

SAFARICOM POST PAY CUSTOMER TERMS AND CONDITIONS

1. Definitions and Interpretations

1.1 In these Terms and Conditions of Agreement:

"Agreement" means the Agreement under which the Service is being provided and includes the Application Form, these Terms and Conditions, Schedules, Supplemental Agreements and Tariff Guides, which may be varied by Safaricom from time to time;

"Application" means your written request for additional Services;

"Charges" means the amounts and deposits payable for the Service as published in the Tariff Guide;

"Connection" means the activation of the MSISDN for use on the Network;

"Connection Charge" means a charge in respect of each MSISDN for connection to the Network as published in the Tariff Guide;

"Credit limit" means the maximum amount of credit available to you in respect of each MSISDN;

"Customer" or **"you"** means the subscriber applying for, or using the Service with whom we are making this contract and includes any person who we believe is acting with your authority;

"Date of Commencement" means the date this Agreement will come into effect as detailed overleaf;

"Disconnection" means the deactivation of the MSISDN from the Network for whatever reason;

"Equipment" includes the cellular telephone handset, accessories, SIM cards, starter packs, promotional items and other items as purchased by you

"MSISDN" means the Mobile Subscriber Integration Services Digital Number, which is your telephone number;

"Material breach" means a breach of any Term of this Agreement, which cannot be remedied;

"Monthly Access Charge" means the standing monthly charge payable by you for the use of the Service as specified in our Tariff Guide;

"Network" means the cellular network operated by Safaricom;

"Party" means either you or us and "Parties" shall mean us both.

"Roaming Services" means a service that allows for the use of the Safaricom MSISDN with networks beyond the coverage of the Safaricom Network;

"Safaricom" or **"we"** or **"us"** means Safaricom Limited of Post Office Box Number 66827, Westlands, 00800, Nairobi, Kenya;

"Service" means our PostPay Service and includes two-way communication via our Network, international dialling, international roaming, short message service ("SMS"), voice mail, data services, emergency access numbers (112/911) and any other Service made available from time to time;

"SIM Card" means the subscriber identity module that enables you to use the Service when used with the cellular telephone handset;

"Tariff Guide" means our list of charges for the Services as published from time to time;

"Term" means the duration of this Agreement in accordance with Clause 2;

1.2 Headings are for convenience only and do not affect the interpretation.

1.3 Reference to money, value and price are to the Kenyan currency unless otherwise stated.

1.4 Reference to a Party includes its successors and permitted assigns.

1.5 Reference to any Statute includes amendments or re-enactments to that Statute from time to time.

1.6 Words importing one gender shall be construed as importing the other gender.

1.7 Words importing the singular shall be construed as importing the plural and vice versa.

1.8 Where any Party comprises more than one person, the obligation and liabilities of that party under this Agreement are to be joint and several obligations and liabilities of those persons.

1.9 This Agreement contains the entire agreement between you and us with respect to the Service and supersedes all previous understandings, commitments, agreements or representations, whether oral or written, express or implied, in relation to the subject matter between us.

1.10 This Agreement is made solely and specifically between you and us for our mutual benefit and is not intended to be for the benefit of or enforceable by any other person. Neither Party can declare itself a trustee of the rights under this Agreement for the benefit of any such person.

1.11 In the event of a conflict between any provision of the Application Form, Schedule or Tariff Guide and the provisions of these Terms and Conditions, the provisions of these Terms and Conditions shall prevail, save to the extent otherwise expressly agreed by the parties.

1.12 If any of the words or provisions of this Agreement shall be construed to be illegal, void or invalid, that shall not affect the legality and validity of the other words or provisions. If any restriction is held not to be valid but would be valid if part of the wording were deleted or its extent reduced or modified then such restriction shall apply with such deletion, reduction or modification as may be necessary to make it enforceable.

1.13 Save as is hereinafter stated, any variation of this Agreement shall be valid only if it is in writing and signed by or on behalf of each Party.

