

## TERMS AND CONDITIONS FOR SAFARICOM'S SHIRIKI PLAN FOR BUSINESS

### 1. APPLICATION OF TERMS AND CONDITIONS

These Terms and Conditions and the details contained in an application form the contract between Safaricom and the Customer in relation to the purchase and use of the Shiriki Plan for Business Service.

### 2. DEFINITIONS & INTERPRETATION

#### 2.1 Definitions

In these Terms and Conditions, including section 1 above:

- (a) **Application** means a request made by a Customer through an Application Form for the purchase of a Shiriki Plan for Business Subscription.
- (b) **Application Form** means Safaricom's application form for the purchase of a Shiriki Plan for Business Subscription which shall be availed by Safaricom to the Customer.
- (c) **Charges** means together: (i) the Shiriki Plan for Business Subscription fee; and where applicable (ii) the Prevailing Tariffs.
- (d) **Content** means any call, data, image or any other material transmitted or communicated through the Services.
- (e) **Customer** means the person whose name and particulars are indicated on the Application form.
- (f) **Shiriki Plan for Business** means an airtime product: (i) which is used for voice and data services; and (ii) has a fixed validity period; and (iii) which is sold in various defined subscriptions.
- (g) **Deposit** means the monetary sum agreed between Safaricom and the Customer which the Customer may be required to pay to Safaricom as security for performance by the Customer of its obligations under these Terms and Conditions.
- (h) **Devices** means a desk phone, tablet, router, mobile phone handset, modem or other terminal or computing device supplied to the Customer by Safaricom at an agreed price or at no cost as the case may be. "Device Manufacturer" means the manufacturer of a Device.
- (i) **Force Majeure Event** means any happening or event which is beyond the reasonable control of a Party and which affects a Party's performance of its obligations or makes such performance impossible or impracticable in the circumstances. Force Majeure Events include acts of God, riots, war, armed conflict, vandalism, sabotage, civil unrest, acts of terrorism, acts of government or Regulators, fire, power outages, adverse weather conditions.
- (j) **Governing Law** means the laws of the Republic of Kenya.
- (k) **Offending Material** means any Content whose communication, transmission, storage or hosting is prohibited by Governing Law including Content which is abusive, defamatory, obscene, pornographic, offensive or furthers an illegal act or purpose.
- (l) **Prevailing Tariffs** means (i) Safaricom's standard rates or charges for all services including the standard rates for international and local roaming, premium rate services and international calls to all destinations other than the destinations indicated on the Order Form as enjoying preferential tariffs (ii) Safaricom's standard rate for out of bundle mobile data usage, currently four Kenya Shillings (Kshs 4/-) per MB.
- (m) **Sponsor** means a Safaricom subscriber on whose behalf the purchase of Shiriki Plan for Business Subscription is made.
- (n) **Beneficiary** means the Recipient's mobile line (MSISDN) which can be prepaid, postpaid or on a hybrid service.

- (o) **"Regulator"** means the Communications Authority of Kenya (CA) and any other person exercising regulatory, supervisory or governmental authority under Governing Law.
- (p) **"Safaricom"** means Safaricom PLC whose offices are located at Safaricom House, Waiyaki Way, Westlands, Nairobi.
- (q) **"Services"** means any service offered by Safaricom and which can be accessed through a SIM card.
- (r) **"Subscription"** means a Shiriki Plan for Business Service subscription as indicated on Clause 4.1.
- (s) **"Subscription Price"** means the price indicated in Clause 4.1 for a Subscription.
- (t) **"Terms and Conditions"** means these terms and conditions including the details submitted by the Customer on an Application Form.

## 2.2 Interpretation

Except where the context otherwise requires:

- (a) sections and schedule headings are included for convenience only and will not affect the construction or interpretation of these Terms and Conditions.
- (b) any phrase introduced by the words **"including"**, **"includes"**, **"in particular"**, **"for example"** **"such as"** or similar shall be construed as illustrative and without limitation to the generality of the related general words.
- (c) unless expressly stated otherwise, any reference to a section or schedule is to the relevant section or schedule of these Terms and Conditions.
- (d) use of the singular includes the plural and vice versa.
- (e) all references to the Parties includes their permitted successors and assigns.
- (f) Safaricom and the Customer are each individually referred to as a **"Party"** and together as **"Parties."**
- (g) Where these Terms and Conditions provide for the giving or issue of any notice, consent, approval, certificate or determination, it shall be in writing and the words notify, approve, consent, certify or determine shall be construed accordingly.
- (h) References to **"on-net calls" or "on-net SMS"** means, as the case may be, voice calls or SMS (short message service) made within the Republic of Kenya from one Safaricom subscriber to another. References to **"off-net calls" or "off-net SMS" means**, as the case may be, calls or SMS (short message service) made within the Republic of Kenya from a Safaricom subscriber to a subscriber of any other telecommunication network. References to **"local data"** means use of the data capacity allocation in Bundle for data services within the Republic of Kenya.
- (i) References to a **"Person"** includes bodies corporate, firms, partnerships, bodies created under treaty, associations, arms of county and national governments.
- (j) Prevailing Tariffs can be obtained through the avenues defined in section 6.

