

TERMS AND CONDITIONS OF THE SAFARICOM FIXED DATA SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement:

- (a) **"Agreement"** or **"Terms and Conditions"** means these terms and conditions and includes the Application Form, the Service Level Agreement and the Tariff Guide, which may be varied by Safaricom from time to time;
- (b) **"Application Form"** means the Customer's request in writing for the Services as set out in the form overleaf;
- (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) **"Connection"** means the activation of the Services following the successful installation and integration of the Customer Premises Equipment to the Network and the term **"Connected"** shall have a similar meaning;
- (d) **"Content"** means voice, sounds, information, communications, data or any other material transmitted or communicated through the Services;
- (e) **"Customer"** means you as the subscriber 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. The term **"you"** shall have a similar meaning;
- (f) **"Customer Equipment"** means such of the Customer's equipment including but not limited to routers to be connected to the Customer Premises Equipment in order to access the Services;
- (g) **"Customer Premises Equipment"** means the compatible systems and infrastructure (including any software) supplied by Safaricom and that is necessary for the Customer to access the Services through the Network;
- (h) **"Customer Site"** means the place(s), communicated by the Customer to Safaricom in writing, at which the Customer Premises Equipment is to be installed and the Services deployed;
- (i) **"E-Bill"** 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;
- (j) **"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;

- (k) **"Installation Charge"** means a charge for installation of the Customer Premises Equipment (where applicable) and Connection to the Network as published in the Tariff Guide;
- (l) **"Monthly Access Charge"** the charges set out in the Tariff Guide for the maintenance of the connection;
- (m) **"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;
- (n) **"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.
- (o) **"Parties"** means Safaricom and the Customer;
- (p) **"Services"** means the fixed data services to be provided by Safaricom as identified on the Application Form;
- (q) **"Service Level Agreement"** means the document published by Safaricom from time to time and that is deemed to have been incorporated in these Terms and Conditions setting out the uptime, maintenance and incident management services to be provided by Safaricom to the Customer following the Connection of the Services;

- (r) **“Standard Tests”** means the tests carried out by Safaricom or its appointed sub-contractors to determine whether the Services are Connected;
- (s) **“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

2.1 Commencement Date- Clause applies to both PrePay and PostPay Customers

This Agreement shall be deemed to have commenced on the date the Customer is Connected by Safaricom (**“Commencement Date”**).

2.2 Duration

(a) PrePay Customers

The Agreement shall continue from the Commencement Date until terminated by the Customer or Safaricom pursuant to the Agreement.

(b) PostPay Customers

The Agreement shall continue from the Commencement Date and, subject to the rights of earlier termination, shall continue for the initial period of twelve (12) months (**“Initial Term”**). Thereafter, unless the Customer notifies Safaricom of its intention not to renew the Agreement at least sixty (60) days prior to the expiry of the Initial Term and each subsequent anniversary, the Agreement shall automatically be renewed for subsequent periods of twelve (12) months.

3. APPLICATION OF TERMS AND ORDER FOR NEW SERVICES

3.1 Application of Terms

- (a) By submitting a completed Application Form to Safaricom 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 or other Customer 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.

3.2 Orders for New Services

The initial Services to be provided by Safaricom to the Customer are as set out in the Application Form, in the event that Safaricom offers new services that come within the definition of "fixed data services" and the Customer requires to utilise such new Services then:

- (a) The Customer may place orders with Safaricom for such new Services as and when required by submitting a written request to Safaricom or complete such order form as may be made available by Safaricom at that time.
- (b) Safaricom may elect to accept the order but shall be under no obligation to do so. If Safaricom elects to accept such an order it shall do so by notice in writing.
- (d) All orders for the new Services placed by the Customer and accepted by Safaricom shall be governed by the terms of this Agreement and any additional terms and conditions for that service which shall be set out in a new Schedule to this Agreement and accepted by the Customer on submission of a purchase order for the deployment and delivery of that new Service by the Customer.

