

Safaricom **CLOUD**

PROVISION OF CLOUD SERVICES

Terms and Conditions & Service Level Agreement

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement:

- (a) **“Acceptable Use Policy”** or **“AUP”** means the document attached hereto and marked as schedule 3 which defines the minimum acceptable standards for use of the Services and the System.
- (b) **“Agreement”** means this agreement, the schedules and annexes hereto. The schedules to this Agreement are:
 - Schedule 1 – The Service Order Form
 - Schedule 2 – Policy Acceptance Use
 - Schedule 3 – Service Level Agreement
- (c) **“Activation”** means the activation of the Services by Safaricom and issue to the Customer of the Customer Account Credentials. The term **“Activate”** shall have a similar meaning.
- (d) **“Charges”** means non-recurring charges (if any) and the monthly charges set out in the Service Order Form and which shall be paid by the Customer to Safaricom for the Services upon expiry of the Trial Period as further described in clause 4.3 and clause 7.
- (e) **“Commencement Date”** means the date indicated on the Service Order Form.
- (f) **“Content”** means data, software, applications, materials, audio, images, communications or any other material transmitted or communicated by Customer through the Services (whether owned or provided by the Customer or any third party).
- (g) **“Customer”** means the person identified on the Service Order Form and who has signed the Service Order Form. The term “you” and “Your” shall have a similar meaning.
- (h) **“Customer Account”** means the Customer’s account on the System through which the Customer will access the Services.
- (i) **“Customer Account Credentials”** means the user name and password used by the Customer to access the Customer Account.
- (j) **“Customer Equipment”** means equipment (including computers and software) required for access to or use of the Services by the Customer.
- (k) **“Force Majeure”** means acts of God, unexpected 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 prevent 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.
- (l) **“Network connectivity”** or **“Network Service”** means the internet connectivity used by the Customer to access the System and the Services.
- (m) **“Service Order Form”** means Safaricom’s order form for the Services, which is attached hereto and marked as Schedule 1.

- (n) **“Services”** means the cloud computing services to be provided by Safaricom to the Customer as described in the Service Order Form.
- (o) **“Service Level Agreement”** means the service level agreement for the Services as described in Schedule 2.
- (p) **“System”** means the entire infrastructure comprising the Safaricom cloud.
- (q) **“Third Party Software”** means software belonging to a third party (including EMC, VM Ware, and Cisco) which is provided by Safaricom to the Customer as part of the Services.
- (r) **“Trial”** means trial of the Services by the Customer at no cost during the Trial Period.
- (s) **“Trial Period”** means the thirty (30) day trial period for the Services, commencing on the Activation date, which is the date on which Safaricom sends to the Customer the Customer Account Credentials.
- (t) **“User”** means a Customer or any other person who accesses or tries to access the System or the Services.

1.2 In this Agreement, unless the context otherwise requires, any reference to:

- (a) the singular includes the plural and vice versa;
- (b) a person includes reference to a body corporate or other legal entity;
- (c) any written law includes that law as amended or re-enacted from time to time;
- (d) words importing one gender shall be construed as importing the other gender;
- (e) any Party includes that Party’s successors and assigns;
- (f) reference to “days” shall be construed as calendar days unless qualified by the word “business”, in which instance a “business day” shall be any day (other than a Saturday, Sunday or public holiday in Kenya).
- (g) the use of the word “including” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it.

2. APPOINTMENT & APPLICATION OF TERMS

2.1 Appointment

The Customer hereby agrees to purchase and Safaricom hereby agrees to provide the Services on the terms and conditions of this Agreement.

2.2 Representations by the Customer and Safaricom

Each Party hereby warrants and represents to the other that:

- (a) it has power to enter into this Agreement and to perform its obligations hereunder and has taken all necessary action required to authorise the execution, delivery and performance of this Agreement;
- (b) all consents, approvals, registrations or authorisations required to enable it lawfully to enter into this Agreement and perform its right and obligations hereunder have been obtained or made and are in full force and effect.

2.3 Application of Terms & Third Party Software

(a) No terms or conditions endorsed upon, delivered with or contained in the Customer's quotation, acknowledgement, purchase order or other Customer documents will form a part of this Agreement and the Customer waives any right which it otherwise might have to rely on such terms and conditions.

(b) Where Third Party Software is supplied to the Customer by Safaricom as part of the Services, the Customer may be required to accept Third Party Software license terms prior to the use or activation of the of the Third Party Software. The Third Party Software is supplied "as is" and except as otherwise stated in the Service Level Agreement or in the Service Order Form, Safaricom gives no express or implied warranties or guarantees as to merchantability or fitness of the Third Party Software for a particular purpose. The provision of the Third Party Software does not provide the Customer with any title or ownership rights in or to the Third Party Software, but only a right of use of the Third Party Software for the Customer's internal business purposes as further defined in clause 2.4.

(c) The Customer hereby agrees that upon accepting the Third Party Software license terms:

(i) the Third Party Software license terms form an agreement between the Third Party Software licensor and the Customer separate and apart from this Agreement.