## 3. REQUEST FOR THE SHIRIKI PLAN FOR BUSINESS

- (a) The Customer may request for the Shiriki Plan for Business Service by filing in the Application Form and submitting it to Safaricom together with (i) the list of the Recipient Numbers which shall be onboarded; (ii) the documentation defined on the Application Form; and (iii) the Deposit (if any).
- (b) Once Safaricom has processed the Customer's application, the appendant product will be added onto the Recipients mobile numbers which will allow them to access airtime resources equivalent to the value of the subscription.

- (c) Safaricom reserves the right to decline an application where (i) the Customer has not submitted the specified details or documentation indicated on the Application Form; or (ii) the Customer has not provided any other information or documentation that Safaricom may request for in order to process the Application; or (iii) where Safaricom has reasonable grounds to believe that the details or particulars submitted by the Customer are inaccurate.
- (d) The Customer may add, replace or otherwise vary the Recipient Numbers submitted to Safaricom by notice to Safaricom. Safaricom will effect the changes on the first day of the month following the request by the Customer.
- (e) The Customer may vary an Application by written notice to Safaricom. Safaricom will effect the changes on the first day of the month following the request for variation by the Customer.
- (f) Safaricom shall not reverse an allocation of resources. It shall be the responsibility of the Customer to ensure the accuracy of the Order. The Customer shall pay the Charges for any allocation of resources done on the instructions of the Customer.
- (g) Safaricom's performance of its obligations under these Terms and Conditions is subject to the Customer making payment of the Charges under section 9 and observance by the Customer of its other obligations under these Terms and Conditions. Where a Customer's account is barred under section 9.4 due to non-payment of the Charges (or any undisputed part of the Charges Safaricom will not perform any allocation of resources until the arrears are paid in full or until the suspension on the Customer's account is lifted. Continued use of Services by the Recipients will be billed at the Prevailing Tariffs and the Customer shall pay the Charges.

#### 4. SHIRIKI PLAN FOR BUSINESS

##### 4.1 Subscriptions

The following subscriptions are available for purchase:

	SHIRIKI PLAN 1	SHIRIKI PLAN 2	SHIRIKI PLAN 3
<b>Fixed Monthly Price</b>	<b>KES 4,500</b>	<b>KES 3,000</b>	<b>KES 4,500</b>
<b>Credit Value</b>	<b>1,500</b>	<b>3,000</b>	<b>4,500</b>
<b>Users</b>	<b>1</b>	<b>2</b>	<b>5</b>
<b>Voice Per Minute</b>	<b>KES 2</b>	<b>KES 1.25</b>	<b>KES 1.25</b>
<b>International Calling Zone A</b>	<b>KES 3</b>	<b>KES 3</b>	<b>KES 3</b>
<b>Data Per MB</b>	<b>KES 0.12</b>	<b>KES 0.11</b>	<b>KES 0.09</b>
<b>SMS</b>	<b>KES 0.03</b>	<b>KES 0.03</b>	<b>KES 0.02</b>

- 4.1.1 The Sponsor line will be migrated to "a hybrid" tariff that allows for the customer to top up with normal airtime and continue to enjoy the preferential rates for the rest of the month.
- 4.1.2 Beneficiary lines will not be migrated and can be either post or prepay tariffs. The tariffs of the Recipients will not be altered/migrated.
- 4.1.3 The Sponsor will be billed a standard fee of the value of the package received no matter the usage for the month.
- 4.1.4 A deposit equal to the value of the package will be required during on boarding of the Sponsor. An upgrade to a higher package would require additional deposit to the tune of the value of the package picked.

