



**SUPPLY OF BULK SMS, SHORTCODE, TRANSACTION ALERTS AND PREMIUM
RATE SMS**

TERMS AND CONDITIONS AND PRIVACY POLICY

PART I - INTRODUCTION

Welcome and thank you for choosing "NITEXT".

Your use of the Services (hereafter defined) is subject to the terms of a legal agreement between you and Content Aggregation Limited, a company incorporated in the Republic of Kenya with its principal office at Westlands Office Park, Waiyaki Way and of P. O. Box 7468-00300 Nairobi ("CAL") and which owns and operates the Platform. CAL is, inter alia, a licensed premium rate service provider providing premium rate services through the existing mobile telephone networks within the Republic of Kenya or in such other places as the Parties shall agree;

The legal agreement between you and CAL is made up of:

- (1) The CAL Terms and Conditions of Use (the '**Terms and Conditions**') set out under Part II and Part IV hereunder; and
- (2) the CAL Privacy Policy (the '**Privacy Policy**') set out under Part III hereunder. (Both the Terms and Conditions and the Privacy Policy are hereafter collectively referred to as '**Terms**').

The Terms form a legally binding agreement between you and CAL in relation to your use of the Platform and all services provided therein. It is important that you read them carefully, understand and accept them in the manner specified herein. Should you need legal advice before accepting the Terms, please obtain such advice at your own convenience and cost.

PART II: CAL TERMS AND CONDITIONS OF USE

1. DEFINITIONS & INTERPRETATION

1.1 In these Terms, the following words and expressions shall, unless otherwise indicated or the context otherwise provides, have the following meanings:

- 1.1.1. "**Bulk SMS Message**" means an SMS sent by or on behalf of the Client to one or more Customers;
- 1.1.2. "**SMS Service**" or "**Services**" means CAL's (a) SMS sale and purchasing scheme whereby the Client may purchase SMS messages in bulk for use to dispatch Bulk SMS Messages and Transaction Alerts, and as further particularized in clauses 2 and 4, and (b) provision of Premium SMS services, as particularized under clause 5;
- 1.1.3. "**Business Day**" means any day between Monday and Saturday (both inclusive) except gazetted public holidays in Kenya;
- 1.1.4. "**Client**" or "**you**" means the person procuring the Services from CAL, and who for that purpose accesses the Platform;
- 1.1.5. "**Commencement Date**" means the date of your acceptance of these Terms;
- 1.1.6. "**Confidential Information**" means any and all communications between the Parties, and all information and other materials supplied to or received by

either of them from the other Party, in writing, orally, visually or in any other medium, or to which one Party obtains access in connection with or as a result of entering into this Agreement or performing obligations pursuant to this Agreement and that relates to the other Party or its affiliates, (a) prior to or on the date of this Agreement whether or not marked confidential; (b) after the date of this Agreement, whether or not marked confidential with an appropriate legend, marking, stamp or other obvious written identification by the disclosing party, (c) all information concerning the business transactions, operations, processes, plans and intentions, of the Parties, and (d) information regarding sales figures and raw data in respect of the sales or marketing of the Products Party's, product information know-how, designs, inventions, trade secrets, software, market opportunities and customers. For the avoidance of doubt, the confidentiality obligations under any validly existing or co-terminus non-disclosure agreement(s) between the Parties shall remain valid in accordance with the terms therein and shall not be affected by the terms of this Agreement;

- 1.1.7. **"Customer"** means a person who is a customer of the Client;
- 1.1.8. **"Intellectual Property"** means all trademarks, logos, brand names, trade names, patents, emblems, designs, and copyright or other similar industrial or commercial monopoly rights owned by the respective Parties or any of their subsidiary or associated companies;
- 1.1.9. **"Non-Personal Information"** means any information that is not Personal Information including, without limitation, any data or other information collected by CAL about your use of the Platform or the Services, device information, log information, location information, and user trends;
- 1.1.10. **"Party"** means either the Client or CAL and **"Parties"** shall mean both the Client and CAL collectively;
- 1.1.11. **"Personal Information"** means personal details related to the Client and shall include the Client's name, addresses, telephone number or credit or debit card information. For the avoidance of doubt, a post office box number shall not be Personal Information;
- 1.1.12. **"Platform"** means Nitext, an online web-based portal developed and operated by CAL and accessible at <https://nitext.co.ke/> and through which the Services shall be provided by CAL and accessed by the Client;
- 1.1.13. **"Premium Rate SMS"** means an SMS sent to a Customer which charges the Customer a predetermined amount for receiving the SMS;
- 1.1.14. **"Network Facilities Provider (NFP)"** means a person licensed by the Communications Authority of Kenya to build and/or commercially operate telecommunication/electronic communications systems and/or to provide mobile telephony services;

- 1.1.15. **“SMS”** means Short Messaging Services, a communication protocol allowing the interchange of short text messages between mobile phones and other telecommunication devices;
- 1.1.16. **“Transaction Alert”** means an SMS sent by the Client through the API to a Customer in response to a certain event or transaction. **“Transaction Alerts”** shall have the corresponding plural meaning.
- 1.2 Words in the singular include the plural and vice versa.
- 1.3 Words importing any one gender include each of the other two genders.
- 1.4 References to natural persons include legal persons (incorporated or unincorporated) and vice versa.
- 1.5 The headings of clauses are intended for convenience only and shall not affect the interpretation of this Agreement.
- 1.6 If any provision in a definition or recital in this Agreement is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of this Agreement, notwithstanding that it is only contained in the definition.
- 1.7 Where any period is prescribed in this Agreement, that period shall be reckoned inclusively of the first day and exclusively of the last day unless the last day is not a Business Day, in which case the last day shall be the next succeeding Business Day.
- 1.8 References in this Agreement to any statute or statutory provisions shall include any statute or statutory provision, which amends, extends, consolidates, or replaces the same and shall include orders, regulations, instruments, or other subordinate legislation made under the relevant statute or statutory provision.
- 1.9 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 1.10 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.11 All sums herein referred to shall be deemed to be exclusive of any taxes and/or imposts including but not limited to Value Added Tax and Stamp Duty, but inclusive of any income taxes payable by the party receiving the payment and any withholding taxes.
- 1.12 The expiration or termination of this Agreement shall not affect those provisions of this Agreement as expressly provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.13 The rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement shall not apply.