(ii) the Customer will comply with the terms of the Third Party Software license in addition to the terms of this Agreement.

(iii) in the event that Safaricom has reasonable grounds to believe that the Customer is in breach of the Third Party Software license terms, Safaricom may suspend the Services immediately upon issue of written notice to the Customer.

2.4 Restrictions on resale of the Services

The Customer hereby agrees that the Services (and any Third Party Software) shall be used only for the Customer's internal business purposes (within the Customer's internal departments, divisions which are fully within the command and control of the Customer). The Customer shall not sell, offer for sale, distribute the Services to any End Users or grant any End User access to the Services or the System except where Safaricom and the Customer have executed a reseller agreement or where such access by an End User is required or necessary in the normal course of the Customer's business operations, and in which case the Customer shall be fully and solely liable for any abuse of the System or breach of the Acceptable Use Policy by the End User. For the avoidance of doubt, the End User has no right to enforce any of the Customer's rights under this Agreement against Safaricom and the Customer hereby agrees to indemnify Safaricom from any such claim, demand or

suit by an End User. An End User is defined for the purposes of this Agreement, as any person other than the Customer.

3. COMMENCEMENT AND DURATION

3.1 This Agreement shall come into force on the Commencement Date and shall be in force for an initial period of twelve (12) months from the Commencement Date ("the Initial Term") subject always to the provisions of clause 4.3 and the rights of early termination defined in clause 10.

3.2 Upon expiry of the Initial Term the Agreement shall automatically renew for successive twelve (12) month periods until the agreement is terminated by either Party in accordance with the provisions of clause 10 (Termination).

4. ACTIVATION, NETWORK CONNECTIVITY & THE TRIAL

4.1 Activation

Safaricom will Activate the Services within a reasonable time period following execution of the Service Order Form by the Customer and Safaricom. It shall be the responsibility of the Customer to set up the Services upon Activation.

4.2 Network Connectivity

4.2.1 Network Connectivity is the responsibility of the Customer.

4.2.2 Notwithstanding the provisions of clause 4.2.1 above, where Safaricom is providing point to point Network Connectivity for the Customer to access the Services, the Network Connectivity will be provided by Safaricom on the terms and conditions for Safaricom's fixed data services. These terms and conditions are printed on the application form for fixed data services signed between Safaricom and the Customer.

4.2.3 In the event of any conflict between the terms and conditions of this Agreement and the fixed data terms and conditions, the terms and conditions of this Agreement will prevail to the extent of such conflict.

4.3 The Trial

(a) The Customer will not be charged for the use of the Services during the Trial Period.

(b) It shall be the responsibility of the Customer to notify Safaricom of any faults or errors in the Services during the Trial. The Customer shall notify Safaricom of any such faults or errors through the contact details set out in the Service Level Agreements. The Customer shall not be entitled to any extension of the Trial Period following any System failures during the Trial Period.

(c) Unless the Customer gives Safaricom notice of the Customer's intention to discontinue the Services prior to the expiry of the Trial Period, the Customer will be billed the Charges for the Services from the date following expiry of the Trial Period. For the avoidance of doubt, the Customer must terminate the Services before the end of the Trial Period to avoid Charges.

5. CUSTOMER OBLIGATIONS

The Customer hereby agrees:

(a) To provide, at the Customer's cost and expense Customer Equipment as may be required for the proper use and running of the Services.

(b) That it is the responsibility of the Customer to ensure that the Customer Equipment is technically compatible with the System. In the event of any incompatibility the Parties will use reasonable endeavours to remedy the incompatibility and if in the opinion of either Party the incompatibility cannot be cured or if either Party is of the opinion that it is not commercially impracticable to remedy the incompatibility, the Agreement shall terminate at the expiry of the Trial Period.

(c) To put in place the appropriate security measures against unauthorised access to and interference with the Customer Equipment and the System.

(d) To provide and maintain a suitable environment as may be notified by Safaricom to the Customer for the proper working of the Services.

(e) Contact Person:

(i) The Customer will designate a contact person/ persons and an e-mail for delivery of notifications and the Customer Account Credentials. The contact person will be as indicated on the Order Form or as may be otherwise communicated in writing by the Customer to Safaricom from time to time. Subject to the restrictions contained in clause 16 all communication related to the Services, including log in credentials, notifications under clause 6.3, information and reminders related to payment of the Charges, shall be sent to the contact person.

(ii) The contact person designated on the Order form or otherwise notified by the Customer to Safaricom shall be deemed to have authority to act on behalf of the Customer, notwithstanding their level of authority. Safaricom shall be under no obligation to make any inquiry as to suitability of such contact persons to act for the Customer.

6. ACTIVATION TIMELINES & SERVICE AVAILABILITY

6.1 Activation Timelines

Safaricom shall use reasonable endeavours to meet any agreed delivery dates for Activation. Safaricom will not be liable for any costs and expenses or any other liabilities incurred by the Customer as a consequence of any delay occasioned by Safaricom in Activation.

