

TERMS & CONDITIONS FOR SAFARICOM MOBILE VOICE & MOBILE DATA BUNDLES (SME BUNDLES)

1. APPLICATION OF TERMS AND CONDITIONS

- 1.1 These Terms and Conditions form the agreement between Safaricom and the Sponsor in relation to the purchase and use of the Bundles. These Terms and Conditions shall be binding on Safaricom and the Sponsor upon the submission of an Order Form by the Sponsor. The Order Form and the details contained in an Order Form shall be deemed to be part of the agreement between Safaricom and the Sponsor.
- 1.2 Capitalised terms used in section 1.1 above shall have the meanings assigned below.

2. DEFINITIONS & INTERPRETATION

2.1 Definitions

In these Terms and Conditions:

- (a) **"Activation"** or **"Activate"** means granting the Sponsor Mobile Number access to the USSD Menu.
- (b) **"Bundle"** means a PrePaid Voice Bundle or a PrePaid Data Bundle as indicated on the Order Form.
- (c) **"Bundle Price"** means the price indicated on the Order Form for a Bundle.
- (d) **"Content"** means any call, data or any other material transmitted or communicated through the use of Safaricom services.
- (e) **"Credentials"** means a PIN or any other security feature used by the Sponsor to secure access to the Bundles.
- (f) **"Data Bundle"** means a mobile data product: (i) which has a fixed validity period; and (ii) which is sold in various defined denominations and capacities. The Data Bundles which can be purchased by a Sponsor are listed on the Order Form and on the USSD Menu.
- (g) **"Devices"** means a desk phone, router, mobile phone handset, modem or other terminal device supplied to the Sponsor by Safaricom. "Device Manufacturer" means the manufacturer of a Device.
- (h) **"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 and adverse weather conditions.
- (i) **"Governing Law"** means the laws of the Republic of Kenya.
- (j) **"M-PESA"** means Safaricom's mobile money service.
- (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) **"Okoo Jahazi"** means a Safaricom service that enables Safaricom PrePay subscribers who meet the defined eligibility criteria to receive from Safaricom airtime on credit on the terms and conditions defined by Safaricom. The terms and conditions and details on the Okoo Jahazi product can be viewed at: http://www.safaricom.co.ke/images/Downloads/Terms_and_Conditions/okoo_jahazi_service_terms_and_conditions.pdf
- (m) **"Order Form"** means Safaricom's application form or order form for the Bundles which shall be availed by Safaricom to the Sponsor for completion and signature.
- (n) **"Recipient"** means a Safaricom subscriber.
- (o) **"Recipient Number"** means the Recipient's PrePaid mobile number (MSISDN).
- (p) **"Regulator"** means the Communications Authority of Kenya (CA) and any other person exercising regulatory, supervisory or governmental authority under Governing Law.
- (q) **"Safaricom"** means Safaricom Limited whose offices are located at Safaricom House, Waiyaki Way, Westlands, Nairobi.
- (r) **"Sponsor"** means a business entity registered under Governing Law and which carries on any lawful trading or business activity for profit or otherwise.
- (s) **"Sponsor Mobile Number"** means the PrePay or PostPay Safaricom mobile number(s) (MSISDN) indicated by the Sponsor on the Order Form which the Sponsor will use to perform Top-Ups and other functions incidental to the use of the Bundles as is further described in these Terms and Conditions.
- (t) **"Terms and Conditions"** means these terms and conditions including the Order Form.
- (u) **"Top Up"** means the purchase of a Bundle by the Sponsor and the allocation of the Bundle by Safaricom to the Recipient Number selected by the Sponsor as is further described in these Terms and Conditions.
- (v) **"USSD Menu"** means Safaricom's interactive menu which can be accessed by the Sponsor through an Activated Sponsor Mobile Number by dialing *485# or any other code which may be notified to the Sponsor by Safaricom from time to time.
- (w) **"Voice Bundle"** means a mobile telephony product: (i) which has a fixed validity period; and (ii) which is sold in various defined denominations referred to as "voice plans" and (iii) can be used for voice calls, SMS and data and whose usage is billed at a blended rate comprising of preferential tariffs and the Safaricom standard published tariffs depending on the Recipient's usage. The Voice Bundles which can be purchased by a Sponsor are listed on the Order Form and on the USSD Menu.

2.2 INTERPRETATION

Except where the context otherwise requires:

- (a) clause, 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" 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 clause, section or schedule is to the relevant clause, 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 Sponsor are each individually referred to as a "Party" and together as "Parties".