1.14 Where in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by facsimile and electronic mail.

2. PROVISION OF THE SMS SERVICE

- 2.1. Subject to the terms and conditions herein contained, CAL shall provide and the Client shall accept the SMS Service for the Term.
- 2.2. CAL shall connect and/or integrate the SMS Service with the Client's computer and other devices. The Client shall provide all equipment and devices necessary to make such connection and/or integration.
- 2.3. The SMS Service shall be provided in accordance with the parameters and specifications set out under the First Schedule hereto.

3. ACCESS TO THE SERVICES

CAL shall provide, and the Client shall access, the Services in accordance with the Service Parameters and Service Specifications set out under the First Schedule hereto.

4. PARTIES' OBLIGATIONS

4.1. The Client's Obligations

4.1.1. The Client shall be responsible for:

- (a) issuing Bulk SMS purchase requests to CAL through the Platform or using such other method as CAL shall specify;
- (b) formulating and formatting the content to be transmitted to the Customers and other persons;
- (c) unless CAL and the Client otherwise agree, transmitting Transaction Alerts, where applicable, to Customers and other recipients; and
- (d) paying for the Services in accordance with clause 6 below.

4.1.2. The Client shall ensure that all content and/or information, including information contained in any websites and any other external sources accessible through any hyperlinks provided or references made in any SMS message, shall comply with the provisions of this Agreement and all applicable laws and regulations. For the avoidance of doubt, the provisions of this Agreement will not in any way limit or qualify the Client's obligations under any applicable laws or regulations.

4.1.3. The Client shall be responsible for ensuring that data and information sent to Customers by it is accurate and technically compatible in all respects with any technical and/or formatting parameters specified by CAL or by the relevant NFP from time to time.

- 4.1.4. The Client shall also ensure that the phone numbers used shall be from its existing database and the Client shall all times ensure that they include the opt-out shortcode that shall be provided by CAL from time to time.
- 4.1.5. CAL has the right to pass on the penalties billed to call in the event of a breach of clause 4.1.4.
- 4.1.6. The Client shall not use the SMS Service, and shall ensure that its employees, directors, officers, agents and any other person who at any time has access to the Client's computer and other communication systems do not use the SMS Service:
- (a) for the transmission of any message or communication which is illegal, unauthorized, unacceptable or calculated to annoy or injure any person or which is in contravention of any law applicable in Kenya at the relevant time(s);
 - (b) to convey to Customers any content, message or any transmission whatsoever that is, in the sole and reasonable opinion of CAL considered to be morally repugnant and/or pornographic and/or is prejudicial in any manner to CAL's business interests and/or reputation;
 - (c) to broadcast or otherwise publish any message or other transmission which may infringe the Intellectual Property rights of any person, whether by virtue of the content of such message or transmission or of the manner in which, or of the person(s) to which, such message or transmission is transmitted;
 - (d) to interfere with, damage, disrupt or unlawfully gain access to any service, equipment or computer network belonging to CAL or any other person;
 - (e) to induce an unacceptable sense of fear or anxiety to any person;
 - (f) for the promotion of tribal, religious, racial, gender-based or other disharmony, discrimination and/or hate;
 - (g) to encourage or incite Customers to engage in dangerous practices or to use any harmful substances; or
 - (h) to mislead the Customers or any other recipient of Bulk SMS Messages, Transaction Alerts or Premium Rate SMS through inaccuracy, ambiguity, exaggeration, omission or otherwise.
- 4.1.7. Without prejudice and in addition to the obligations of the Client under clause 4.1.6 above, the Client shall, whenever it sends any SMS to any person using the network operated by Safaricom PLC, one of the NFPs, comply with the Enhanced Governance on CSP Promotional/Marketing Messaging Regulations issued by Safaricom PLC from time to time. As at the date hereof, the applicable regulations are annexed as the Third Schedule hereto.
- 4.1.8. Without prejudice to any other rights that CAL may have under this Agreement or any applicable law, the Client shall indemnify and hold harmless CAL and its officers, directors, shareholders, affiliates, employees, officers and agents against any criminal

and/or civil actions and/or any costs, damages, losses or claims resulting directly or indirectly from breach of the provisions of this clause 4.

