSONAL DATA**
- 5.1 You will be required to register the SIM Card assigned to you in order to utilise the Services. You agree to provide accurate and current information about yourself as required by the relevant registration process, and to promptly update such information as necessary to ensure that it is kept accurate and complete.
- 5.2 Notwithstanding the registration of your SIM Card, you will not have any proprietary right in the SIM Card or assigned mobile phone number. The SIM card, and the software within it, belong to Safaricom or is licensed to Safaricom and is licensed or sub-licensed to you as the case may be so that you can access and use the Services. We reserve the right at any time to alter or replace your SIM Card or assigned mobile phone number or any other name, code or number whatsoever associated with the Service.
- 5.3 You are solely responsible for:
 - (a) maintaining the confidentiality of any PIN, passwords or other account identifiers which you choose or are assigned to you; and
 - (b) all activities that occur under such password or account.
- 5.4 Safaricom shall not be responsible or liable in any way, directly or indirectly, for loss or damage of any kind incurred as a result of, or in connection with, your failure to comply with these requirements. You agree that Safaricom may disclose and grant access to information regarding your account, to any person who properly provides your PIN or other security passwords for such account.
- 5.5 Safaricom or any Safaricom group company may retain the data submitted by you on the Application Form or which might otherwise be derived during the term of the Agreement from your use of the Services and you accept that Safaricom may use the same for the following reasons:
 - (a) Fraud prevention and law enforcement;
 - (b) For reasonable commercial purposes connected such as marketing and research related activities;
 - (c) To comply with any legal, governmental or regulatory requirement;
 - (d) For use by our lawyers in connection with any legal proceedings;
 - (e) In business practices including but not limited to quality control, training and ensuring effective systems operation.
- 6. NUMBER PORTABILITY & DIRECTORY SERVICES**
- 6.1 Number Portability
 - (a) If you wish to port from our Network, you must contact the mobile operator to which you wish to port and you will be responsible for complying with the porting requirements of that operator. Porting will be treated as a termination of this Agreement and Safaricom will not be liable to refund you for the value of any unused minutes, SMS or data in your chosen Price Plan, you will in addition lose any Bonga Points you may have accumulated prior to your porting.
 - (b) Requests to port from our Network may be declined by Safaricom in the event that your account is in arrears, your details do not match those on our systems or you have not complied with such other porting requirements as may be communicated by the Communications Commission of Kenya and Safaricom from time to time.
 - (c) Porting to our Network will be subject to such requirements as Safaricom may communicate from time to time.
- 6.2 Directory Services
When available we will list your number in our directory enquiry service in printed or electronic format.
- 7. LIMITATION AND EXCLUSION OF LIABILITY**
- 7.1 Safaricom's liability in contract, tort or otherwise (including liability for negligence) under or in connection with this Agreement is limited to Kshs one hundred thousand (Kshs 100,000). This limitation of liability is cumulative and not per incident.
- 7.2 You agree that the following exclusions of liability are reasonable:
 - 7.2.1 Safaricom, its officers, employees, sub-contractors agents and partners will not be liable to you or any party for:
 - (a) any indirect or consequential loss or damage whatsoever, whether it is foreseen or unforeseen, including but not limited to loss of profits, data, revenue, business, anticipated savings or goodwill or loss of life;
 - (b) any losses arising in connection with any failure, interruption, delay, suspension or restriction in providing the Services to you which is due to a Force Majeure event;
 - (c) the loss, late receipt or non-readability of any download, transmission, or other communications or loss of data, data privacy or security transmission;

- (d) for any damage to Your Equipment following the use of the Services. You acknowledge and accepts that Safaricom does not guarantee the security of the Services against unlawful access or use, you shall therefore be required to take reasonable precautions while using the Services including adopting such appropriate security measures against unauthorised access to and interference with Your Equipment, associated software or equipment, hardware and data (including back up) as you deem necessary; and
- (e) any Charges or losses incurred as a result of or unauthorised use of the Services including following a theft of the same.

7.2.2 Except as provided in this Agreement, Safaricom provides no warranties, conditions or guarantees as to the description or quality of the Services and all warranties, conditions or guaranties implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as is permitted by law.

7.3 Notwithstanding any other provisions of this Agreement, you confirm and undertakes to indemnify and keep indemnified Safaricom on demand for and against all proceedings, costs (including reasonable legal fees), claims, damages, expenses and liabilities of whatsoever nature howsoever suffered or incurred by Safaricom arising out of or by reason of any act or omission by you, or your employees, representatives or agents in the performance of your obligations under this Agreement including but not limited to any breach or non-compliance with any terms of this Agreement or negligence.