3. ACTIVATION

- 3.1 A Sponsor may have up to three (3) Sponsor Mobile Numbers.
- 3.2 Safaricom will Activate each Sponsor Mobile Number upon receipt of an Order Form and the required vetting documentation which is indicated on the Order Form.
- 3.3 Safaricom will send a notification to the Sponsor Mobile Number once the Sponsor Mobile Number has been Activated.
- 3.4 Upon Activation, the Sponsor will have the ability to view Bundles, perform Top-Ups, add or remove Recipient Numbers, check balances on Bundles and perform any other functions that may be made available to the Sponsor by Safaricom through the USSD Menu.
- 3.5 Recipients shall not have access the USSD Menu. Recipients shall not have the ability to purchase Bundles or to access the customer care lines 2222. All purchases of Bundles shall only be done by the Sponsor through the Sponsor Mobile Number.
- 3.6 Safaricom reserves the right to decline an Order Form where (i) the Sponsor has not submitted the specified details on the Order Form; or (ii) the Sponsor has not submitted the required vetting documentation indicated on the Order Form; or (iii) where Safaricom has reasonable grounds to believe that the details or particulars submitted by the Sponsor are inaccurate; or (iv) for any other grounds permissible under Governing Law.

4. TOP-UPS & USE OF BUNDLES

- 4.1 A Sponsor can pay the Bundle Price by M-PESA or by purchasing airtime value. The Sponsor Mobile Number must be registered for M-PESA in order for the Sponsor to purchase the Bundles using M-PESA. Where a Sponsor purchases Bundles using M-PESA, an amount equivalent to the Bundle Price plus the amount of any outstanding Okoo Jahazi amount on the Recipient's Number will be deducted directly from the M-PESA account on the Sponsor Mobile Number.
- 4.2 If the Sponsor Mobile Number does not have sufficient airtime or sufficient value in the M-PESA account to cater for the Bundle Price and in case of a purchase of the Bundle by M-PESA, an amount equal to the Bundle Price plus any overdue Okoo Jahazi amounts on the Recipient Number plus M-PESA charges (if any) for the transaction, the purchase of the Bundle will be rejected.
- 4.3 Bundles cannot be transferred from one Recipient Number to another Recipient Number. Bundles or any unutilised value or capacity on a Bundle cannot be redeemed for cash or airtime. The Sponsor cannot reverse a completed Top-Up and Safaricom will not refund the Bundle Price once a Top-Up is done.

4.4 Loyalty Points

The Sponsor Mobile Number will earn points under Safaricom's Bonga loyalty program through usage of the Bundles. Loyalty points earned by usage of Bundles will be allocated to the Sponsor Mobile Number.

- 4.5 The Sponsor shall not transmit any Offending Material. The Sponsor shall notify Recipients that they must not transmit Offending Material.

5. RESTRICTIONS ON TOP-UPS

- 5.1 The Sponsor may Top Up ten (10) Recipient Numbers (in addition to a PrePaid Sponsor Mobile Number) using each Sponsor Mobile Number. The Sponsor may however replace up to two (2) Recipient Numbers each calendar month.
- 5.2 A Top-Up cannot be performed where the Recipient is a PostPay subscriber.

6. VOICE BUNDLES

- 6.1 Voice Bundles can be used for voice calls and SMS. Voice Bundles may also be used for data where the Recipient Number is not subscribed to any other Safaricom mobile data plan.
- 6.2 Recipients of Voice Bundles will enjoy the preferential tariffs defined on the Order Form (and which are referred to in this section 6 as "Preferential Tariffs") for the selected services defined on the Order Form SUBJECT TO the conditions defined in section 6.3 and 6.4 below. Where a Preferential Tariff has not been indicated on the Order Form, Safaricom's published rate or published tariff will apply. For avoidance of doubt, Safaricom's published tariffs or published rates will apply to any use of the Voice Bundles for international and local SMS, roaming, premium rate services and international calls to all destinations other than the destinations indicated on the Application Form as enjoying Preferential Tariffs for voice calls.
- 6.3 Voice Bundles shall be valid for ninety (90) days. However, the Preferential Tariffs shall be valid for only thirty (30) days from the date of the Top-Up of the Voice Bundle and the Sponsor must perform another Top-Up before the expiry of the aforementioned thirty (30) day Period in order for the Recipient to continue enjoying the Preferential Tariff. If the Sponsor does not perform a Top-Up before the expiry of thirty (30) days from the date

of Top-Up of a Voice Bundle, the Preferential Tariff will cease to apply and the use of the unutilized value remaining on the Voice Bundle shall be billed at the published Safaricom rates or published Safaricom tariffs for all services.

- 6.4 When the Sponsor performs a Top-Up any unutilised value on a Voice Bundle on the Recipient's Number will adopt the Preferential Tariffs of the latest Voice Bundle purchased by the Sponsor.
- 6.5 The value on a Voice Bundle may be depleted before the expiry of the ninety (90) day validity period based on usage of the Voice Bundle.