4.2. CAL's Obligations

4.2.1. CAL shall be responsible for:

- (a) procuring and supplying to the Client the Short Codes and Alphanumeric Codes necessary to enable the Client to dispatch Bulk SMS Messages, Premium Rate SMS and Transaction Alerts and to otherwise enable correspondence between the Client and Customers or other recipients of SMS;
- (b) providing all equipment and other devices necessary to enable the Client to access the SMS Service, to formulate and dispatch Bulk SMS Messages and to receive correspondence, if applicable, from Customers. Provided that, if CAL provides a portal for the Client to dispatch Bulk SMS Messages and Transaction Alerts for themselves, the Client shall then be responsible for procuring all the hardware, software and internet connectivity required to facilitate such dispatch;
- (c) unless otherwise agreed, dispatching Bulk SMS and Premium Rate SMS to Customers;
- (d) procuring from NFPs and other suppliers and availing to the Client Bulk SMS for purposes of transmission of Bulk SMS Messages to Customers; and
- (e) without prejudice to the Client's obligations hereunder, employing appropriate technology, security and safety methods to procure that the Bulk SMS supplied to the Client is accessible by the Client.

4.2.2. CAL shall obtain and renew, in accordance with any law or regulations from the time being in force, all permits, licences and authorisations required for:

- (a) the performance of its obligations under these Terms; and
- (b) transmission of Bulk SMS Messages and Premium Rate SMS to Customers.

Provided that nothing in this clause 4.2.2 shall be read or interpreted to in any way excuse the Client from performing any obligation or being subject to any liability placed on it under this Agreement or the applicable law, or to transfer such obligation or liability to CAL.

4.2.3. CAL shall produce to the Client on request certified copies of such permits, licences, registrations and/or authorisations.

4.2.4. CAL shall perform its obligations under this Agreement in good faith and with all due diligence, efficiency, and in accordance with generally accepted professional standards and practices in the Bulk SMS supply business.

5. PREMIUM RATE SMS

- 5.1. The Parties agree that, in addition to the Bulk SMS and Transaction Alert services stipulated above, CAL may, if the Client so requests, also provide the following Premium Rate SMS services, namely:
 - 5.1.1. dispatching Premium Rate SMS to Customers on behalf of the Client; and
 - 5.1.2. collecting all revenue payable by Customers by way of reverse billing for Premium Rate SMS dispatched to them.
- 5.2. The Client shall be responsible for the following with respect to the Premium Rate SMS service:
 - 5.2.1. formulating and formatting the content to be transmitted to the Customers and other persons; and
 - 5.2.2. ensuring that the content of each Premium Rate SMS:
 - a) clearly state who they are from, how the sender can be contacted and how the recipient can opt-out of receiving such messages;
 - b) without prejudice to all other restrictions contained hereunder, ensuring that no Premium Rate SMS contains any unlawful, harassing, libelous, defamatory, abusive, threatening, harmful, vulgar, obscene, or otherwise objectionable material of any kind.
- 5.3. Every Premium Rate SMS shall contain details of the charges payable by the Customer by way of reverse billing, which charges shall be agreed upon between the Parties from time to time.
- 5.4. The Parties agree that all revenue collected from Customers in accordance with clause 5.3, net of all applicable taxes, shall be shared in the proportions set out under the Fourth Schedule.
- 5.5. CAL shall remit the portion of the revenue due to the Client pursuant to clause 5.4 as read with the Fourth Schedule. within seven (7) Business Days from the last day of each calendar month with regard to revenue collected during the immediately preceding calendar month, if any. If no revenue shall have been collected during any calendar month, CAL shall, within seven (7) Business Days from the last day of that month, inform the Client of that fact in writing.

6. REMUNERATION OF CAL

- 6.1. In consideration for provision of the Bulk SMS Service and the Transaction Alert service to the Client, the Client shall remunerate CAL in accordance with the Second Schedule hereto.
- 6.2. The Client shall meet all the set-up fees and other costs associated with the integration of the Bulk SMS Service and the Transaction Alert service into the Client's computer

and/or other communication systems.

- 6.3. The Client shall be responsible for all charges and other costs payable to NFPs from time to time. Provided that:
 - 6.3.1. CAL shall take reasonable measures to obtain the most favourable pricing and payment terms from NFPs for the Client; and
 - 6.3.2. Where any adjustment of an NFP's charges is made by an NFP, CAL shall take steps to procure that the Client shall be provided with commercially reasonable notice before the taking effect of such adjustments.
- 6.4. All payments will be made in Kenya Shillings (Kshs.) and the Client shall have the right, upon issuance of a fiscalised invoice by CAL, to deduct all statutory taxes required to be deducted at source and provide to CAL the requisite certificates in respect of all such deductions.
- 6.5. In the event that there are any due amounts payable by the Client to CAL pursuant to this Agreement which amounts shall have remained due for more than thirty (30) days, (hereinafter referred to as "Outstanding Amounts"), CAL shall be entitled to suspend provision of the Services to the Client until full payment of the Outstanding Amounts.

7. INDEMNITY

- 7.1. Without prejudice to any other provision of this Agreement granting indemnity in favour of any particular Party, each Party ("**the Indemnifying Party**") shall indemnify and keep the other Party ("**the Indemnified Party**") indemnified against any action, liability, cost, claim, loss, damage, proceedings, expense (including legal costs on attorneys) suffered or incurred by Indemnified Party or in any way arising from:
 - 7.1.1. any breach by the Indemnifying Party of any of its obligations, representations or warranties under this Agreement;
 - 7.1.2. any matter relating to the Services hereunder or the performance of the Indemnifying Party's obligations hereunder, or in any way arising out of any third-party claims, any claims arising from any act alleged to be illegal, claims for defamation, infringement of intellectual property rights, damage to computer database, loss of data or distribution of illegal or obscene or offensive material;
 - 7.1.3. violation of any laws or regulation of any governmental, regulatory or judicial authority by the Indemnifying Party;
 - 7.1.4. the gross negligence or willful misconduct of the Indemnifying Party or its employees or agents in connection with this Agreement.