8. TERMINATION AND SUSPENSION

8.1 Safaricom may in its sole discretion suspend or terminate your access to the Services without liability to compensate you for any period during which:

- (a) Where you fail to comply with your obligations under this Agreement;
- (b) Safaricom is required or requested to comply with an order or instruction of or on recommendation from the Government, court, regulator or other competent authority;
- (c) Safaricom reasonably suspects or believes that you are in breach of the terms and conditions of this Agreement or any other terms and conditions referred to herein;
- (d) Such a suspension or variation is necessary to facilitate modifications to, or allow for planned maintenance of the Network;
- (e) You fail to pay any Charges required to facilitate access to the Services;
- (f) Your report to us the theft or loss of your SIM Card or other device facilitating access to the Services;
- (g) Where your line (MSISDN) remains inactive for a period of ninety days or such other period as may be prescribed by the Communications Commission of Kenya from time to time.
- (h) For any reason Safaricom is unable to provide the Services.
- (i) You are in breach of any fair usage policy implemented by Safaricom from time to time.

"Fair usage policy" for the purposes of clause 8.1(i) above refers to a policy implemented by Safaricom to facilitate equitable access to the Services by all our subscribers.

8.2 You may terminate this Agreement at any time by giving notice in writing to Safaricom.

8.3 You shall reimburse Safaricom for all reasonable costs and expenses incurred as a result of the suspension, termination or variation of the Services where the suspension, termination or variation is implemented by Safaricom as a result of any act or omission by you.

9. CONSEQUENCES OF TERMINATION

9.1 Termination shall not affect any provision of this Agreement expressed to have effect after termination, or any other rights either Party may have against the other Party subsisting at the time of termination.

9.2 You shall be liable to pay Safaricom the prorated value of any Price Plan Equipment calculated as follows:

- a) Number of months remaining on your Price Plan Period divided by the duration of the Price Plan Period multiplied by the value of the Price Plan Equipment as published in the Tariff Guide relating to your selected Price Plan at the Commencement Date of the Agreement.
"Price Plan Period" means the minimum fixed term as set out in your Price Plan during which period you must remain on your selected Price Plan.
- b) Or using such other formula as may be communicated by Safaricom in subsequent variations of these terms and conditions from time to time.

10. VARIATION OF THE AGREEMENT

Safaricom may change this Agreement at any time and will give you notice of the changes under clause in accordance with clause 11 (Notices and No Waiver).

11. NOTICES AND NO WAIVER

- (a) Any notices in regard to any information that we may wish to send to you from time to time including but not limited to variations to these, modifications/variations to the Services or Charges, any promotions and other information will be through advertisement in a daily newspaper or on the Safaricom website www.safaricom.co.ke. You will be deemed to have been bound by such variation by continuing to use the Services.
- (b) Any invoices or notices for purposes of legal proceedings will be served:

- (i) In the case of you: at your last known address as set out in the SIM registration form completed by you; or
- (ii) In the case of Safaricom: by hand delivery to Safaricom House, Opposite All Africa Conference of Churches, Waiyaki Way, Nairobi and marked for the attention of the Head of Legal & Regulatory Affairs.

Such notices will be deemed to have been received (if dispatched in the manner described above) 5 business days after mailing if forwarded by post and the following business day if hand-delivered or dispatched by E-mail.

"Business day" for the purposes of this clause 11 means Monday to Friday between the hours of 0900 and 1700, excluding public holidays.

- (c) 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.

12. ARBITRATION

- (a) Save as may otherwise be provided herein, all questions in dispute arising between the Parties and all claims or matters in such dispute not otherwise amicably resolved settled between the Parties within a period of thirty (30) days (or such longer period as may be agreed upon between the parties) shall be referred to arbitration.
- (b) Arbitration shall be by a single Arbitrator to be appointed by agreement between the Parties or in default of such agreement within fourteen (14) days of such notification of such dispute by either Party to the other, upon application by either Party to the Chairman for the time being of Kenya Branch of Chartered Institute of Arbitrators of the United Kingdom and any Arbitration proceeding shall take place in Nairobi.
- (c) Every award made under this clause shall be made in accordance with the provisions of the Arbitration Act 1995 (Act No. 4 of 1995) or other Act or Acts for the time being in force in Kenya in relation to Arbitration. To the extent permissible by law the determination of the Arbitrator shall be final and binding upon the Parties.
- (d) Notwithstanding these Arbitration provisions, the Parties shall not be precluded from seeking urgent injunctory relief, in which case the Parties submit to the exclusive jurisdiction of the High Court of Kenya.

13. GOVERNING LAW

The construction, validity and performance of this Agreement shall be governed in all respects by the Laws of Kenya.
