

TERMS AND CONDITIONS OF THE SAFARICOM DOMAIN NAME REGISTRATION AND WEB HOSTING SERVICE ON A PREPAY BASIS

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement:

- (a) **"Agreement"** or **"Terms and Conditions"** means these terms and conditions and its schedules;
- (b) **"Charges"** means the amounts payable for the Services as published in the Tariff Guide or otherwise described in these terms and conditions including any applicable deposits but excluding any applicable interest on late payments;
- (c) **"Content"** means voice, sounds, information, communications, data or any other material appearing, posted, exchanged, transmitted or communicated through the Services;
- (d) **"Customer"** means you as the organisation, corporate or individual applying for, or using the Services and with whom Safaricom is making this contract and includes any person who Safaricom believes is acting with the Customer's authority;
- (e) **"Customer Equipment"** means such of the Customer's equipment as will interact with the Network to facilitate access to the Services;
- (f) **"Force Majeure"** means acts of God, geographical topography, 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. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder;
- (g) **"Network"** means the network operated by Safaricom, its subsidiary(ies), holding company and/or its third party providers to facilitate the provision of the Services;

- (h) **“Offending Material”** means any Content that is:
 - (i) in breach of any law, regulation or code of practice invoked by Safaricom or industry regulator or any policy adopted by Safaricom and communicated to the Customer with regard to the acceptable use of the Services, or
 - (ii) abusive, indecent, defamatory, obscene, offensive, menacing or a threat to the health and safety of any third party; or
 - (iii) in breach of confidence, intellectual property rights, privacy or any right of a third party.
- (i) **“Registry”** means the relevant domain names Registry including but not limited to the Kenya Network Information Centre (KENIC);
- (j) **“Services”** means the domain name registration and web hosting services to provided by Safaricom under this Agreement and includes such other services as may be incidental or conducive to the provision of the Services;
- (k) **“Tariff Guide”** means the list of charges for the Services as published and varied by Safaricom from time to time.

1.3 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) any agreement or other document includes that agreement or other document as varied or replaced by the Parties in writing from time to time;
- (e) words importing one gender shall be construed as importing the other gender; and
- (f) any Party includes that Party's successors and assigns.

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

2 COMMENCEMENT AND DURATION

This Agreement shall be deemed to have commenced on the date the Customer is connected to the Services (**“Commencement Date”**). The Agreement shall continue from the Commencement Date until terminated by the Customer or Safaricom pursuant to the Agreement.

“connected” for the purposes of this clause 2 means the Customer is able to have access to and utilise the Services.

3 APPLICATION OF TERMS

- (a) By submitting a completed Application Form to Safaricom and/or utilising the Services you confirm that you have read, understood and accepted the terms and conditions of this Agreement.
- (b) The terms and conditions set out in this Agreement are the only terms on which Safaricom is prepared to deal with the Customer in relation to the provision of the Services.
- (c) No terms or conditions endorsed upon, delivered with or contained in the Customer’s quotation, acknowledgement, purchase order, delivery note or other 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.
- (d) The Customer acknowledges that it may use the Services in conjunction with other Safaricom products and services and accepts it will comply with the terms and conditions of such other Safaricom products and services while utilising the same in addition to the terms and conditions set out in this Agreement.

4 SUPPLY OF THE SERVICES

4.1 Domain Name Registration

The Customer acknowledges and agrees that Safaricom:

- (a) does not guarantee the availability, registration or renewal of a desired domain name, even if an inquiry indicates the availability of the domain name;
- (b) may elect, at its discretion, to accept or reject the Customer’s application for registration or renewal of a domain name for any reason including, but not limited to, rejection due to a request for the registration or renewal of a prohibited domain name;
- (c) is not liable or responsible in any way for any errors, omissions or any other actions by any Registry administrator arising out of or related to the Customer’s application for and registration or renewal of, or failure to register or renew a particular domain name.

4.2 Warranties by the Customer

(a) Domain Name

By applying to register a domain name the Customer hereby represents and warrants that:

- (i) the statements made by the Customer in connection with the application for registration, maintenance, or renewal are complete and accurate;
- (ii) to the Customer's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
- (iii) the Customer is not registering the domain name for an unlawful purpose; and will not knowingly use the domain name in violation of any applicable laws or regulations. In making this warranty the Customer acknowledges that it recognises that it is its responsibility to determine whether its domain name registration infringes or violates a third party's rights.

(b) Web Hosting

The Customer acknowledges that Safaricom does not operate or exercise control over, and accepts no responsibility for the Content. The Customer accepts that it shall be solely responsible for the accuracy, legality and compliance of the Content with the relevant laws and this Agreement. The Customer further warrants that it has obtained all necessary consents, approvals and licences for the use of any third party Content.