2. Term

This Agreement shall commence on the date entered in the Application Form overleaf and, subject to the rights of earlier termination, shall continue for such period as is indicated overleaf ("the initial term"). The Agreement will then automatically be renewed for a further period of

twelve (12) months. You may terminate this Agreement at the expiry of the initial term or at any later date, upon giving us one (1) month's notice in writing.

3. Supply of Service

3.1 We reserve the right to evaluate your creditworthiness before or after providing the Service.

3.2 We reserve the right to lock the SIM card so that it will only operate on the Network and may be restricted from certain services.

3.3 You may only use the Service within the Republic of Kenya and those areas covered by our Network or our partner networks.

3.4 Access to roaming networks will depend upon the arrangements between the foreign operators and us and will be subject to the availability of the foreign operator's network, gateway restrictions and charges.

3.5 We reserve the right to immediately change the terms, conditions, notices and charges under which we offer the Service, or any product or service offered thereunder, as a direct result of new or amended legislation, statutory instrument, Government regulations, policy or licence. In the event of any review of our business planning, technical, public interest or operational reasons, changes within the industry, recommendations from regulatory bodies or similar events, and where circumstances permit, we shall notify you of such changes by SMS or e-mail or through the media (including newspaper publications, television and radio) or on our website at www.safaricom.co.ke.

4. These terms and conditions and any changes to them may also be accessed on our website at www.safaricom.co.ke and your continued use of our Services shall be deemed to be your acceptance of an agreement to all such terms, conditions, notices and charges and any changes thereto.

4. Your Obligations

For the term of this Agreement, and where applicable, upon the expiry of this Agreement, agree:

(a) to comply with instructions given by us about the Service;

(b) not to use the Service for any purpose that is unlawful or prohibited by these Terms and Conditions or by any notice or publication issued by us from time to time.

(c) not to use the Service in any manner, which could damage, disable, overburden, or impair the Network or other Service or interfere with any party's use and enjoyment of the Service.

(d) not to attempt to gain unauthorised access to any Service, material, information, accounts, computer system or networks connected to the Service through hacking, passwords or any other means.

(e) to indemnify and hold us and our employees and partners harmless from any third party claim

or demand arising out of your wrongful use of the Service, or your breach of these Terms and Conditions or violation of any rights of another user of the Service.

(f) to pay for all charges up to the time you notify us of the loss or theft of the Equipment and plus the monthly (or other periodic) access charges applicable for the remainder of the Term of this Agreement. We advise you to insure, at your own cost, the Equipment for the replacement value against loss or theft (including cover against calls made if the Equipment is stolen).

(g) to keep confidential all information that you may have acquired by virtue of your Agreement with us for any purpose other than the performance of your obligations under this Agreement during the Term of this Agreement and after its termination or expiry for any reason, except with our prior written consent or to the extent that disclosure is reasonably necessary for the purposes of this Agreement. This Clause shall not apply to confidential information which at the date of this Agreement, or at any time thereafter, becomes publicly known other than by your breach of this Agreement or is required to be disclosed by an order of the Court or as required by any statutory or other competent authority;.

(h) to keep confidential and for your own security, all details of your account, electronic serial number of any Equipment, and any lock code(s) or Personal Identification Numbers used by you.

(i) to notify us immediately you become aware of any unauthorised use of your account. We will not be liable for any loss you may incur as a result of a third party using your account with or without your permission. You will indemnify us against losses incurred by us or by any other party due to a third party using your account.

(j) to pay the applicable charges and/or deposits before using the Service. Your deposit may be used as security against any losses incurred or any outstanding charges upon default in payment or upon termination of this Agreement.

(k) to pay all usage charges during the term of this Agreement.

You acknowledge that you have not relied and shall not rely upon any statement, representation or warranty made by us or any of our employees other than as set out in these Terms and Conditions.

5. Our Obligations

We will use all reasonable efforts to maintain your access to the Network and Services throughout the Term of this Agreement. However, the Service is not fault free and may be affected by factors outside our control such as atmospheric conditions, type of mobile equipment in use, physical or topographical features, radio frequency interference or third party services you use on the network. The Service may also be temporarily interrupted during upgrading,

maintenance and other works that may be required.