6.2 Fault Reporting and Repair

(a) Fault reporting and repair for the Services shall be done in the manner defined in the Service Level Agreement.

(b) In the event that the Customer requires support other than that stated in the Service Level Agreement any such

support which Safaricom agrees to supply in addition to that covered under the Service Level Agreement will be charged at Safaricom's prevailing rates.

6.3 Service Related Notifications

Safaricom may, from time to time and depending on the nature of the Service, send notifications or reminders to the Customer's relating to the Customer's use of the Service, including notifications to reset passwords, carry out upgrades or backups. It is the Customer's responsibility to act on any such notifications.

6.4 Limited Warranty

(a) Although Safaricom will take all reasonable steps to ensure that the Services are available to the Customer at all times, Safaricom cannot guarantee a continuous fault free service. The quality and availability of Services may be affected by factors including (but not limited to) Force Majeure, planned maintenance or rectification work on the Network, the transmission link(s), or the Customer's Equipment may interfere adversely with the quality and provision of the Services. Except as indicated in the Service Level Agreement, Safaricom does not warrant that the Service will meet your needs, perform at a particular speed, bandwidth or data throughput rate, or will be uninterrupted, error-free.

(b) Except as expressly provided in the Service Level Agreement the Services is provided with no other warranties of any kind and Safaricom disclaims all other warranties, express or implied including without limitation to service description, any warranty of merchantability or fitness for a particular purpose.

6.5 Disclaimers

(a) Safaricom assumes no responsibility whatsoever for failures in the Services arising from the exclusions defined in the Service Level Agreements and also any other acts or omissions of the Customer which amount to a breach of the Agreement.

(b) The Customer hereby acknowledges and agrees that faults or failures in the Services arising from the exclusions defined in the Service Level Agreements or arising from the Customer's breach of the terms of this Agreement shall not relieve the Customer of its payment obligations the Agreement.

(c) The Customer's sole remedy for Service outages or downtimes shall be the service credits defined in the Service Level Agreement for such outage or downtime.

6.6 Suspension or Variation of the Services

Safaricom may suspend the Services upon written notice to the Customer for any period during which:

(a) 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;

(b) the Customer is in breach of the terms and conditions of

this Agreement until such time as the Customer remedies the breach or either Party terminates the Agreement;

(c) Such a suspension or variation is necessary to facilitate modifications to, or allow for planned maintenance of the System.

7. CHARGES & PAYMENT TERMS

7.1 Customers who do not have a postpay account with Safaricom or existing Customers who have outstanding balances on their postpay accounts or who otherwise, in the opinion of Safaricom do not meet Safaricom's credit policies will be required to pay to Safaricom the sum equal to two (2) months Charges as security for performance by the Customer of its obligations under this Agreement. The deposit will be returned by Safaricom to the Customer without interest upon termination of the Agreement subject to the performance by the Customer of all its obligations under this Agreement.

7.2 The Customer hereby agrees that payment of the Charges is not and shall not be conditional or dependent on the actual use of the Services by the Customer.

7.3 All Charges shall be calculated in accordance with Safaricom's billing records. If the Customer reasonably disputes any of the Charges on any invoice it must pay the undisputed portion of the invoice and submit notice in writing of the claim for the disputed amount.

7.4 The charges shall be invoiced monthly in advance. Safaricom will issue monthly invoices to the customer:

- (a) to the contact person;
- (b) by post

7.5 The Customer will pay the Charges within fifteen (15) days from the date of Safaricom's invoice. If payment has not been received by Safaricom within this fifteen (15) day period:

(a) Safaricom reserves the right to bar the Customer Account; and

(b) if the Customer has still not paid the Charges within thirty (30) days, from the date of Safaricom's invoice, Safaricom will deactivate the Customer Account without any liability for any Content which may be lost or unrecoverable upon deactivation of the Customer Account. The Customer is hereby advised that deactivation of the Customer Account will result in the permanent loss of Content.

(c) Safaricom will also charge interest on the unpaid amount at a rate of 2%, accruing on a daily basis and being compounded quarterly until the Customer pays the outstanding Charges and the payment is received by Safaricom in full; and/or

(d) refer the debt to a collection agent and/or institute debt recovery proceedings for the recovery of the debt. The Customer will be liable for all pre and post judgment collection costs reasonably incurred in pursuing any debt collection claim against the Customer until payment is received in full.

7.6 The Customer authorises Safaricom at any time, without notice to the Customer to obtain from and/or submit to credit referencing agencies information about the Customer's credit profile.

7.7 Without prejudice to any other right or remedy, Safaricom reserves the right to set off any amount owing at any time from the Customer to Safaricom against any amount payable by Safaricom to the Customer under this Agreement.