4. SUPPLY OF THE SERVICES

4.1 Installation of Customer Premises Equipment

- (a) The Customer shall, at its own expense and in order to facilitate the installation and use of the Customer Premises Equipment:
 - (i) obtain all necessary consents, way leaves, rights of way, including consents for any necessary alterations to buildings where the Customer Sites are located;
 - (ii) provide a suitable environment, accommodation, and foundations, including all necessary trunking, conduits and cable trays in accordance with the relevant installation standards;
 - (iii) take up or remove, any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers, as Safaricom advises are necessary, and carry out afterwards any making good or decorator's work required;
 - (iv) provide any electricity and connection points required by Safaricom; and
 - (v) carry out all other preliminary works including having in place such Equipment, of such specifications as are communicated to the Customer by Safaricom in writing and that is required to be in place prior to any installation of the Customer Premises Equipment and Connection to the Network.
- (b) Safaricom shall make reasonable endeavours to meet the installation date as set out in the Service Level Agreement. Safaricom will however not be liable to the Customer for any consequences of delay or be liable for any damages, costs or expenses whatsoever, which the Customer may incur or suffer as a result of a delay in the completion of the installation.
- (c) To enable Safaricom to carry out its obligations under this Agreement or to recover any Customer Premises Equipment from the Sites, the Customer shall provide Safaricom employees and anyone acting on Safaricom's behalf, who produces a valid identity card, with access to any Customer Site. Safaricom will normally only require access during the Customer's normal working hours but may, on reasonable notice, require the Customer to provide access at other times.
- (d) Safaricom employees and anyone acting on Safaricom's behalf will observe the Customer's reasonable site access regulations as previously advised in writing to Safaricom.

- (e) Safaricom shall use reasonable endeavours to meet any agreed delivery dates for the supply of the Customer Premises Equipment and related accessories to the Customer, time will however not be of the essence with regard to such supply and Safaricom will not be liable for any costs and expenses incurred by the Customer as a consequence of such delay.
- (f) Safaricom may without the consent of the Customer employ the services of a sub-contractor to install the Customer Premises Equipment and undertake any works thereto.
- (g) Following installation of the Customer Premises Equipment, Standard Tests shall be carried out by Safaricom or its authorised sub-contractor to ensure that the Services are ready for use. If the Services are not ready for use, Safaricom shall investigate the cause of the failure and shall either repair or replace at its option, the Customer Premises Equipment or any part thereof and repeat the Standard Tests. Once the Standard Tests have been successfully completed then the Customer will be Connected.

4.2 Care of Equipment

- (a) The Customer is responsible for the care and safety of the Customer Premises Equipment and must not add to, modify, reverse engineer, decompile or in any way interfere with the Customer Premises Equipment or any embedded software supplied as part of the Customer Premises Equipment nor allow anyone (other than an authorised Safaricom representative) to do so.
- (b) Any Customer Equipment connected to the Customer Premises Equipment or otherwise used to access the Services must be technically compatible with the Customer Premises Equipment and the Services and shall be connected and used in accordance with such reasonable instructions, safety and security procedures as may be advised by Safaricom in writing or any third party equipment provider from time to time.
- (c) Save where title to the Customer Premises Equipment has passed to the Customer following the payment to Safaricom by the Customer of any monies payable for the purchase of the Customer Premises Equipment, the Customer shall be liable to Safaricom for any loss of or damage to the Customer Premises Equipment, except where such loss or damage is due to fair wear and tear or is caused by Safaricom, or anyone acting on Safaricom's instructions.
- (d) The Customer recognises that no right, title or interest in the software contained in the Customer Premises Equipment vests in the Customer.
- (e) Safaricom accepts no liability for any loss suffered by the Customer or any third party as a result of the Customer's misuse of the Customer Premises

Equipment or for any accidental damage. For the avoidance of doubt the provisions of clause 7 will apply to the sale and supply of Customer Premises Equipment by Safaricom other than the fact that Safaricom's total liability in respect of any Customer Premises Equipment shall be limited to the value of the Customer Premises Equipment.

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 that may be communicated by Safaricom to the Customer from time to time.

4.4 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 Customer Premises Equipment or any other 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.

4.5 Suspension or Variation of the Services

- 4.5.1 Safaricom may in its sole discretion suspend or vary the Services without liability to compensate the Customer (save as may be provided in the Service Level Agreement) 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) 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;
 - (c) Such a suspension or variation is necessary to facilitate modifications to, or allow for planned maintenance of the Network provided that Customer is given reasonable notice of such suspension, termination or variation; and
 - (d) The Customer has not paid the Charges by the due date as provided in clause 6.2.
- 4.5.2 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.
- 4.5.3 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.