Miscellaneous Provisions

1. Liability

We will not be liable for any direct, indirect, consequential, incidental or special loss or other costs arising out of or in connection with this Agreement.

2. Waiver

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

3. Use of SIM Cards

3.1 Your use of the SIM card shall be under licence from us. The SIM card shall remain our property and may be returned to be returned to us upon request or if the MSISDN is disconnected from the Network.

3.2 It is your responsibility to keep the SIM card secure and free from damage and we will have no liability for any loss or liability incurred resulting from the unauthorised use or damage of the SIM card. In addition, you are restricted from tampering with the SIM card in any manner.

3.3 You will immediately notify us of any loss, theft or damage to the SIM card and shall be responsible for its replacement costs. Notwithstanding the above, the blocking of the Equipment or SIM card is dependent on a number of factors, which may be beyond our control. For this reason, we will not be held liable for any delays in such blocking.

4. Equipment

4.1 Title to any Equipment provided to you on provision of the Service, will remain with us and may be transferred to you under such conditions as may be required.

4.2 You will be responsible for any loss or damage to the Equipment from the point of delivery to you.

4.3 We may block further use of the Equipment upon your written request provided that any loss or theft of the Equipment has been procedurally reported to the police and after you have given us all information and documents we may require to effect this. Any replacement of the Equipment shall be at your cost.

5. Warranty

5.1 If you have purchased any Equipment from us which is found to be faulty or defective, you will need to immediately return the Equipment and the original receipt for the purchase to us (at the point of sale) ,within ten (10) days of purchase. We will

only be responsible for the replacement of the Equipment in the case of manufacturer's defects.

5.2 We will use reasonable endeavours to extend to you the benefit of any warranty as given to us (subject to any limitations and restrictions thereof) by the manufacturer provided that any expense reasonably incurred by us in extending such benefit shall be held to your account. This warranty is the only warranty given by us and specifies its entire liability including liability for negligence and in particular but without limitation all statutory or other express, implied or collateral terms. Conditions or warranties are excluded to the fullest extent provided by law including but not limited to any warranties and conditions expressed or implied by the Sale of Goods Act (Chapter 31 of the Laws of Kenya).

6. Tariffs and Taxes

6.1 Voice and data charges applicable for the various services may be found in our Tariff Guide.

6.2 Unless otherwise stated, call charges are calculated per second and rounded up to two decimal points.

6.3 Charges for outgoing SMS messages shall be based on the number of messages sent. A standard SMS message contains up to 160 characters. Some handsets allow the Customer to send messages of more than 160 characters by dividing the message into a number of messages of up to 160 characters required to convey the message. Each such message will be charged at the text message rate contained in our Tariff Guide.

6.4 Outgoing and incoming voice and data charges applicable under any roaming service shall be those levied by the relevant network providers (which may include a minimum charge) plus our charge at the prescribed rates.

6.5 You may move between Tariffs ("migrate") subject to such conditions and procedures as may be published in our Tariff Guide.

6.6 Discounts (where applicable) are mutually exclusive, except where stated to the contrary, and cannot be claimed in addition to any other discounts that may apply on the same Tariff or Charge.

6.7 Discounts (where applicable) exclude Roaming and International call charges.

6.8 We reserve the right to adjust these discounts at any time.

6.9 All Tariffs and Charges payable under this Agreement are exclusive of Value Added Tax, which shall be calculated at the prevailing rate on the Invoice date.

7. Payment Terms

Unless otherwise specified by us;

(a) Connection Charges shall be payable upon acceptance of your application and subsequent connection to our Network.

(b) Monthly Access Charges shall be invoiced by us and payable by you monthly in advance.

(c) Voice and data charges set out or referred to in our Tariffs (other than monthly access charges) shall be invoiced monthly in arrears.

(d) Any exceptions or objections to the charges must be advised to our Credit Control Manager immediately. In the event that no exception or objection is raised within fifteen (15) days from the billing date then the invoice amount shall be deemed to be correct.