- 4.1.5 An Enterprise can nominate up-to a maximum of 1 administrator on their Shiriki Plan for Business Subscription. The administrator will have rights to perform subscription management on behalf of the Customer. Resources will however continue to sit on the Sponsors line.
- 4.1.6 A maximum of 4 Recipients can be added onto the service for Shiriki4500.
- 4.1.7 A maximum of 1 Recipient can be added onto the service for Shiriki3000.
- 4.1.8 Upon reaching the individual usage limit, beneficiaries will incur any voice, data and SMS charges applicable to their prevailing tariff, and will not continue consuming from the Shiriki Plan for Business pool until the month elapses.
- 4.1.9 An airtime top-up or bundle purchase can be done by the sponsor upon reaching the individual usage limit. The airtime topped up or bundles purchased by the users will attract the Shiriki Plan for Business rates i.e. Voice, SMS and Data charges applicable to their existing tariff will apply
- 4.1.10 The Customer or Recipients cannot use the Shiriki resources / airtime to purchase other resources.
- 4.1.11 The monthly Shiriki credit value has a validity period of one calendar month.

#### **4.2 Offending Material**

The Customer shall not transmit or transact in any Offending Material. The Customer shall notify the Recipients that they must not transmit or transact in Offending Material and the Customer shall be responsible for ensuring that the Recipients comply with this provision.

#### **4.3 Loyalty Points**

The Customer will earn points under Safaricom's *Bonga* loyalty program through the Recipients use of the Shiriki Plan for Business. Loyalty points earned by usage of the Shiriki service will be allocated to the Customer's account.

#### **4.4 Recipients**

It shall be the responsibility of the Customer to notify the Recipient of the provisions of these Terms and Conditions and where applicable, to put in place any measures that the Customer may consider necessary to monitor or manage the use of Shiriki Plan for Business Service and all other Services.

#### **5. SIM CARDS**

The Customer shall not modify or attempt to modify SIM card issued by Safaricom to the Customer or otherwise tamper or attempt to tamper with the SIM Card in any manner. The Customer shall inform Safaricom as soon as it is reasonably practicable after the Customer becomes aware that a SIM card is lost or stolen. Such notification shall not excuse the Customer from its obligations to pay the Charges incurred through the use of the lost or stolen SIM card.

#### **6. CUSTOMER CARE AND SUPPORT**

A Customer may contact Safaricom for assistance with any issues related to their account with Safaricom by calling the number 2222, or by sending an e-mail to [advantage@safaricom.co.ke](mailto:advantage@safaricom.co.ke) or by contacting the customer's designated account manager or relationship manager.

#### **7. SERVICE DELIVERY**

Safaricom will deliver the Services in a professional and workman-like manner and shall resolve all matters raised by the Customer within a reasonable period.

#### **8. SERVICE AVAILABILITY**

- 8.1 The quality and availability of Services may be affected by factors including Force Majeure events, maintenance or other works on Safaricom network. Where faults or interruptions in the Services are attributable to Safaricom, Safaricom will remedy the fault or interruption on a best effort basis.
- 8.2 Safaricom may, upon notification to the Customer suspend the Services for any period during which:
- (a) Safaricom is required to comply with an order or instruction of or on recommendation from the government or a Regulator or other competent authority;
  - (b) Safaricom is investigating an alleged violation by the Customer of its obligations under these Terms and Conditions or misuse of the Shiriki Plan for Business Service or other Services accessed through the Recipient Number.

## **9. CHARGES & PAYMENT TERMS**

- 9.1 In consideration of Safaricom providing the Shiriki Plan for Business Service and all other mobile telephony services that are accessed through a Recipient Number, the Customer hereby agrees to pay the Charges.
- 9.2 Safaricom shall send an invoice for the Charges to the Customer each month. Safaricom will send the invoice by e-mail to the e-mail address availed to Safaricom by the Customer on the Purchase Form or as otherwise notified by the Customer to Safaricom. An invoice shall be deemed to have been delivered to the Customer once Safaricom sends the invoice by e-mail and does not receive any notification that the delivery of the-mail to the Customer has failed.
- 9.3 The Customer shall make payment of the Charges within thirty (30) days from the date of receipt of Safaricom's invoice in respect of the Charges.
- 9.4 If the Customer fails to make payment of the Charges in accordance with section 9.3. then without prejudice to Safaricom's other rights and remedies under these Terms and Conditions and under the Governing Law, Safaricom reserves the right to suspend all allocation of resources until the Customer makes full payment of the Charges;
- 9.5 If the Customer disputes any of the Charges on any invoice, the Customer shall pay the undisputed amounts and submit to Safaricom a notice in writing of the disputed amount within seven (7) days from the date of receipt of the invoice providing the reasons for the dispute, and if possible, how much the Customer considers is due. The Parties shall use reasonable efforts to amicably settle the dispute. It shall be the responsibility of Safaricom to produce records detailing the usage of the Services in relation to which the dispute arose and such records shall, in the absence of manifest error be deemed to be a proper and final record of the transactions in relation to which the dispute was raised.