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 The Charges are subject to a survey of the Customer Site by Safaricom prior to Connection of the Services. Where following such survey and in order to meet the Customer's requirements Safaricom reasonably considers it necessary in the circumstances to provide the Services, wholly or in part, utilising non-standard Customer Premises Equipment or the utilisation of more expensive installation methods or employment of additional labour or expense than it normally incurs then Safaricom may in addition to the Charges determine a supplementary charge to be payable in relation to the relevant Service.

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 Unless otherwise specified by Safaricom:

- (a) Any applicable Installation Charges shall be payable upon acceptance of the Customer's application and subsequent connection to the Network.
- (b) Other Charges applicable to the Services set out or referred to in our Tariff Guide (other than monthly access charges (if any)) shall be invoiced monthly in arrears.

6.2 Safaricom will issue monthly invoices to the Customer:

- (a) At the billing address specified in the Application Form, or at such other address as may be notified to Safaricom from time to time; or
- (b) by via E-Bill- this option will automatically apply to PrePay subscribers.

6.3 Save for the Charges payable in advance prior to Connection all payments will be made by the Customer within a period of fifteen (15) days from receipt of Safaricom's invoice. If payment has not been received by Safaricom within this period, then Safaricom may:

- (a) Suspend the Customer's access to the Services until receipt of payment in full; and/or;
- (b) in the case of PostPay Customers:
 - (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 (or, if lower, such other rate as may be required by law), accruing on a daily basis and being compounded quarterly until payment is actually received in full; and/or
 - (ii) refer the debt to a collection agent and/or institute debt recovery proceedings for the recovery of the debt.
 - (iii) The Customer will be liable for all pre and post judgment collection costs reasonably incurred in pursuing any debt collection claim against the Customer until payment is received in full.

6.3 The Customer authorises Safaricom at any time, without notice to the Customer to obtain from and/or submit to credit referencing agencies information about the Customer's credit profile.

- 6.4 Save in the case of a demonstratable error all Charges shall be calculated in accordance with Safaricom records.
- 6.5 Without prejudice to any other right or remedy, Safaricom reserves the right to set off any amount owing at any time from the Customer to Safaricom against any amount payable by Safaricom to the Customer under this Agreement.

7. LIMITATION AND EXCLUSION OF LIABILITY

- 7.1 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.
- 7.2 The Customer agrees that the following exclusions of liability are reasonable.
- 7.1 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 or that of any nominated sub-contractors (ii) subject to clause 4.1(f) above, 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 acknowledges and accepts that Safaricom does not guarantee the security of the Services against unlawful access or use, the Customer shall therefore 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.

- 7.2 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.
- 7.3 Notwithstanding any other provisions of this Agreement, the Customer confirms and undertakes to indemnify and keep indemnified Safaricom on demand for and against all proceedings, costs (including reasonable legal fees), claims, damages, expenses and liabilities of whatsoever nature howsoever suffered or incurred by Safaricom arising out of or by reason of any act or omission on the part of the Customer, the Customer's employees, representatives or agents in the performance of the Customer's obligations under this Agreement including but not limited to any breach or non-compliance with any terms of this Agreement or negligence.

8. FAULT REPORTING AND REPAIR

- 8.1 If the Customer reports a fault in the Services, Safaricom will repair the fault within the timelines provided in the Service Level Agreement.
- 8.2 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 reasonable charge for the work done by Safaricom or its authorised contractor and/or refund any money expended by Safaricom in this regard.
- 8.3 Safaricom reserves the right to vary the fault and repair procedure set out in the Service Level Agreement by giving written notice to the Customer as provided in clause 11 (*Variation*) of these terms and conditions.

9. TERMINATION

9.1 PrePay Customers

Safaricom may terminate this Agreement and disconnect the Services by notice in writing to the Customer:

- (a) Where the Customer fails to pay any applicable Charges due to Safaricom;
- (b) Where the Customer fails to comply with its obligations under this Agreement;
- (c) For any reason Safaricom is unable to provide the Services.

Following such a termination the Customer will be liable to pay Safaricom the costs set out in clause 9.2.1.1(b) below where applicable.