(e) All charges are payable from the billing date. You may make payment by cash, cheque, approved credit card and/or bank transfer. Payment may be made at any of our retail stores. All cheques should be drawn in favour of "Safaricom Limited"

(f) If we have not received your payment within the credit period of fifteen (15) days from the billing date or have not received any objection to the invoiced amount then we may:

i) suspend your access to the Service or any discounts in place until we receive payment in full; and/or;

ii) 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; and/or;

iii) refer the debt to a collection agent and/or institute debt recovery proceedings for the recovery of the debt; and/or

iv) hold all pre and post judgment collection costs to your account until we receive payment in full.

8. Right of Set off

We will reserve the right to off set any sums owed by you under this Agreement against any sums we are holding to your credit or as a deposit under this Agreement or any other Agreement with you.

9. Right of Assignment

9.1 You may not assign, transfer or delegate, or purport to assign, transfer or delegate, any of your rights or obligations under this Agreement without our prior written consent, which shall not be unreasonably withheld. However, you will be required to furnish Safaricom with all documents, payments and discharges necessary to effect the transfer. In cases of transmission upon death, we may require proof of letters of administration or grants of probate to effect any such transmission.

9.2 We may however transfer, assign or delegate any or all of our rights under this Agreement to any of our subsidiaries or associated companies.

10. The MSISDN and Other numbers

10.1 The MSISDN and any other numbers made available in connection with the use of the Service remain the property of Safaricom Limited.

10.2 In the event that we may need to change your MSISDN we will notify you of the change.

10.3 You may request us to transfer the MSISDN to a third party, which transfer will be at our discretion and upon payment of all outstanding charges relating to the Services used up to the transfer date and administration charges in

relation to the transfer provided that following the transfer of the MSISDN, we may deduct the charges from the deposit and refund the balance of the deposit to you (without interest).

11. Customer Information

11.1 By applying for our Services, you hereby consent that your personal data and banking information will be obtained and used to process, manage and administer your account or be used by us for purposes incidental to our business.

11.2 We will reserve the right to disclose information relating to your personal data, banking and PostPay account information to any of our subsidiaries, associated companies or partners.

11.3 We may hold and use information provided by you or obtained from our suppliers and marketing organisations for a number of purposes, which may include:

(a) carrying out any activity in connection with a legal, governmental or regulatory requirement affecting us, in connection with legal proceedings or in respect of prevention, detection or prosecution of any crime or fraud.

(b) monitoring or recording of access to voice or data services for our business purposes such as quality control and training; prevention of unauthorised use of our telecommunications system; and ensuring effective systems operation; and in order to prevent or detect crime.

(c) For reasonable commercial purposes connected to your use of the services, such as marketing and research related activities.

11.4 You may request to be listed in any publicly available telephone directory enquiry service in printed or electronic format at such price as stated in our Tariff Guide. In some cases, we may be required to include your details in the directory enquiry service as ex-directory. Directory enquiry service information may be passed from us directly or indirectly to other organisations so that they may operate their own directory enquiry service.

11.5 We may be required by law or industry or business practice to provide other mobile telecommunications operators with your information for various justifiable reasons such as, but not restricted to, where any Equipment is reported lost or stolen, to request them to bar access to their systems and assist in recovery, where possible.

11.6 We may also provide details of name and transactions using our Network to a credit reference bureau, or other agency, for circulation to other credit grantors who may use the information to determine your credit ratings.

12. Intellectual Property

12.1 The intellectual property rights, as reserved from time to time, in the SIM Card (including the software) are supplied to you, under licence from us for use with the Service only.

12.2 You may not copy or change or re-engineer any of the intellectual property rights.

12.3 In the event that we change or vary our intellectual property rights, you may be required to return the SIM card to us or pay for the SIM Card or its replacement value at the price stated in our Tariff Guide.

13. Notice

13.1 Any notice required to be given to us will be deemed to have been given if posted by registered mail or delivered by hand or courier against a signature of our employee authorised to receive such notice. Notices must be marked for the Attention of: The Corporate Sales Manager, Sales Department, Safaricom Limited.