8. LIMITATION AND EXCLUSION OF LIABILITY

8.1 Subject to the provisions of clause 6.5 and 8.2 Safaricom's liability to the Customer howsoever arising is limited to three (3) months Charges

8.2 Safaricom, its officers, employees, sub-contractors agents and partners will not be liable to the Customer for:

- (a) any anticipated savings, goodwill, consequential, loss of profits, incidental or special loss, corruption or loss of data, howsoever arising;
- (b) any losses or damage arising in connection with Force Majeure events;
- (c) loss or damage arising from failure by the Customer to comply with its obligations under this Agreement.

8.3 The Customer shall indemnify, and hold harmless Safaricom from and against any claims, damages, losses, liabilities, costs and expenses (including but not limited to reasonable attorney's fees) arising out of or relating to any third party's claim concerning:

- (a) any claim involving alleged infringement or misappropriation of third party rights by the Customer;
- (b) breach of the Acceptable Use Policy;
- (c) any death or personal injury suffered by your officers, employees, agents, sub-contractors agents and partners arising out of activities related to the use of the Services.
- (d) claims arising from breach by the Customer of Third Party Software license terms

This sub-clause 8.3 shall survive the termination of this Agreement.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All right title and interest in and to the System shall remain the intellectual property of Safaricom. The Customer shall not acquire any right, title and interest in or to the System, any software or other intellectual property supplied by Safaricom to enable the Customer to receive access or use the Services.

9.2 All right, title and interest and to any of the Customers existing intellectual property shall remain the property of the Customer.

10. TERMINATION

10.1 Termination for Convenience

A Party may terminate this Agreement at any time for its sole convenience by giving thirty (30) days prior written notice to the other Party.

10.2 Termination for Cause by the Customer

The Customer may terminate this Agreement at any time by giving written notice immediately effective upon issue to Safaricom if:

- (a) Safaricom commits a breach of any of its obligations

under this Agreement and such breach is not rectified within thirty (30) days from receipt of a written notice giving particulars of the breach.

(b) Safaricom becomes insolvent, or makes any arrangement with a creditor to go into liquidation or becomes subject to an administration order or a receiver is appointed over its assets.

10.3 Termination for Cause by Safaricom

Safaricom may terminate this Agreement at any time by giving written notice immediately effective upon issue to the Customer if:

(a) Safaricom has reason to believe that the Services are being used by the customer for the transmission of Offending Material, in a manner prejudicial to Safaricom or for criminal activities or Safaricom has been instructed to cease providing the Service by any licensing or regulatory authority;

(b) The Customer Equipment is found to emit signals, which may interfere with the quality of the Services or the System;

(c) The Customer fails to pay the full amount of charges stated in the billing statement by the due date;

(d) In Safaricom's opinion the Customer fails at anytime to meet the standard credit requirement that Safaricom may deem necessary from time to time;

(e) Safaricom has good reason for believing that any information given by the Customer to Safaricom is false or misleading;

(f) The Customer commits any breach of any of the provisions of this Agreement and such breach is not rectified within thirty (30) days from receipt of a written notice giving particulars of the breach;

(g) The Customer engages in the prohibited activities mentioned in clause 2.4;

(h) The Customer becomes bankrupt, or makes any arrangement with a creditor to go into liquidation or become subject to an administration order or a receiver is appointed over its assets.

11. CONSEQUENCES OF TERMINATION

11.1 Upon termination of this Agreement for any reason:

(a) The Customer shall pay to Safaricom all Charges and other monies outstanding at the time of termination including all interest charges and other monies due under clause 7.5(d).

(b) Safaricom shall disable the Customer's access to the System and the Customer shall remove all Content from the System within fourteen (14) days from the effective date of the termination notice failing which Safaricom will delete the Customer's Account and all Content will be permanently deleted.

(c) Where applicable, Safaricom will refund the deposit paid by the Customer (without interest) and less any interest charges for late payment or other deductions which Safaricom is entitled to charge to the Customer under this

Agreement.

11.2 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.

12. MODIFICATIONS TO THE AGREEMENT

No variation, amendment or modification of any term of this agreement shall be valid or binding on the Parties unless made in writing and executed on behalf of each Party by a duly authorized representative

13. ASSIGNMENT & SUB-CONTRACTING

13.1 Assignment

Neither this agreement nor any rights or obligations hereunder may be ceded, assigned, or otherwise transferred without the prior written consent of the other Party.

13.2 Sub-contracting

Safaricom may without the consent of the Customer sub-contract the performance of the Services to any of Safaricom's authorised vendors or service partners provided that Safaricom shall remain at all times fully responsible and liable for such sub-contractor.

14. DATA DISCLOSURE

Safaricom may disclose your Content or information pertaining to your use of the Services to any law enforcement body, investigative, regulatory authority or to a competent judicial authority upon production of a court order.

15. DISPUTE RESOLUTION

15.1 Amicable Settlement

The parties shall use their best efforts to settle amicably any dispute arising from or in connection with this Agreement or the interpretation thereof.