PROVIDED THAT either Party's maximum cumulative liability under this Agreement shall not exceed the revenue received by CAL from the Client under this Agreement in the six (6) months immediately preceding the occurrence of the claim from which the costs or expense arise and shall be subject to the following conditions having been met:

- (a) The Indemnified Party must have expended its best efforts towards recovery of any amounts lost including, without limitation, in the case of the Client, recovery from Customers;
 - (b) The Indemnifying Party shall not indemnify the Indemnified Party against any losses arising fully or in part from actions, inactions, faults or negligence of the Indemnified Party or any third party;
 - (c) Without prejudice to the limitation of liability set out in this clause 7.1, the Indemnified Party must have notified the Indemnifying Party of any direct loss in respect of which a claim of indemnity arises within thirty (30) days of the loss occurring. The Indemnifying Party shall not be under obligation to indemnify the Indemnified Party against any direct loss in respect of which notice has not been issued in accordance with the provisions of this clause.
- 7.2. Notwithstanding anything to the contrary contained in this Agreement, a Party, its officers, employees, sub-contractors, agents and partners shall not be liable to the other Party for any indirect, consequential, incidental or special loss including, without limitation, loss of profit, anticipated savings, loss of goodwill, corruption or loss of data howsoever arising.

8. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 8.1. Each of the Parties shall keep confidential this Agreement and shall not disclose to any other person nor use for any purpose other than in implementing this Agreement, any Confidential Information other than information which:
- 8.1.1. is required to be disclosed by operation of law or any requirement of a competent authority;
 - 8.1.2. is reasonably required to be disclosed in confidence to the Party's professional advisors for use in connection with this Agreement; or
 - 8.1.3. is or becomes within the public domain (otherwise than through the default of the recipient Party); or
 - 8.1.4. is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party; or
 - 8.1.5. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 8.1.6. is independently developed without access to any Confidential Information belonging to the other Party.
- 8.2. All public announcements and/or press releases in connection with the subject matter of this Agreement or its implementation shall only be made after mutual consultation and agreement on the broad parameters thereof. Provided that this clause shall not be read or interpreted to prohibit CAL from advertising or otherwise communicating provision of the SMS Service to its other clients or potential clients.

- 8.3. For the avoidance of doubt, all Intellectual Property inherent in the software and other solutions required to provide and/or access the SMS Service provided by CAL under this Agreement (including improvements and upgrades thereto) shall remain the sole and exclusive property of CAL.
- 8.4. Unless otherwise agreed in writing, neither Party shall be entitled to use the Intellectual Property of the other Party save for the strict purposes of this Agreement. Notwithstanding the foregoing, CAL hereby grants a licence for the personal and non-exclusive use, for purposes of this Agreement but no more, of any software and other solutions, including any operating applications, provided by CAL to facilitate use of the SMS Service under this Agreement for the Term, including any extension thereto agreed upon by the Parties. Except as otherwise provided herein, the Client shall not grant any sub-licence or other right to CAL's Intellectual Property to Customers or any other third parties without the prior written consent of CAL.
- 8.5. Any breach of this clause 8 shall be deemed to be a "material breach" for purposes of clause 9.2.2.

9. TERM

- 9.1. The agreement created by these Terms shall come into force on the Commencement Date and shall continue in force indefinitely unless terminated in accordance with the provisions of clause 9.2 below.
- 9.2. The agreement may be terminated:
 - 9.2.1. By either Party without cause at any time upon issuing a three (3) months' written notice of intention to terminate to the other Party;
 - 9.2.2. By either Party ("**the Innocent Party**") forthwith by written notice to that effect if the other Party ("**the Party in Breach**") shall have committed any material breach of its obligations hereunder which is not capable of remedy or which shall not have been remedied within seven (7) Business Days of the Party in Breach receiving a written complaint specifying the nature of such breach and requiring its remedy; or
 - 9.2.3. By either Party if the other Party shall go into liquidation other than for the purposes of reconstruction or amalgamation or shall be placed under administration or suffer the appointment of a receiver of any of its property or income or make any deed or arrangements with or composition for the benefit of any of its creditors.
- 9.3. Termination of this Agreement, howsoever occurring, shall not prejudice any accrued rights of either Party.

10. PROCEDURE UPON TERMINATION

- 10.1. Upon termination of this Agreement for whatever reason including, for the avoidance of doubt, termination under clause 11.3:

- 10.1.1. The Client shall pay to CAL all sums then due under the terms of these Terms within thirty (30) days of the termination date;
 - 10.1.2. CAL shall hand the Short Codes and Alphanumeric Codes used to provide the Services over to the Client; and
 - 10.1.3. Each Party shall return to the other Party, or, with the other Party's consent, destroy, any Confidential Information in its possession and belonging to the other Party.
- 10.2. Subject to the provisions of this Agreement, the Parties shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this Agreement and the termination of this Agreement shall not affect or prejudice such rights and remedies and each Party shall be and remain liable to perform all outstanding liabilities under this Agreement notwithstanding that the other Party may have exercised one or more of the rights and remedies against it.