13.2 We may give notice by writing to you at your last known address, or by registered mail, or delivered by hand or courier service, by SMS, media release or through our website at www.safaricom.co.ke. You are advised to keep checking our website for any changes to the Service and your continued use of the Service shall be understood to be your acceptance of such changes.

14. Auto Bar

You may use the Auto Bar service, upon request, to receive updates on the available credit in your account. This service shall be used strictly as a guideline to allow you some degree of control over your account. We will therefore not be liable for delays in effecting the bar. Where you have exceeded your credit limit, access to the out-going Services may be barred until a sufficient amount of payment is made into the account. You remain liable for all charges incurred for use of the Service, irrespective of any delays in the barring or un-barring of your account.

15. Barring of Service

15.1 We may bar your access to the Service for any of the reasons contained in sub-clauses 16 (d), (e), (f), (g) and (h) below but which, in our opinion, does not warrant termination.

15.2 We may also bar your access to the Service during upgrading, maintenance, audits and other works that may be required.

15.3 During this period you may not be able to access most or all of the services that are dependent on the barred Service.

15.4 The Service may be reinstated upon completion of our works, at the renewal of this Agreement or once you settle any outstanding matter that gave rise to the barring of the Service.

15.3 The barring of you access to the Service does not constitute a waiver of the amounts due to us or your obligations under this Agreement.

16. Termination

This Agreement may be terminated if:

(a) We have reason to believe that the Service is being used in an unauthorised or illegal way or for

criminal activities or we have been instructed to cease providing the Service by any licensing, law enforcement or regulatory authority;

(b) You write to us notifying us of your decision to terminate this Agreement

(c) Either party commits any material 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;

(d) either Party 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;

e) the Service is no longer available to you upon expiry of the Agreement or on expiry of your line;

f) the Equipment is found to emit signals, which may interfere with the quality of the Service;

g) your available credit balance where applicable, falls below a minimum set by us, and we do not receive your full payment by the due date;

h) there exists a dispute as to payment;

i) in our opinion you are unable to meet or maintain our standard credit requirements.

17. Consequences of Termination

17.1 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.

17.2 Where you terminate this Agreement before the expiry of the initial term then you will be required to pay all outstanding charges plus the monthly or other periodic charges, which would otherwise have been payable for the remainder of the Term, had this Agreement not been terminated,.

17.3 Where you terminate this Agreement after the expiry of the initial term without giving one (1) month's written notice, then you will be required to pay all outstanding charges plus the monthly or other periodic charges for a further one (1) calendar month.

17.4 We will use all reasonable endeavours to disconnect the MSISDN from the Network without delay upon notice to do so.

18. Force Majeure

The obligation of each Party under this Agreement shall be suspended during the period to the extent that such Party is prevented or hindered from complying therewith by any cause beyond its reasonable control including but not limited to acts of God, war, civil commotion, industrial dispute, inability to secure materials, act or omission of carriers or suppliers, or regulatory intervention. If such delay or failure continues for at least thirty (30) days then either Party may terminate this Agreement, upon expiry of the thirty (30) days, by notice in writing to the other. Upon such termination all amounts due to Safaricom by the

Customer shall immediately become due and payable.

19. Request for additional Services

Unless otherwise required, activation of International Dialling, Roaming Services, Data services and any other new service provided may be made available upon request at least forty-eight (48) hours prior to departure from Kenya, upon completion of the necessary documentation and upon payment of such required amounts and/or deposits.

Contact: Customer Care

Tel: (020) 427 0200 from a Telkom landline or Dial 200 from a Post Pay Safaricom line

20. Dispute Resolution

20.1 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 mutually settled between the Parties shall be referred to Arbitration

20.2 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.

20.3 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.

20.4 Notwithstanding these Arbitration provisions, the Parties shall not be precluded from seeking urgent interim relief, in which case the Parties submit to the exclusive jurisdiction of the High Court of Kenya.

21. Applicable Law

This Agreement shall be interpreted, governed and construed in accordance with the laws of the Republic of Kenya.