7. DATA BUNDLES

- 7.1 Data Bundles can only be used for data services.
- 7.2 Data Bundles will have the validity period defined on the Order Form depending on the capacity of the Data Bundle.
- 7.3 Upon the expiry of the validity period defined on the Order Form any unused capacity on the Data Bundle will be lost unless the Sponsor performs a Top-Up before the expiry of the applicable validity period. If a Sponsor performs a Top-Up before the expiry of the applicable validity period any unused capacity on the Data Bundle will be rolled over and will take on the validity period of the latest Data Bundle purchased by the Sponsor.

8. CONCURRENT SUBSCRIPTIONS

The Bundles take first priority over any other Safaricom bundle or tariff plans previously purchased or existing on the Recipient's Number. The validity dates for such other Safaricom bundles or tariff plans will not be extended upon their expiry.

9. DEVICES

Devices are sold subject to the manufacturer's limited warranty which is packaged together with the Devices. All faulty Devices will be handled in accordance with the manufacturer's limited warranty. The cost of the Devices shall be indicated on the Order Form. The Sponsor and Safaricom will agree on the terms for delivery of the Devices upon the purchase of the Device by the Sponsor.

10. CUSTOMER CARE AND SUPPORT

A Sponsor may contact Safaricom for assistance with any issues related to the Services through the following channels:

- (a) For PrePay customers - by calling the number 100 or 2222 OR by sending an e-mail to customer-care@safaricom.co.ke
- (b) For PostPay customers - by calling the number 200 or 2222 OR by sending an e-mail to advantage@safaricom.co.ke

11. SERVICE DELIVERY

11.1 Service Warranties

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

11.2 Service Availability

- (a) 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.
- (b) Safaricom may, upon notification to the Sponsor, suspend the Services for any period during which:
- Safaricom is required to comply with an order or instruction of or on recommendation from the government or a Regulator or other competent authority;
 - Safaricom is investigating an alleged material violation by the Sponsor of its obligations under this Agreement or misuse of the Bundles by a Recipient.

12. GOVERNANCE

Each Party represents to the other Party that all consents, approvals, permits or authorisations 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 authorisations for as long as the Customer uses the Bundles.

13. NO LIABILITY

Safaricom will not be liable to the Sponsor for any losses (including direct losses, indirect losses or consequential losses of any nature) or for any damage or any injury suffered by the Sponsor arising from or in connection with: (i) the purchase and use of the Bundles including any delays in Activation or delays in effecting Top-Ups; (ii) downtime or delays in Safaricom's network or failure of Safaricom's network.

14. DEACTIVATION

The Sponsor may request Safaricom in writing to deactivate the USSD Menu for a Sponsor Mobile Number.

15. FORCE MAJEURE

The failure of a party to a party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, PROVIDED THAT the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms of this Agreement.

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 five (5) 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.

16. DATA USAGE AND PROTECTION

- 16.1 Safaricom and its personnel shall during the term of this Agreement comply with the Governing Law in connection with the processing of information or data disclosed by the Customer to Safaricom.
- 16.2 Safaricom may use the data provided by the Sponsor for purposes connected to the delivery of the Services and:
- for fraud prevention and law enforcement;
 - to comply with any legal, governmental or regulatory requirement.

17. NOTICES AND NO WAIVER

- 17.1 Any notices for purposes of legal proceedings will be served:
- In the case of the Sponsor:** By registered post to the address indicated on the Order Form or the address given by the Customer during the subscriber registration process.
 - In the case of Safaricom:** by delivery to Safaricom House, Waiyaki Way, Nairobi and marked for the attention of the Director, Corporate Affairs
- 17.2 Such notices will be deemed to have been received 5 business days after mailing if forwarded by post and the following business day if hand-delivered or dispatched by e-mail. "Business Day" for the purposes of this clause 17 means Monday to Friday between the hours of 0900 and 1700, excluding public holidays.

18. DISPUTE RESOLUTION

18.1 Amicable Settlement

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

18.2 Arbitration

- 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 (or such longer period as may be agreed upon by the Parties), a Party may elect to commence arbitration.
- Where a Party elects to commence arbitration proceedings, 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, 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 Arbitration of the United Kingdom.
- 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.
- To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the Parties hereto.

18.3 Notwithstanding the provisions of clause 18.2, a Party shall be at liberty to pursue such other dispute resolution injunctive measures as may be available to that Party under the Governing Law.

19. VARIATION OF THESE TERMS AND CONDITIONS

Safaricom reserves the right to vary these Terms and Conditions upon serving reasonable notice to the Sponsor.

20. SEVERABILITY

If any provision of these Terms and Conditions 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 may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

21. CUMULATIVE REMEDIES & NO WAIVER

Except where these Terms and Conditions provides otherwise, 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.

22. RESERVED RIGHTS

Safaricom may discontinue all or selected Bundles upon notice to the Sponsor PROVIDED THAT Safaricom shall not cancel any unutilized value for Voice Bundles or unutilised capacity for Data Bundles before the expiry of the defined validity period for the affected Bundle.

23. 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.