## **10. EVENTS OF DEFAULT AND TERMINATION**

### **10.1 Termination for Breach by either Party**

A Party ("**Non-Defaulting Party**") shall have the right to terminate these Terms and Conditions immediately by written notice to the other Party ("**Defaulting Party**"), and such notice shall be effective immediately upon service to the Defaulting Party if:

- (a) the other Party is in breach of any of its obligations under these Terms and Conditions and either that breach is incapable of remedy or that other Party has failed to remedy that breach within thirty (30) days after receiving written notice requiring it to remedy that breach; or
- (b) the other Party is unable to pay its debts or becomes bankrupt or insolvent or an order or an application is made or a resolution passed for the administration, winding-up or dissolution of the other Party (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any of the assets of the other Party or the other Party enters into or proposes any composition or arrangement with its creditors generally or anything

analogous to the foregoing occurs.

- (c) a Force Majeure event under section 10.5 below persists for more than thirty (30) days from the date the Party invoking the Force Majeure provisions notifies the other Party of the occurrence of the Force Majeure event.

## 10.2 Termination by Safaricom

Safaricom shall be entitled to terminate these Terms and Conditions by serving notice of immediate termination to the Customer where Safaricom has been instructed to cease providing the Service by a Regulator or by any other competent authority.

## 10.3 Termination for Convenience

A Party may terminate these Terms and Conditions without cause by serving thirty (30) days' notice of termination on the other Party.

## 10.4 Consequences of Termination

- (a) Safaricom shall not provide the resources to the Customer upon expiry of the notice period provided in the notice of termination issued by Safaricom or the Customer or immediately on receipt of the notice where no period has been provided.
- (b) Termination will not affect any accrued rights or liabilities of any party at the date of termination.
- (c) The Customer shall pay all outstanding and undisputed Charges.
- (d) Where applicable, Safaricom will refund the Deposit (if any) without interest and less any interest charges for late payment or other deductions which Safaricom is entitled to charge to the Customer under these Terms and Conditions.
- (e) The use of all Services from the date of termination of the Agreement shall be billed at the prevailing published rates.

## 10.5 Force Majeure

- (a) The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, these Terms and Conditions in so far as such inability arises from an event of *Force Majeure*, **PROVIDED THAT** the Party affected by such an event has taken reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out its obligations under these Terms and Conditions.
- (b) A Party affected by an event of Force Majeure shall notify in writing the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

## 11. CONFIDENTIALITY

### 11.1 Confidential Information

In this Agreement, "**Confidential Information**" means (i) any information which can be used to personally identify a Recipient ("**Personal Data**"); (ii) any information that has been marked as confidential or whose confidential nature has been made known by a Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"). Confidential Information does not include information which: (i) except for Personal Data, is already known to the Receiving Party at the time of disclosure by the Disclosing Party; (ii) is or becomes publicly known through no wrongful act of the Receiving Party; (iii) is independently developed by the Receiving Party without benefit of the Disclosing Party's Confidential Information; or (iv) is received by the Receiving Party from a third party without restriction and without a breach of an obligation of confidentiality.

- 11.2 The Receiving Party shall only disclose Confidential Information to its personnel and professional advisors (i) who have a need to access such Confidential Information solely for the purpose of fulfilling their obligations under these Terms and Conditions or their professional obligations to the Receiving Party, and (ii) have been advised of the obligations of confidentiality and are under obligations of confidentiality to the Receiving Party. Subject to the provisions of section 11, the Receiving Party shall not otherwise use or disclose to any person, firm or entity any Confidential Information of the Disclosing Party without the Disclosing Party's express, prior written permission.
- 11.3 Each Party shall exercise at least the same level of care to protect the other's Confidential Information as it exercises to protect its own Confidential Information of a similar nature but in no event less than reasonable care, except to the extent that applicable law or professional standards impose a higher requirement.

## **12. DATA USAGE, PROTECTION AND PROTECTION**

- 12.1 Safaricom and its personnel shall comply with the Governing Law in connection with the processing of the Personal Data.
- 12.2 Safaricom may use the Confidential Information and the Personal Data for purposes connected to this Agreement for:
- (a) Fraud prevention and law enforcement;
  - (b) To comply with any legal, governmental or regulatory requirement;
  - (c) In reasonable business practices necessary for delivery of Services.
- 12.3 Safaricom is committed to respecting and protecting the privacy of the information we collect from you in compliance with the applicable laws and obligations on data use and privacy. Our privacy statement, as updated from time to time, explains how we treat your personal data and protect your privacy when you use our Service and can be found on [https://www.safaricom.co.ke/images/Downloads/Terms and Conditions/C1\\_Safaricom\\_Data\\_Privacy\\_Statement.pdf](https://www.safaricom.co.ke/images/Downloads/Terms and Conditions/C1_Safaricom_Data_Privacy_Statement.pdf). Any update or amendment to these Terms and Conditions including privacy terms will be available on the Safaricom website [www.safaricom.co.ke](http://www.safaricom.co.ke) and will take effect from the date of notification of the update or amendment.