11. FORCE MAJEURE

- 11.1. Neither of the Parties shall be held liable for any breach of any of its obligations under this Agreement if such a breach results from an event of Force Majeure.
- 11.2. For the purposes of this Agreement, "**Force Majeure**" shall mean any event or circumstance which materially affects a Party in a manner which prevents that Party from performing or fulfilling all of its obligations under this Agreement in accordance with the terms hereof or at all and where such event or circumstance or its effects cannot be prevented, avoided or removed by such Party acting in accordance with prudent practice and has not been precipitated or caused by material breach or gross negligence on the part of the affected Party. Without prejudice to the generality of the foregoing, Force Majeure event shall include, but shall not be limited to:
 - 11.2.1. floods, earthquakes, natural phenomena, and war;
 - 11.2.2. decisions of any relevant governmental authority;
 - 11.2.3. liquidation of a relevant NFP or any event affecting the ability of such NFP to supply Bulk SMS to CAL;
 - 11.2.4. failure of telecommunication equipment and/or infrastructure; and
 - 11.2.5. termination of the Bulk SMS supply agreement between CAL and the relevant NFP.
- 11.3. Where an event of Force Majeure event shall continue to subsist for a period of fourteen (14) Business Days, the other Party may at any time thereafter terminate this Agreement upon issuing a seven (7)-day notice in writing to the effected Party, but without prejudice to any antecedent rights or liabilities of either Party.

PART III: PRIVACY POLICY

CAL is committed to maintaining robust protection of private information for information

obtained from users of the Platform and the Services. This Privacy Policy sets out CAL's information use and privacy to help you make informed decisions when using the Services.

11.4. Information Collection

- 11.1. In addition to any information that may be provided automatically by your browser or mobile device when you visit the Platform, CAL receives and maintains certain information that you used to access the Platform or which you may otherwise provide to CAL. Some of this information is Personal Information.
- 11.2. Further, for purposes of providing the Services, CAL shall be entitled to gather such data regarding you as it may reasonably require, through the Platform by utilising such methods as it may deem appropriate, efficient and secure.
- 11.3. CAL shall take all measures and, in any event, no less measures than it takes in relation to its own data, to prevent any unauthorized access and/or use of any data collected hereunder. Without prejudice to the generality of the foregoing, CAL shall secure all such data using such access control technologies as shall be, for the time being, be the most modern, efficient and effective.
- 11.4. By using the Services, you are authorizing CAL to store and use this information, including, without limitation, your email address and phone number, as specified in these Terms. CAL will store your Personal Information for as long as you have an account on the Platform and, thereafter, for as long as it is required to fulfil contractual or legal requirements, or to provide statistics to CAL or any of its affiliates.

12. Use of Information

- 12.1. Without prejudice to any other responsibilities or liability that CAL may have under the applicable law in relation to collection and use of data, CAL shall not, and shall procure that none of its employees, directors, shareholders or agents, use the information collected for any purpose other than for the purpose of providing the Services. Except as otherwise stated in these Terms, CAL shall not sell, trade, rent or otherwise share for marketing purposes your Personal Information with third parties without your consent.
- 12.2. CAL may share your Personal Information with persons who are performing any services for CAL including, without limitation, employees, contractors, service providers, and agents who need to know that information in order to perform such services. CAL shall ensure that these persons are subject to strict contractual confidentiality obligations with regard to your Personal Information.
- 12.3. CAL may use your Personal Information to communicate with you including, without limitation, contacting you (including, without limitation, by calling you, sending SMS to you, or displaying notifications on your device) in response to questions, to solicit feedback from you, to provide technical support, and, subject to these terms, to send marketing and promotion messages, and to inform you about promotional offers, new products and incidental matters.

- 12.4. Whenever you contact CAL, CAL may keep a record of your communication to help solve any issues you might be facing and for any other lawful purpose.
- 12.5. CAL may use your physical address, postal address, email address, telephone number and other contact information to inform you about CAL's services, such as letting you know about upcoming changes or improvements.
- 12.6. If any Personal Information provided is wrong, CAL shall give you ways to update it quickly or to delete it unless CAL decides to keep that information for legitimate business or legal purposes. In addition, you may at any time make a request to CAL for rectification of any inaccurate Personal Information or for completion of any incomplete Personal Information. When updating, rectifying or completing your Personal Information, CAL may ask you to verify your identity before acting on your update, rectification or completion request. CAL may at its discretion reject your update, rectification or completion request.
- 12.7. CAL may track certain information about your visits to the Platform and use of the Services and may use various technologies to collect and store information when you use the Platform, including using cookies or similar tracking technologies to identify your browser or device. This information may be used by CAL internally to improve the Services and for service delivery development and marketing purposes generally.
- 12.8. CAL may, at its discretion, provide Non-Personal Information to advertisers and other third parties. No part of this Privacy Policy shall be read or interpreted to limit in any way CAL's use or disclosure of Non-Personal Information.
- 12.9. In the event that CAL exercises its right to transfer its rights and obligations under these Terms for any reason, your Personal Information and Non-Personal Information may be among the assets transferred. You acknowledge and consent that such transfers may occur and are permitted by this Privacy Policy, and that any acquirer of our assets may continue to possess and use your Personal Information and Non-Personal Information as set forth in this Privacy Policy.
- 12.10. Notwithstanding any other provision hereunder, you agree that all databases created by CAL from information collected and all Intellectual Property Rights relating to the compilation, organisation or aggregation thereof shall be the property of CAL. Consequently, the restrictions relating to use of your information shall not apply to such databases, compilations, organizations and/or aggregations.

13. Rights Regarding the Use of Your Personal Information

- 13.1. You have the right at any time to prevent CAL from contacting you for marketing purposes.
- 13.2. You agree that notwithstanding the promotional preferences you indicate, CAL may continue to send you administrative emails, text messages or push notifications including, without limitation, changes to the Terms.
- 13.3. You have the right to request from CAL access to your Personal Information. Such a request must be in writing.