9.2 PostPay Customers

9.2.1 Termination by the Customer

9.2.1.1 Termination for Convenience

The Customer may terminate this Agreement at any time upon giving sixty days notice in writing to Safaricom, such notice not to expire before the end of the Initial Period. If the Customer wishes to terminate the Agreement prior to the expiry of the Initial Period then:

- (a) Safaricom shall be entitled to invoice the Customer in relation to the Charges which would have been payable by the Customer for the balance of the Initial Period; and
- (b) the Customer shall be liable to pay Safaricom:
 - (i) All Charges and other monies outstanding at the time of termination;
 - (ii) The prorated value of the Customer Premises Equipment (where such equipment was supplied by Safaricom to the Customer at the commencement of this Agreement and where no initial payment was required from the Customer for the same) calculated as follows:

***Number of months remaining on the Agreement
divided by the Initial Period multiplied by the
value of the Customer Premises Equipment as
published in the Tariff Guide at the
commencement date of the Agreement.***
- (c) Safaricom shall be entitled to claim the above amounts from the Customer as a debt and Safaricom's records will be conclusive proof of the amount due from the Customer.

9.2.2 Termination for Cause

The Customer may terminate this Agreement at any time by giving written notice immediately effective upon issue to Safaricom if:

- (a) Safaricom commits a breach of any of its obligations under this Agreement and such breach is not rectified within thirty (30) days from receipt of a written notice giving particulars of the breach;

- (b) Safaricom becomes bankrupt, or makes any arrangement with a creditor to go into liquidation or becomes subject to an administration order or a receiver is appointed over its assets.

Following such a termination the Customer will be liable to pay Safaricom the costs set out in clause 9.2.1.1(b) above where applicable.

9.2 Termination by Safaricom

9.2.1 Termination for Convenience

Safaricom may terminate the Agreement at its convenience by giving the Customer thirty (30) month's notice in writing.

9.2.2 Termination for Cause

Safaricom may terminate this Agreement at any time by giving written notice immediately effective upon issue to the Customer if:

- (a) Safaricom has reason to believe that the Services are being used for the transmission of Offending Material, in a manner prejudicial to Safaricom or for criminal activities or Safaricom has been instructed to cease providing the Service by any licensing or regulatory authority;
- (b) The Customer Equipment is found to emit signals, which may interfere with the quality of the Services or the Network;
- (c) The Customer fails to pay the full amount of charges stated in the billing statement by the due date;
- (d) In Safaricom's opinion the Customer fails at anytime to meet the standard credit requirement that Safaricom may deem necessary from time to time;
- (e) Safaricom has good reason for believing that any information given by the Customer to Safaricom is false or misleading;
- (f) The Customer commits any breach of any of the provisions of this Agreement and such breach is not rectified within fourteen (14) days from receipt of a written notice giving particulars of the breach;
- (g) The Customer 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;
- (h) This Agreement is signed on a PostPay basis before Safaricom has completed its credit check on the Customer or any time thereafter and the Customer is found not to have met Safaricom's credit requirements upon the conclusion of such a check;

- (j) The licence under which Safaricom provides the Services is terminated or modified preventing Safaricom from providing the Services;
- (k) Any wayleave, right of way or consent necessary for the Customer Premises Equipment to be connected to the Customer Site is withdrawn, withheld or terminated provided that the Customer shall be liable to indemnify Safaricom as provided herein if the withdrawal or termination is attributable to the Customer and in addition the provisions of clause 9.1 with regard to payment of monies due on termination shall apply.

10. CONSEQUENCES OF TERMINATION

- 10.1 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.
- 10.2 Safaricom shall use all reasonable endeavours to disconnect the Customer Premises Equipment from the Network immediately upon notice to do so.

11. VARIATION OF THE AGREEMENT

- 11.1 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) Introduce a new or improved Service Level Agreement; or
 - (h) 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

provided that any change introduced for the reasons set out in paragraphs (e) to (j) inclusive, above, shall not materially affect the Service or the performance of the Service except insofar as it is reasonable to do so. Safaricom will give the Customer notice of the changes at least 28 days before the changes are to take effect (save where immediate change is required following direction of the Communications Commission of Kenya or other competent government authority).

- 11.2 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.

12. 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.

13. 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.

14. 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.

15. GOVERNING LAW

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