## **13. NOTICES AND NO WAIVER**

- 13.1 Any notices for purposes of legal proceedings will be served at the addresses indicated on the Order Form or through the contact details indicated on the Order Form. Notices served in accordance with this section 13.1 will be deemed to have been received: (i) if forwarded by e-mail immediately upon the successful transmission of the notice by e-mail; (ii) if notices are sent by registered post within five (5) Business Days after mailing the notice by registered post; (iii) if hand-delivered upon acknowledgement of the delivery by the Party to whom the notice is to be served.
- "Business Day"** for the purposes of this section 14 means Monday to Friday between the hours of 0900 and 1700, excluding public holidays.
- 13.3 For avoidance of doubt, the provisions of this section 13 shall not apply to the delivery and receipt of invoices for the Charges. Delivery and receipt of invoices shall be done in accordance with the provisions of section 9.

## **14. SUBCONTRACTING**

### **14.1 Assignment:**

A Party shall not assign the rights or obligations created under these Terms and Conditions without prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

### **14.2 Subcontracting**

Safaricom shall be entitled to subcontract all or any part of these Terms and Conditions to competent

subcontractor(s) **PROVIDED ALWAYS THAT** Safaricom remains responsible to the Customer for all actions, omissions and representations of the subcontractors.

## **15. NO LIABILITY**

Safaricom will not be liable to the Customer for any losses (including direct losses, indirect losses or consequential losses of any nature) or for any damage or any injury suffered by the Customer arising from or in connection with: (i) the purchase and use of the Shiriki Plan for Business Service including any delays in allocating resources; (ii) downtime or delays in Safaricom's network or failure of Safaricom's network.

## **16. GOVERNANCE**

Each Party represents to the other Party that all consents, approvals, permits or authorizations required under Governing Law or under the constitutional documents of a Party to enable a Party to lawfully perform its obligations hereunder have been obtained or made and are in full force and effect and that each Party will maintain such approvals, permits registrations and authorizations for as long as these Terms and Conditions are in effect.

## **17. DISPUTE RESOLUTION**

### **17.1 Amicable Settlement**

The Parties shall use their best efforts to settle amicably any dispute arising from or in connection with these Terms and Conditions.

### **17.2 Arbitration**

- (a) If the dispute has not been settled amicably within thirty (30) days (or such longer period as may be agreed upon between the Parties) from when the dispute resolution process was instituted, a Party may elect to commence arbitration.
- (b) Where a Party elects to commence arbitration proceedings, the dispute 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, the arbitrator shall be appointed upon the application of either Party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators.
- (c) 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 (as amended).
- (d) To the extent permissible by Law, the determination of the arbitrator shall be final, conclusive and binding upon the Parties hereto.

17.3 Notwithstanding the provisions of section 17.2, a Party shall be at liberty to pursue such other dispute resolution or injunctive measures as may be available to that Party under the Governing Law.

## **18. ENTIRE AGREEMENT**

These Terms and Conditions contain the whole agreement between the Parties relating to the subject matter of these Terms and Conditions. These Terms and Conditions shall not be varied or cancelled, unless such variation or cancellation shall be expressly agreed in writing by the Parties

## **19. SEVERABILITY**

If any provision in these Terms and Conditions is declared by any judicial or other competent authority to be void, illegal or otherwise unenforceable, the Parties shall amend that provision in a manner that achieves the intention of the Parties without the illegality or alternatively the offending provision may



be severed from these Terms and Conditions by agreement of the Parties and the remaining provisions of these Terms and Conditions shall remain in full force and effect.

**20. CUMULATIVE REMEDIES & NO WAIVER**

The rights and remedies contained in these Terms and Conditions are cumulative and not exclusive of the rights or remedies provided by Governing Law. The failure by a Party to enforce at any time or for any period any one or more of the provision of these Terms and Conditions shall not be a waiver of such provisions or a waiver of the right at any time to enforce such provision.

**21. RESERVED RIGHTS**

Safaricom may discontinue the Shiriki Plan for Business Service upon notice to the Customer **PROVIDED THAT** Safaricom shall not cancel any Subscriptions before the expiry of the Validity Period.

**22. GOVERNING LAW**

These Terms and Conditions and the performance of the Parties obligations shall be subject to and interpreted in accordance with the Governing Law.