- 13.4. You also have the right to lodge a complaint with CAL regarding the use of your Personal Information. Complaints must be in writing.

14. Information Protection

- 14.1. You acknowledge and agree that all information provided to CAL is at your sole risk and that while CAL will take all reasonable measures to protect your information, CAL does not guarantee that your information will not be accessed, disclosed, altered or destroyed by breach of such measures or otherwise.
- 14.2. CAL may further protect your information from potential security breaches by implementing certain technological security measures.

15. Third-Party Websites

- 15.1. As part of the Services or for any other reason, CAL may provide links to third-party websites or applications on the Platform. However, CAL shall not be responsible for the privacy practices employed by those websites and applications or the information or content they contain.
- 15.2. This Privacy Policy applies solely to information collected by us through the Platform or otherwise from you. It does not apply to your use of a third-party website accessed by selecting a link on the Platform.
- 15.3. If you access or use the Services through or on a third-party website or application, then the privacy policy of that third-party website or application will apply to your access or use of that site or application.

PART IV - GENERAL PROVISIONS

16. Governing Law

The construction, validity and performance of this Agreement shall in all respects be governed and construed in accordance with the laws of the Republic of Kenya.

17. Dispute Resolution

- 17.1. In the event of a dispute arising between the Parties in connection with this Agreement or its interpretation, the Party claiming the existence of such a dispute shall give the other Party a written notice ("**Dispute Notice**") setting out the nature of the dispute.
- 17.2. The Parties shall, upon receipt issuance and receipt of the Dispute Notice, use their best efforts to amicably settle the dispute.
- 17.3. Where any dispute cannot be settled amicably between the Parties within fourteen (14) days of the date of receipt of a Dispute Notice, the dispute shall be referred for arbitration by a single arbitrator to be appointed by agreement between the Parties or failing such agreement, upon the application of either Party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators. The provisions of the Arbitration Act, 1995 as amended from time to time shall apply to all such arbitration

proceedings. Such arbitration proceedings shall, so far as permitted by law, be binding on the Parties.

- 17.4. The decision by the Arbitrator shall be final and binding in accordance with the provisions of the Arbitration Act.
- 17.5. The Arbitration shall be held in Nairobi. The language of the arbitration shall be English.
- 17.6. Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.
- 17.7. Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief or conservatory measures from any court of competent jurisdiction pending the final decisions or award of the arbitrator.

18. Miscellaneous

- 18.1. Except as is necessary for delivery of the SMS Service to the Client or as Parties may otherwise agree, nothing contained herein shall constitute a partnership or an agency relationship between the Parties and neither of the Parties shall have any authority to bind or commit the other in any way in this regard.
- 18.2. This Agreement constitutes the whole agreement between the Parties relating to the subject matter of this Agreement and supersedes any previous written or oral Agreement between them in relation to the matters dealt with in this Agreement.
- 18.3. If any provision of these Terms 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 and the remaining provisions of this Agreement shall remain in full force and effect.
- 18.4. Except where these Terms provides otherwise, the rights and remedies contained in it are cumulative and not exclusive to rights or remedies provided by the applicable law. The failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 18.5. These Terms contain the whole agreement between the Parties and shall supersede all prior agreements and other arrangements, whether written or otherwise, relating to the subject matter of hereof.
- 18.6. CAL may at any time change any provision of, or replace, these Terms. Provided that such changes or replacement will take effect once posted on the Platform. If you do not agree to the changes, you may stop using the Services. Your continued use of the Services after the date the change or replacement is posted on the Platform will constitute your acceptance of the changes.

- 18.7. CAL may assign or transfer any of its rights or obligations under the Terms to any other person. Provided that CAL shall notify you of such transfer but failure by CAL to notify you shall not invalidate the transfer.
- 18.8. Communication from CAL to you regarding your use of the Platform or the Services will be by way of text messages, telephone calls, electronic mail, and displays within the. You authorise CAL to use the email address and telephone number provided on your account for purposes of such communication. Provided that communication done and notices issued through any of the methods specified in this clause shall be deemed effective communication or notice for all purposes.
- 18.9. You agree that you are solely responsible for (and that CAL has no responsibility to you or to any third party for) any breach of your obligations under these Terms and for the consequences (including any loss or damage which CAL may suffer) of any such breach.

FIRST SCHEDULE: SERVICE PARAMETERS AND SERVICE SPECIFICATIONS

In addition to the terms and conditions set out in the body of this Agreement, the following detailed service parameters and specifications shall define the provision of the SMS Service by CAL to the Client during the Term.

1. DEFINITIONS

- 1.1. **"Defect/Fault"** means an error resulting in inability or reduction in capacity to access or use the SMS Service;
- 1.2. **"Fix"** means the repair of a Defect/Fault;
- 1.3. **"Measurement Period"** means a calendar month;
- 1.4. **"Emergency Maintenance"** means the conduct of an immediate non-scheduled Fix arising from the existence of a Defect/Fault or a potential Defect/Fault detected by either Party;
- 1.5. **"Preventive Maintenance"** means the conduct of scheduled infrastructure maintenance, application and database updating and upgrading;
- 1.6. **"Service Downtime"** refers to the time during which the SMS Service or any part thereof is not available;
- 1.7. **"Problem acknowledgment time (PAT)"** is the time taken by CAL to acknowledge receipt of a Defect/Fault;
- 1.8. **"this Schedule"** means this First Schedule to the Agreement;
- 1.9. **"Defect Repair Time (DRT)"** is the time taken by CAL to remedy a Defect/Fault;
- 1.10. **"Availability"** refers to uptime of the SMS Service; and
- 1.11. **"Working hours"** means 8:00 am to 5:00 pm on Business Days.

