

TERMS & CONDITIONS FOR THE SALE OF DEVICES TO SAFARICOM'S CUSTOMERS ON INSTALLMENTS

The person whose names appear overleaf ("the Customer") hereby agrees to the following terms and conditions:

1. Definitions & Interpretation

In this Agreement the following words and expression shall have the following meaning:

"Agreement" or **"Terms and Conditions"** means these terms and conditions and includes Application Form.

"Application Form" means the application form overleaf;

"Customer" means the person or entity listed as the customer in the Application Form. References to "You" or "Your" shall be construed as references to the Customer;

"Devices" means the handsets, ipads, tablets, laptops and other devices to be purchased by the Customer by way of monthly installments as listed on the Application Form;

"Data Bundle" means the data volume in terms of the internet limit that the Customer can utilise;

"Party" means either Safaricom or Customer and **"Parties"** shall mean them both;

"Payment" means the monthly installments (inclusive of VAT) payable by the Customer to Safaricom for the Devices and data bundles as indicated on the Application Form;

"Person" means reference to a body corporate or other legal entity;

"Services" means Safaricom's services which the Customer is connected to as at the date of the Agreement as indicated on the Application Form.

1.2 RESERVED

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

- (a) the singular includes the plural and vice versa;
- (b) any written law includes that law as amended or re-enacted from time to time;
- (c) any agreement or other document includes that agreement or other document as varied or replaced by the Parties in writing from time to time;
- (d) words importing one gender shall be construed as importing the other gender;
and
- (e) any Party includes that Party's successors and assigns.

1.3 Clause headings are inserted for convenience only and shall be ignored in construing this Agreement.

2. Eligibility

- (a) The device installment plan is only open to Safaricom's postpay subscribers and customers who are currently using the Services and who are in good standing and whose accounts are not in arrears on the date of making the application for the Devices.
- (b) Safaricom reserves the right to carry out a credit check on any Customer as a pre-condition to the approval of the Customer's application for the Devices.
- (c) Safaricom reserves the right to request a Customer to deposit a specified sum of money or a bank guarantee as a security for performance of Your obligations under this Agreement. You, the Customer, hereby agrees to provide Safaricom with all information that may be required to assess the application and You agree that such information may be used by Safaricom for purposes of debt collection in the event that Your account is in arrears.

3. Release of Devices & Warranty Terms

- (a) The Devices listed overleaf will be released to You upon approval of the Application Form.
- (b) The Person who signs the Application Form shall be deemed to have authority to bind the Customer to this Agreement. Safaricom shall not be under an obligation to make inquiries as to whether the person has such authority.
- (c) Risk in the devices will pass to You upon collection of the Devices from Safaricom or delivery of the devices to the premises indicated overleaf. For the avoidance of doubt Safaricom will not be responsible for any loss or damage to the Devices upon collection or delivery of the devices to the premises. Title to the Devices will pass to You upon payment of the Devices in full.
- (d) Devices are sold subject to the manufacturer's limited warranty which is packaged together with the Devices and is also available from Safaricom upon written request. If You find that the Product is faulty or defective, You should immediately, not later than three days, return it to Safaricom together with the receipt for the purchase. All faults will be handled in accordance with the manufacturer's limited warranty. For the avoidance of doubt Safaricom will not be liable for any fault in the Devices outside the manufacturer's warranty. Any logistical expense reasonably incurred by Safaricom in extending such benefit shall be held to Your account. This warranty is the only warranty given by Safaricom 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. You are hereby advised to take note of any limitations and restrictions thereof and to examine the features of the device prior to signing the Application Form.

- (e) You agree that once the Application Form has been signed and the Devices indicated on the form released there will be no replacement or repair unless the same is under the manufacturer's limited warranty.
- (f) Value of the Device is as at the date of the Customer's application. No adjustment shall be made for promotions or price cuts offered by Safaricom.
- (g) The Devices to be purchased by the Customer are set out in the Application form. In the event that the Customer requires additional Devices, the Customer may place an order by completing a new Application Form.
- (h) Safaricom may elect to approve the Application Form but shall be under no obligation to do so.
- (i) All Application Forms for the additional Devices approved by Safaricom shall be governed by the terms of this Agreement.