15.2 Arbitration

(a) If the dispute has not been settled pursuant to the amicable settlement process within fourteen (14) days or such longer period as may be agreed upon between the parties from when the amicable settlement process was instituted, any party may elect to commence arbitration. Such arbitration shall be referred to arbitration by a single arbitrator to be appointed by agreement between the Parties or in default of such agreement, within fourteen (14) days of the notification of a dispute upon the application of either Party, the arbitrator shall be appointed by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitration of the United Kingdom.

(b) Such arbitration shall be conducted in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.

(c) To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the Parties hereto.

(d) Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.

(e) Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.

16. NOTICES

16.1 Notifications & Routine Correspondence

Routine communications and notifications related to the service may be conducted by electronic mail and shall be sent to the contact person designated under clause 5(e).

16.2 Variation & Termination of the Agreement

The Parties agree that any communication by electronic mail shall not amount to notice in writing for the purposes of Clause 10 (Termination) or sufficient to allow for a variation of this Agreement for the purposes of Clause 12 (Modifications to the Agreement) and that any purported notice under, or variation of, this Agreement by electronic mail shall have no effect. The Parties select as their respective addresses, the addresses set out in the Service Order Form for all purposes arising out of or in connection with this Agreement at which addresses only all processes and notices arising out of or in connection with this Agreement may validly be served upon or delivered by the Parties.

16.3 Time of Delivery

Any notice shall be in writing and shall either be delivered by hand or sent by registered post, and shall be deemed to have been duly received at the addressees shown above.

16.4 Change of address

Either Party may provide changes in the above addressees by notice in writing given to the other Party as aforesaid.

17. GENERAL

17.1 Cumulative Remedy & Non-Waiver

Except where this Agreement provides otherwise, the rights and remedies contained in it are cumulative and not exclusive to rights or remedies provided by law. The failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

17.2 Severability

If any provision of this Agreement is declared by any judicial or other competent authority or an arbitrator appointed hereunder to be void, voidable, illegal or otherwise unenforceable, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality or at the discretion of Safaricom it may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

17.3 Governing Law

This Agreement shall be governed and construed by the laws of the Republic of Kenya.

17.4 Costs

Each party shall bear its own costs incurred in the review of this Agreement and execution of the Service Order Form.

SCHEDULE 1: SERVICE ORDER FORM

(Attached)

SCHEDULE 2:

ACCEPTABLE USE POLICY FOR SAFARICOM'S CLOUD SERVICES

This Acceptable Use and Privacy Policy ("the AUP") states the minimum acceptable standards for use of the Services and the System.

1. Definitions & Interpretation

In this AUP:

Unless otherwise indicated, capitalized terms have the same meaning as defined in the Agreement.

"Commercial Services" means the sale or offer for sale of any products or services; and/or distribution or offer to distribute any products or services; and/or advertisement of goods and services manufactured, produced, distributed or resold by the User with the intention of enticing other persons to purchase or procure those goods and services.

"Governing Law" means the laws of the Republic of Kenya.

"Personally Identifiable Information" or **"Personally Identifiable Data"** means any information or data that can be used to uniquely identify, contact, or locate a person or can be used with other sources to uniquely identify a single individual.

"Third Party User Network" means the computer and internet system belonging to any person other than the Customer, including that person's account on the System.

"User Network" means the Customer's computer and internet system and networks.

2. Authority to access the System or the Services

2.1 Age Restriction

You must be eighteen (18) years of age or above in order to register or subscribe for any Services. If you are below eighteen (18) years of age, you may browse the Safaricom cloud services web pages with the consent of your parents, guardians, educational or other training institution.

2.2 Registration, Passwords and Account Security

(a) You agree that you will provide Safaricom with accurate details regarding your identity, your postal and physical address for the purposes of registration or subscription for any Service or if so required as a pre-condition for granting you access to the System. Any information you provide to Safaricom will be handled in accordance with Safaricom's privacy policy and the Governing Law.

(b) All Users will, unless otherwise notified by the Customer to Safaricom, be deemed to be accessing the Services or the System with the full authority of the Customer. You agree

that you will be responsible for the acts and omissions of all Users in connection with the Service. You are responsible for ensuring each User complies with the provisions of this Acceptable Usage Policy. You agree that you will be solely responsible to Safaricom for all activities that occur under your account or which are performed from the User's Network.

(c) Customer Account Credentials

You agree to comply with the following conditions with regard to the Customer Account Credentials:

- (i) you will change the Customer Account Credentials upon receipt of the initial Customer Account Credentials from Safaricom. You agree to use reasonable steps to keep the Customer Account Credentials confidential and to disclose the Customer Account credentials only to authorised persons.
- (ii) where Customer Account Credentials cannot be changed by the Customer and a security token is issued, you will keep the security token in safe custody and restrict access to the security token to authorized personnel only.
- (iii) the user name you choose must not be obscene, threatening, menacing, racist, offensive, derogatory, defamatory or in violation of any intellectual property or proprietary rights of any third party. If we consider in our sole and absolute discretion that the user name selected by you is inappropriate, we reserve the right to reject and prevent your use of such user name.