2. SERVICE SUPPORT

- 2.1. CAL will be responsible for the identification, management and resolution of Defects in accordance with this Schedule, which shall include:
 - (a) Proactively identifying Defects in the SMS Service, advising the Client of the same and providing Fixes.
 - (b) Providing assistance to the Client in the analysis and correction of Defects affecting the SMS Service using telephonic communication or such other means of communication as CAL shall avail in accordance with the Agreement;
 - (c) Timely analysis and correction of all Defects (remotely or by attendance on site);
 - (d) Providing the Client progress feedback every 24 hours during investigation of

every Defect/Fault until resolution;

- (e) Developing and providing a Defect/Fault correction plan if required by Client; and
- (f) Provide results and root-cause reports on all Defects/Faults experienced, and that were fixed by CAL.

2.2. CAL will ensure that Defects/Faults are dealt with in accordance with the Response Times and Fix Times set out in paragraph 1.4 of this Schedule and will advise the Client of both progress and the results of any Defect/Fault investigation and resolution. Each Defect will be assigned a Severity Level in accordance with the Severity Levels set out in the table below.

2.3. The Severity Level becomes the priority that the Defect is given and will determine the nature of CAL's response and the Response and Fix Times.

2.4. In the event of a Severity Level 1 or 2 Defect, CAL shall attend a technical bridge/teleconference with Client within 30 minutes of notification of the Defect.

2.5. Severity 1 issue requiring failover to restore services, will take 2hrs from failover trigger time.

2.6. CAL is not obliged to Fix Defects which arise from:

- (a) malfunction or failure of any system which falls under a third party's or the relevant NFP's responsibility;
- (b) failure of telecommunications infrastructure or systems;
- (c) loss or degraded connectivity to NFP network systems;
- (d) incorrect use of the Bulk SMS Service by the Client;
- (e) NFP USSD gateway outage;
- (f) NFP SMS gateway (SMSC) outage;
- (g) NFP Top-Up server outage;
- (h) NFP mobile wallet server outage;
- (i) Faults in Client VPN concentrator & configurations;
- (j) Faults in Client SMPP client;
- (k) Faults in Client USSD Browser; and
- (l) Faults in Applications hosted at the Client's computer and other systems.

2.7. The Client will be responsible for:

- (a) The identification, management and resolution of Defects/Faults that arise from their systems;

- (b) Proactively informing CAL of any maintenance activity within their environment that impacts the Services;
- (c) Providing relevant information required for troubleshooting or, as the case may be, pre-emptying of reported or otherwise identified Defects/Faults or imminent Defects/Faults;
- (d) Providing results and root-cause reports on all Defects/Faults experienced that affect the Services, and that were fixed by the Client.

3. CAL'S PREVENTATIVE MAINTENANCE

- 3.1. Preventative Maintenance periods are imperative in order to reduce the risk of Defects/Faults. Planned outages are necessary to allow maintenance of the infrastructure and associated components. These typically include regular maintenance releases associated with operating systems, middleware, and database software.
- 3.2. CAL shall provide to the Client at least ten (10) Business Days prior notice of planned Preventative Maintenance.
- 3.3. Scheduled Preventive Maintenance shall only be carried as from 2300 hrs to 0400 hrs (EAT) for a maximum duration of 4 hrs. Should CAL require a planned maintenance window longer than 4 hours, CAL shall inform the Client at least ten (10) Business Days in advance.

4. CAL EMERGENCY MAINTENANCE

- 4.1. CAL shall carry out any necessary maintenance where it reasonably suspects that the CAL's systems or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimize) disruption to the Services.
- 4.2. CAL shall give as much notice as is reasonably practical to the Client prior to carrying out any Emergency Maintenance.

5. REPORTING OF SERVICE FAILURES

The Client shall use the contacts specified herein or such other contacts as CAL shall specify from time to time to report all Defects/Faults and any other service disruptions.

6. SERVICE AVAILABILITY MEASUREMENT

- 6.1. CAL shall schedule monthly service review meetings on dates agreed with the Client.
- 6.2. Availability of the Services shall be measured as follows:
 - $$\text{Uptime \%} = \{(\text{Total mins in month} - \text{Total downtime mins in month}) / \text{Total mins in month}\}$$

7. INCIDENT SEVERITY LEVELS AND RESOLUTION TIMES

Severity Level	PAT	DRT
1	15 minutes	2 hours
2	15 minutes	4 hours
3	30 minutes	10 hours
4	30 minutes	24 hours

8. SERVICE LEVELS – SEVERITY

Severity Level	Typical Impact
Severity 1	<p>A Severity 1 incident will result from the identification of a Defect/Fault terms of:</p> <ul style="list-style-type: none"> • Non-availability of the Service to the Client and/or Customers; • Protracted recurrence of a Severity 2 incident; • USSD gateway outage; • Outage of link(s) to NFPs; • Faults in CAL’s VPN device(s) & configurations; and • IT security breach or threat on the part of the CAL.
Severity 2	<p>A Severity 2 incident will result from the identification of a Defect/Fault in terms of:</p> <ul style="list-style-type: none"> • Intermittent availability of the Service; • The full use of one part, material, feature or functionality of the Service being not available to the Client or is subject to restrictions (such as unavailability or degradation of airtime or other payment services); • General Customer complaints on the quality of the Service; • Protracted recurrence of a Severity 3 incident.
Severity 3	<p>A Severity 3 incident will result from the identification of a Defect/Fault in terms of:</p> <ul style="list-style-type: none"> • Issue relating to isolated events or affecting a particular Customer or group/class of Customers; • Reduced or limited coverage of the Service; and • Reduced performance of the Service
Severity 4	<p>Defects/Faults with a non-critical impact with no visibility to the Client and/or Customers, including non-critical enquiries made by the Client to CAL or Customers to the Client.</p>