4. Data Bundles

- (a) The Data Bundle is valid for Thirty (30) days and is renewable on a monthly (30 calendar days) basis. The validity date of a data bundle is calculated from the date on which the Bundle is activated following Safaricom's approval of the Customer's Application Form.
- (b) Any unutilized Data Bundle will be carried forward to the following month's Data Bundle provided that the Customer's account is not in arrears. For the avoidance of doubt the unutilized Data Bundle shall expire if not utilized within the following month.
- (c) In the event that You or any third party using a Device exhausts the Data Bundle allocated to the particular Device before the expiry of the thirty (30) day validity period referred to in clause 4 (a) above, any continued usage of data by You or the third party will be deemed to be "Out of Bundle". You agree to pay the Out of Bundle charges which shall be billed at the prevailing published tariffs and which shall be payable in accordance with the provision of clause 5 (c).
- (d) The Data Bundle provided is to be utilized within Kenya and is not valid for data roaming services. You agree that you will be liable for all data roaming charges incurred through Your use or any third party's use of the data roaming service which shall be billed at the prevailing published tariffs.

5. Payment for the Devices and Data Bundles

- (a) You agree that you will remain liable for the Payments even where the Devices are intended for use by third parties who are not party to the Agreement.
- (b) You agree to continue making Payments even in the event of loss or theft of the Devices or where the Devices are faulty outside the period of the manufacturer's warranty.
- (c) All Payments are due Fifteen (15) days from the invoice date and You shall pay Safaricom by cash, cheque, approved credit/debit card and/or bank transfer. Invoices shall be sent to the Customer's address specified in the Application Form.
- (d) In the event that You do not pay the amounts due within the credit period of Fifteen (15) days from the invoice date then Safaricom may:
 - (i) 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;
 - (ii) if payment has still not been received thirty (30) days from date of the missed invoice payment or if You miss any other payments:
 - Arrears plus the Payment for the remainder of the term of the Agreement shall immediately become due and invoiced to the Customer's account.
 - Safaricom may refer the debt to a collection agent and/or institute debt recovery proceedings for the recovery of the debt; and/or pre and post judgment collection costs will be held to Your account until payment is received in full.
 - Safaricom may offset service credits due to the Customer under the terms and conditions for the Services against the Payment arrears.
 - Safaricom may offset any sums due to You under any other agreement against the Payment arrears.

6. Term & Termination of the Agreement

- (a) This Agreement shall commence on the date entered in the Application Form until the debt is discharged in full.
- (b) The Payments will immediately become due upon termination of this Agreement for any reason and provisions of clause 5 (d) shall apply to such Payments.
- (c) Once the Customer discharges its debt in full, Safaricom will continue to provide the Data Bundle to You until You issue Safaricom with notice in writing to discontinue. The charge for the Data Bundle shall be payable in accordance with the terms of this Agreement. For the avoidance of doubt clause 4 (c) shall apply to Your utilization of the Data Bundle.

7. General

- (a) No terms or conditions endorsed upon, delivered with or contained in Your documentation will form a part of this Agreement and You waive any right which You otherwise might have to rely on such terms and conditions.
- (b) Any notice required to be given to Safaricom shall be deemed to have been given if it is posted by registered mail or delivered by hand or courier service to the aforementioned address and marked for the Attention of: The Chief Executive Officer
- (c) Any notice required to be given to You shall be deemed to be so given if it is addressed to You at Your last known address and posted by registered mail or delivered by hand or courier service to You.
- (d) Such notice shall be deemed to have been received five (5) business days after posting or if delivered by hand or courier upon receipt by the duly authorised officer.
- (e) 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.
- (f) 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
- (g) The construction, validity and performance of this Agreement shall be governed in all respects by the Laws of Kenya.

8. Dispute Resolution

8.1 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.

8.2 Arbitration

- (a) Save as may otherwise be provided herein, all questions in dispute arising between the Parties and all claims or matters in such dispute not otherwise mutually settled between the Parties shall in the first instance be referred to the Communications Commission of Kenya.

- (b) In the event that the Communications Commission of Kenya fails to settle the dispute within fourteen (14) days of the dispute being referred to it, then the matter shall be referred to arbitration by a single arbitrator to be appointed by agreement between the Parties or in default of such agreement, the arbitrator shall be appointed within fourteen (14) days upon application by either Party to the Chairman for the time being of Kenya Branch of Chartered Institute of Arbitrators of the United Kingdom. The arbitration proceeding shall take place in Nairobi.
- (c) Every award made under this clause shall be made in accordance with the provisions of the Arbitration Act 1995 (Act No. 4 of 1995) or other Act or Acts for the time being in force in Kenya in relation to Arbitration. To the extent permissible by law the determination of the Arbitrator shall be final and binding upon the Parties.
- (d) Notwithstanding these arbitration provisions, the Parties shall not be precluded from seeking urgent injunctory relief, in which case the Parties submit to the exclusive jurisdiction of the High Court of Kenya.

9. Application of the Terms and Conditions for Safaricom's Post Pay Services

The published Customer terms and conditions for Safaricom's postpay services will apply to this Agreement to the extent that such terms and conditions have not been varied by this Agreement.