4.3 Use of the Services

- (a) Where the Customer intends to use the Services for the provision of services for which a licence is required, it shall be the responsibility of the Customer to secure such licence from the relevant regulator(s) Safaricom may withhold the provision of the service until the Customer obtains such a licence.
- (b) The Customer shall not utilise and shall ensure that no other person utilising the Customer's access to the Services uses the Services:
 - (i) for storing, reproducing, transmitting, communicating or receiving any Offending Material; or
 - (ii) for fraud or for any criminal purpose or in a manner that is contrary to any regulatory or legal requirement; or
 - (iii) to cause annoyance, inconvenience or needless anxiety to any person; or
 - (iv) contrary to any other instructions and/or acceptable use policy that may be communicated by Safaricom to the Customer from time to time.

4.4 Licence

The Customer grants to Safaricom, for the duration of this Agreement, a non-exclusive, non-transferable licence to host the Content.

4.5 No Warranties, Availability and Supply of the Services

Although Safaricom will take all reasonable steps to ensure that the Services are available to the Customer at all times, it 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 Customers Equipment may interfere adversely with the quality and provision of the Services. Safaricom does not warrant that the Service or any equipment provided by it will meet your needs, perform at a particular speed, bandwidth or data throughput rate, or will be uninterrupted, error-free, or secure, or free of viruses, worms, disabling code or conditions, or the like. It is agreed that the Customer's inability to use the Services or Content by reason of failure of any Customer Equipment shall not relieve it from payment of any of the Charges due under this Agreement.

5 TARIFFS AND TAXES

- 5.1 Charges applicable for the Services are set out in the Tariff Guide.
- 5.2 All Tariffs and charges payable under this Agreement are exclusive of Value Added Tax and all other applicable taxes which shall be calculated at the prevailing rate on the invoice date.
- 5.3 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.

6 PAYMENT TERMS

- 6.1 The Service is offered on a PrePay basis and unless otherwise specified by Safaricom the Charges shall be payable by the Customer annually in advance and once paid will not be refundable to the Customer for any reason including upon a rejection by the Registry of the registration or renewal of a domain name.
- 6.2 Payments will be issued by the Customer within a period of fifteen (15) days from the due date as set out in the E-Bill. If payment has not been received by Safaricom within this period, then Safaricom may at its discretion terminate the Agreement or suspend the Customer's access to the Services until payment is received in full.

“E-Bill” for the purposes of this clause 6.2 means Safaricom's electronic billing facilities providing the Customer with access to billing data current or historical either via email or online through a prescribed Safaricom portal;

7 INDEMNITY

Notwithstanding any other provisions of this Agreement, the Customer agrees to defend, indemnify and hold harmless Safaricom at all times against all actions, proceedings, costs (including reasonable legal fees), claims, expenses, demands, liabilities, losses and damages whatsoever including without limitation for defamation and infringement of intellectual property rights which Safaricom may sustain, incur, suffer or pay arising out of or in connection with the use of the Services or any act or omission thereof.

8 LIMITATION AND EXCLUSION OF LIABILITY

8.1 Safaricom's liability in contract, tort or otherwise (including liability for negligence) under or in connection with this Agreement is limited to Kshs one hundred thousand (Kshs 100,000). This limitation of liability is cumulative and not per incident.

8.2 The Customer agrees that the following exclusions of liability are reasonable.

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

- (a) any direct, indirect, anticipated savings, goodwill, consequential, incidental or special loss, corruption or loss of data, injury, loss of life, destruction of property or damage to Customer Site or adjacent property or other costs arising out of or in connection with this Agreement in contract or tort or otherwise for any loss including as a consequence of a failure or delay in availability of the Network notwithstanding Safaricom's awareness of the possibility of the Customer incurring the same;
- (b) any losses arising in connection with (i) Force Majeure events or other circumstances outside our control or outside our knowledge (ii) any unforeseeable acts or omissions or negligent acts on the part of Safaricom's service providers, suppliers, contractors, agents or employees;
- (c) the loss, late receipt or non-readability of any download, transmission, or other communications or loss of data, data privacy or security transmission;
- (d) for any damage to the Customer Equipment or loss of data following the use of the Services. The Customer shall be required to take reasonable precautions while using the Services and the Customer shall in addition be required to adopt such appropriate security measures against unauthorised access to and interference with the Customer Equipment, associated software or equipment, hardware and data (including back up) as the Customer deem necessary; and
- (e) any charges or losses incurred as a result of or unauthorised use of the Services including following a theft of the same.

8.2 Except as provided in this Agreement, Safaricom provides no warranties, conditions or guarantees as to the description or quality of the Services and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as is permitted by law.

8.3 Safaricom makes no representations or warranties of any kind whatsoever that the registration or use of a domain name under this agreement will immunize the Customer either from challenges to the domain name registration, or from suspension, cancellation or transfer of the domain name registered to the Customer.