(d) Domain Names

- (i) You agree to comply with the requirements or conditions attached to the registration of your domain name by the domain name registrar.
 - (ii) You may only use IP addresses assigned to you by Safaricom in connection with the Services.
- (e) You agree to take reasonable measures, including but not limited to encryption and/or User authentication mechanism to secure any personally identifiable data, sensitive, confidential or proprietary information or data transmitted through or stored on the System. Safaricom accepts no liability or responsibility for loss, corruption or leakage of any personally identifiable data, sensitive, confidential or proprietary information except where such loss, corruption or leakage has occurred as a result of breach or non – observance by Safaricom of the System security policies and in such event Safaricom's liability for the loss, corruption or leakage of data or information shall be limited to the amounts (if any) set out in the Agreement or Service Schedule.
- (f) You agree that Safaricom may suspend, restrict access, block or delete any Content stored on or transmitted through the System if the data is corrupted or infected with a virus.

3. Advertisement & Sale of Goods & Services through the Portal

Except as otherwise indicated in the Agreement, Services are for the internal or personal use of the User. A User shall not use the System for Commercial Services without the prior written consent of Safaricom.

4. Blogs, Chats, Streaming

You are responsible for monitoring any Content stored on, transmitted or streamed through on blogs, chat forums and other social media networks which you operate from the System or from your domain. Any Content transmitted in the blogs, chats rooms and other such social media networks must comply with the provisions of paragraph 5.1 and 5.2 below. You agree to put in place policies regulating the use of such blogs, chat rooms and other such social media networks and you agree to incorporate the provisions of paragraph 5.1 and 5.2 below in any such policies. You agree to put in place a mechanism for reporting abuse of such policies and you agree to remove any Content on the blogs, chat rooms or other social media networks that violates the provisions of paragraph 5 below.

5. Prohibited Activities

5.1 Abuse of System Security

- (a) You shall not or attempt to access or modify the System, the Services or any Third Party User Network through any unlawful or illegitimate means. For the avoidance of doubt, this restriction extends to the use of Customer Account Credentials acquired legitimately to access Personally Identifiable Data or other Content which You do not have authority to access or view.
- (b) You shall not or attempt to circumvent, override, bypass, disable or otherwise interfere with the security and User authentication controls on the Services, the System or a User Network. You shall not probe, scan or test or attempt to probe scan or test the vulnerability of the System or a Third Party User Network.
- (c) You shall not engage in any activity that interferes with, impairs, degrades, interrupts, obstructs or disrupts the operation of the Services, the System or User Network.
- (d) You shall not conceal or disguise your identity or send any "pop up" messages with the intention to carry out a fraudulent act such as but not limited to fraudulently acquiring personally identifiable data. You shall not send "Pop-up" messages to any person with the intention of defrauding such person
- (e) You shall not use or distribute any software that covertly gathers or transmits information about the System.

5.2 Third Party Software

- (a) Where Safaricom has supplied Third Party Software to You, you shall not or permit other persons to:
 - (i) copy, alter or in any way modify the Third Party Software or engage in any acts of piracy in relation to

the Third Party Software;

(ii) translate, decompile, disassemble, reverse compile, reverse engineer, interrogate, or decode the Third Party Software;

(iii) bypass or delete any security methods or systems, including but not limited to hacking, that are intended to prevent unauthorized copying, use of or access to the Third Party Software; or

(iv) distribute, transmit, sell, sub-license, market, rent the Third Party Software.

(b) You shall promptly notify Safaricom in writing of any unauthorized use of the Third Party Software, or any claim or proceeding involving, the Third Party Software of which You become aware.

5.3 Offensive Content

You agree that you will not use the Services or the System for storing, reproducing, transmitting, communicating or receiving any Offending Content. For the purpose of this Acceptable Use Policy Offending Content means any Content that:

(i) is abusive, indecent, defamatory, obscene, lewd, prurient or pornographic in nature, offensive, excessively violent, graphic or menacing as may be contemplated by a reasonable person; or

(ii) is designed to cause annoyance, inconvenience or needless anxiety to any person; or

(iii) is in contravention of any request by notice by the recipient of the Content to you indicating that the recipient does not wish to receive the Content;

(iv) infringes Safaricom's or any other person's intellectual property rights. This restriction includes but is not limited to downloading, storing, transmitting, using, copying, streaming publishing, distributing any literary material, musical works, software, images, artworks or other copyrighted works without the consent of the copyright owner, use of trademarks and trade names without the consent of the trademark owner, use of pirated versions of software or other copyrighted works, exposure of trade secrets or other confidential or proprietary information in breach of your obligation or duty of confidence;

(v) is defamatory, libelous, invasive of or in breach of another's right to privacy, hateful, or racially or ethnically objectionable;

(vi) is misleading or false or otherwise designated as illegal under the Governing Law;

(vii) promotes or offers an illegal or unlawful practice, product or service under the Governing Law;

(viii) negatively targets or appears to target a particular religion, political group, ethnic or tribal orientation, culture or gender.

6. Remedies

6.1 Safaricom reserves the right to suspend your access to the Services or the System without prior notice to You if Safaricom has reasonable grounds to believe that you have committed a violation or abuse of this AUP.

6.2 Safaricom will, if so required by the Governing Law and Safaricom's governance guidelines report any violation or abuse of this AUP that is in violation of the Governing Law.

6.3 The above remedies are in addition to any other remedies that may be available to Safaricom or any other third party under the Governing Law for breach or abuse of the AUP by a User.

7. The Agreement

This AUP is hereby incorporated into the Agreement.

SCHEDULE 3:

SERVICE LEVEL AGREEMENT (SLA) FOR PROVISION OF CLOUD SERVICES

1. This SLA defines the following:-

- a) Service Availability
- b) Customer incident management and support

2. Service Availability

The service quality indicator to be used is Service un-availability occurring as a result of Service Outage. Service Outage means un-availability of the cloud services when the cloud services are un-usable due to total failure in the cloud infrastructure. The term "Availability" means the percentage of a particular month (based on 24-hour days for the number of days in the subject month) that the content of customer's hosted system is available for access by third parties (via HTTP, HTTPS or other protocol) as measured by Safaricom

2.1 Safaricom shall deliver during each month of the term of the Customer's agreement a Service Availability as specified in Table 1a,b,c,d (Service Availability and Credits) as measured by Safaricom's standard monitoring tools.

2.2 In the event that the Services are unavailable and fail to meet the availability target due to a service outage (outside of maintenance periods or a planned maintenance outage coordinated with the Customer), the Customer will be eligible to receive service credits in Table 1. Safaricom will advise the Customer at least 48 hours in advance of any scheduled maintenance that will result in a service interruption or outage. However, emergency maintenance will require a much shorter notification period to the customer but not less than one (1) hour.

Table 1: Service Availability and Credits

Table 1a – Data Centre as a Service		
Band	Service Availability Band Description	Service credits as a % of MAC
1	> 99.00%	0%
2	< 99.00% > 98.00%	2.5%
3	< 98.00% > 97.00%	5%
4	< 97.00% > 96.00%	7.5%
5	< 96.00%	10%

Table 1b - Storage as a Service		
Band	Service Availability Band Description	Service credits as a % of MAC
1	> 99.0%	0%
2	< 99.00% > 98.00%	2.5%
3	< 98.00% > 97.00%	5%
4	< 97.00% > 96.00%	7.5%
5	< 96.00%	10%

Table 1c - Backup as a Service		
Band	Service Availability Band Description	Service credits as a % of MAC
1	> 99.0%	0%
2	< 99.00% > 98.00%	2.5%
3	< 98.00% > 97.00%	5%
4	< 97.00% > 96.00%	7.5%
5	< 96.00%	10%

Table 1d - Archiving as a Service		
Band	Service Availability Band Description	Service credits as a % of MAC
1	> 99.0%	0%
2	< 99.00% > 98.00%	2.5%
3	< 98.00% > 97.00%	5%
4	< 97.00% > 96.00%	7.5%
5	< 96.00%	10%

Table 1e - Disaster Recovery as a Service		
Band	Service Availability Band Description	Service credits as a % of MAC
1	> 99.0%	0%
2	< 99.00% > 98.00%	2.5%
3	< 98.00% > 97.00%	5%
4	< 97.00% > 96.00%	7.5%
5	< 96.00%	10%

service outage is claimed in accordance with the SLA, Safaricom will grant service credits to the customer.

- 2.6 Nothing in this SLA creates nor implies a warranty. No refunds will be issued, included cases where customers are at the end of their pre-paid term.
- 2.7 In the event that Safaricom determines upon conduct of the tests and measurements that the outage is caused by an act or omission by the customer then the customer will not be entitled to receive service credits.
- 2.8 Safaricom will be exempt from extending service credits when:
- a) Downtimes occur during maintenance periods, scheduled or unscheduled. Unscheduled maintenance refers to any temporary corrective action procedures required to remedy conditions that are likely to cause severe service degradation. This may include but not limited to unexpected hardware failure, software corruption, or software exploitation through viruses/worms
 - b) the Customer and Safaricom agree on a timescale for performance of Planned Maintenance affecting a Service level as set out in this SLA;
 - c) Outages are caused by Customer applications, equipment or facilities;
 - d) Outages are caused by acts of omissions of the Customer, or any use or user authorized by the Customer;
 - e) Outages are generated by the customer by customer mis-configurations or misuse of the products and services, exploited servers, or traffic in excess of the maximum allowed by contract;
 - f) Outages are caused by hackers, sabotage or viruses;
 - g) Outages are caused by DNS issues outside Safaricom control;
 - h) Customer is unable to access service due to unavailability or degradation of the customer access network connection or internet access point even when such service is provided by Safaricom;
 - i) failures are due to denial of service attacks outside the control of Safaricom including
 - ii. Flooding the network to prevent legitimate network traffic
 - iii. Preventing a particular individual from accessing a service
 - iv. Disrupting a service to a specific system or individual
 - v. Disrupting the state of information, such as resetting of TCP sessions
 - j) there is failure of E-mail or webmail delivery and transmission to or from Safaricom including failure of notification of lack of service from the customer;
 - k) Outages elsewhere on the internet that hinder access to the services;