9. FAULT REPORTING AND REPAIR

9.1 If the Customer reports a fault in the Services, Safaricom will repair the fault as soon as reasonably possible.

9.2 If work of any kind done by Safaricom in response to a complaint made by the Customer of a fault in the Service reveals no such fault, or the fault is found not to be in the Service, or the fault is as a result of the Customer's Equipment or otherwise caused by the Customer's default or failure to comply with such operational instructions as have been issued by Safaricom, Safaricom shall be entitled to require the Customer to pay a charge for the work done by Safaricom or its authorised contractor and/or refund any money expended by Safaricom in this regard.

10. TERMINATION AND SUSPENSION

10.1 Safaricom may in its sole discretion suspend the Services or terminate this Agreement without liability to compensate 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 licence under which Safaricom provides the Services is terminated or modified preventing Safaricom from providing the Services or for any other reason Safaricom is unable to provide the Service;
- (c) Safaricom reasonably suspects or believes that the Customer is in breach of the terms and conditions of this Agreement or any other terms and conditions referred to herein;
- (d) Safaricom has good reason for believing that any information given by the Customer to Safaricom is false or misleading;
- (e) Such termination is necessary following withdrawal of the domain name by the Registry;

- (f) A suspension is necessary to facilitate modifications to, or allow for planned maintenance of the Network provided that Customer is given reasonable notice of such suspension;
- (g) The Customer has not paid the Charges by the due date as provided in clause 6.2.

10.2 The Customer shall reimburse Safaricom for all reasonable costs and expenses incurred as a result of the suspension, termination or variation of the Services where the suspension, termination or variation is implemented by Safaricom as a result of any act or omission by the Customer.

10.3 The Customer will be liable for all periodic charges during any period of suspension where such suspension is occasioned by an act or omission of the Customer.

11. CONSEQUENCES OF TERMINATION

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 VARIATION OF THE AGREEMENT

12.1 Safaricom may change this Agreement at any time in order to:

- (a) Comply with any legal or statutory obligation including, but not limited to, any requirements from time to time under the Kenya Information and Communication Act 2008 as amended from time to time and any additional, successor or replacement legislation relating to the telecommunications industry in Kenya; or
- (b) Comply with the conditions of the Licence issued to Safaricom by the Communications Commission of Kenya; or
- (c) Comply with any final order, provisional order, direction, notice, specification, designation or consent made by the Communications Commission of Kenya relating to the Service; or
- (d) Change the Charges payable under this Agreement;
- (e) Introduce new Service features;
- (f) Withdraw Service features; or
- (g) Maintain the integrity or security of the Service or the Network; or
- (i) Introduce process changes, provided they are not to the Customer's material detriment; or improve clarity, or make corrections to typographical errors; or

- 12.2 In addition to Safaricom's right to change this Agreement under clause 11.1 above, Safaricom may also change this Agreement at any time with the agreement of the Customer. Safaricom will give the Customer written notice of the changes and publish details of any change on the Safaricom Website at least 28 days before the change is to take effect. The Customer shall, within 28 days of the service of Safaricom's notice (or such other period as may be set out in Safaricom's notice) of the changes, communicate its acceptance or rejection of the proposed changes.

13. USE OF PERSONAL DATA

Safaricom may retain the data submitted by the Customer on the Application Form or which might otherwise be derived during the term of the Agreement from the Customer's use of the Services and the Customer accepts that Safaricom may use the same for the following reasons:

- (a) Fraud prevention and law enforcement;
- (b) For reasonable commercial purposes connected to your use of the Service, such as marketing and research related activities;
- (c) To comply with any legal, governmental or regulatory requirement;
- (d) For use by our lawyers in connection with any legal proceedings;
- (e) In business practices including but not limited to quality control, training and ensuring effective systems operation.

14. NOTICES AND NO WAIVER

- (a) Any notices in regard to any information that we may wish to send to you from time to time including but not limited to variations to these, modifications/variations to the Services or Tariffs, any promotions and other information will be through advertisement in a daily newspaper or on the Safaricom website www.safaricom.co.ke. The Customer will be deemed to have been bound by such variation by continuing to use the Services.
- (b) Any notices for purposes of legal proceedings will be served:
 - (i) **In the case of the Customer:** at the Customer's last known billing address.
 - (ii) **In the case of Safaricom:** by hand delivery to Safaricom House, Waiyaki Way, Nairobi and marked for the attention of the Head of Legal & Regulatory Affairs.

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 13 means Monday to Friday between the hours of 0900 and 1700, excluding public holidays.

- (c) 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.

15. 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 amicably resolved settled between the Parties within a period of thirty (30) days (or such longer period as may be agreed upon between the parties) shall be referred to arbitration.
- (b) 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.
- (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.

16. GOVERNING LAW

The construction, validity and performance of this Agreement shall be governed in all respects by the Laws of Kenya.