- 2.3 Service credits are based directly on those virtual cloud services affected by a qualified cloud downtime event. Products and services or hardware not related to a qualified cloud downtime event do not qualify for a service credit
- 2.4 In order to be eligible for the Service Availability Credit, the Customer's account with Safaricom must be fully paid up and the Customer must notify Safaricom Business Service Support through the customer interface contacts set out below within six (6) Working Hours of the outage event with verification by Safaricom of the outage. The duration of each Service Outage shall be measured from the opening of the trouble ticket until the Service is restored to the Customer's satisfaction and the time of restoration stamped in the trouble ticket. Such calculation shall, in the absence of manifest error, be conclusive evidence of the service unavailability
- 2.5 Safaricom will conduct the tests and measurements following the opening of a trouble ticket and if it's reasonably satisfied that

- l) Outages are as a result of Force Majeure (including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labour disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software (including, without limitation e-commerce software, payment gateways, chat, statistics or free scripts), or inability to obtain raw materials, suppliers, or power used in or equipment needed for provision of this SLA;
- m) the Customer is in breach of any part of the Terms and Conditions or Safaricom suspends the Service or any part of it in accordance with the Terms and Conditions;
- n) the Customer fails to agree or keep an appointment date or work is aborted;
- o) reasonable assistance is required or information is reasonably requested by Safaricom from the Customer, and such assistance or information is not provided or is not provided in a timely fashion;
- p) the failure is due to an inaccurate Service Order Form being submitted or written instructions being issued by the Customer;
- q) a fault is not reported in accordance with the fault reporting provisions as required by Safaricom; or
- r) the Customer fails to reasonably respond to a reasonable query raised by Safaricom in relation to the Service; or
- s) the Customer has failed to follow any reasonable and clear written instructions issued by Safaricom in relation to the Service.

3. Customer incident management and support

3.1. Working Days and Working Hours

Safaricom Business Customer service and incidents management will be available to the Customer on a twenty-four hours a day, seven days a week three hundred and sixty-five days a year (24/7/365) basis.

3.2. Single Point of Contact (SPOC)

Tickets will be opened immediately a customer calls the support desk to report a failure on the link

Table 2 - Helpdesk and Support Contacts

Escalation Level	Function	Contact
1 st Level Customer Support	Technical Support Team	Phone: 0722-002222 or 020-4272222. Email: business.support@safaricom.co.ke

3.3. Response Times

Safaricom will respond to the trouble Incident within 30 minutes and will endeavour to restore services with the view of meeting the service level commitments in Table 1a to 1e

3.4. Escalation

Table 3a: Escalation Levels and Contacts – Maintenance & Technical Support

Escalation Level	Function	Contact
2 nd Level	Team Manager	Enterprise Service Desk Team Leader Peter Mumira – 0721559740 Email: pmumira@safaricom.co.ke
3 rd Level	Section Manager	Senior Manager – Service Operations Jacinta Mutangili – 0722-540872 Email: jmutangili@safaricom.co.ke
4 th Level	Head of Department	Network & Service Operations Elly Odera – 0722-540609 eodera@safaricom.co.ke

Table 3b: Escalation Timeframe – Maintenance & Technical Support

Target Resolution Time Frame	1 st Hierarchical Escalation to Team Manager	2 nd Hierarchical Escalation to Section Manager	3 rd Hierarchical Escalation to Executive Head of Department	Targeted Escalation Timeframe
30 Mins	Within 30 Mins of elapsed time	1 Hour of elapsed escalation time	2 Hours of elapsed escalation time	Within 3 Hours 30 Minutes of elapsed time
1 Hour	Within 1 Hour of elapsed time	1 Hour of elapsed escalation time	2 Hours of elapsed escalation time	Within 4 Hours of elapsed time

Table 4: Escalation Levels and Contacts – Account Billing Services

Escalation Level	Function	Contact
1 st Level Customer Service Management	Service Management Team	Phone: 0722-002222 or 020 4272222. Email: businessaccountmanagement@safaricom.co.ke
2 nd Level Customer Service Management	Customer Experience Manager	Allan Muchugure Phone: 0722-961961 Email: amuchugure@safaricom.co.ke
3 rd Level Customer Service Management	HOD Sales & Retention	Evans Nyagah Phone: 0722- 996865 Email: ejnyagah@safaricom.co.ke

(WRITE IN BLOCK LETTERS AND PUT ORGANISATION STAMP)

Signed by (Full Name)

.....

Designation

Signature