9. CAL ESCALATION MATRIX

Escalation Levels	Contact	Contact Name	Contact Email Address & Mobile Number	Escalation Level
1.	Service Desk	Service Desk	Email: help@viusasa.com Phone: 0709 767 000	First point of contact
2.	Account Manager	Hellen Wahiga	Email: hellen.ndegwa@calkenya.com Phone: 0722 389 022	From 30 minutes

10. SPECIFIC STANDARD OPERATING PROCEDURES

The following procedure shall be used to resolve any problems arising after service is certified to be in production environment.

10.1. Incident logging

- 9.1.1. All Defect/Fault incidents shall be reported to the CAL's service desk at the email and telephone numbers provided or using such other means of communication as shall have been availed by CAL in accordance with the Agreement.
- 9.1.2. CAL's service desk shall provide a ticket for each incident report and provide feedback guided by the severity level and escalation matrix provided herein.

10.2. Incident escalation

- 9.1.3. All escalations shall be guided by the severity level and escalation matrix provided herein.
- 9.1.4. Either Party may escalate a ticket to seek quicker closure or more expertise where it has been determined that longer wait for resolution may lead to extreme loss of revenue or reputation.

10.3. Proactive information sharing

Each Party shall inform the other in advance of any planned activities/actions or any other thing in a Party's knowledge that may result in a Defect/Fault.

SECOND SCHEDULE: REMUNERATION TO CAL

1. FEES PAYABLE

The fees payable for set-up and configuration of Bulk SMS interface, supply of Bulk SMS, and Transaction Alerts shall be as shall be communicated by CAL to the Client from time to time. Provided that a display of the fees payable within the Platform shall be deemed to be sufficient communication of such fees to the Client.

2. TERMS OF PAYMENT

- 2.1. The one-off fees payable for set-up and configuration of Bulk SMS interface shall be paid in accordance with this paragraph 2.1. The Client shall issue a purchase order to CAL on or after the Commencement Date. CAL shall then issue an invoice for such fees to the Client and the Client shall pay the invoice within seven (7) days of receipt of the invoice by the Client.
- 2.2. The Bulk SMS fees are based on the Client making an order of not less than 10,000 SMS. Bulk SMS fees shall be paid in advance prior to the supply of Bulk SMS units.
- 2.3. The fees and costs set out in this Schedule are exclusive of all taxes including but not limited to Value Added Tax and Stamp Duty. When making payment, the Client shall gross up the relevant payment so as to include the applicable taxes. Provided that, if applicable, the Client shall deduct from and pay to the Kenya Revenue Authority withholding tax payable on the monies due to CAL at such rate as may be prescribed by the Kenya Government from time to time.
- 2.4. Unless otherwise agreed, all applicable NFP charges shall be paid through CAL and receipted accordingly. CAL shall arrange for NFPs to issue invoices for relevant NFP charges and CAL shall immediately transmit such invoices to the Client. The Client shall effect payment of NFP charges within the same month of receipt of the invoice or within such other time as may be specified by the NFP.
- 2.5. Any changes in scope or configuration of the Services will be charged as agreed by the Parties in writing.

THIRD SCHEDULE: SAFARICOM PLC'S ENHANCED GOVERNANCE ON CSP PROMOTIONAL/MARKETING MESSAGING REGULATIONS

CSP Bulletin Number: 001/2019



9th May 2019

CSP BULLETIN

Dear CSP Partner,

RE: ENHANCED GOVERNANCE ON CSP PROMOTIONAL/MARKETING MESSAGING

Further to the previous communication regarding the above, we continue to see an increase in complaints from subscribers on the matter of unsolicited messages and deceptive marketing activities.

We wish to remind you that the Code of Ethics, which is part of the Content Service Provision (CSP) Agreement ("**Agreement**") is intended to guide your operations within the legal and ethical requirements and to protect the subscriber from above mentioned illegal activities.

You will appreciate that Safaricom has invested a significant amount of resources to develop and maintain the goodwill associated with the Safaricom name and brand. It has been noted with concern that the above-mentioned complaints have negatively impacted on the accrued value and goodwill built over time.

Following review of the process, we have therefore implemented the following enhancements on this governance framework and now wish to notify all our CSPs of the changes below:

1. CSPs will now be required to confirm they have validated databases and that subscriber consent has duly been obtained prior to sending targeted promotional messages. This will be required for every bulk purchase.
2. Marketing Messaging will only be sent out between 0800hrs and 1800hrs.
3. All messages will carry an easy and working opt out instruction.
4. Survey messages sent to subscribers should be conducted within **72 hrs.** after the transaction/contact has been made and any follow ups prompts via sms should be within a week.
 - o The first message to subscriber should be an introduction to the survey. It should clearly detail the purpose and that the sms is FREE. It should also provide the customer with the option to express their desire to continue with the survey.
 - o In cases of no response to the introductory question, the survey should expire within 48 hours upon which no further prompts should be made unless the customer makes another transaction or contact.

This Bulletin further reinforces the following controls as provided for in the aforementioned Agreement:

1. Political messages will be shared with Safaricom for review and prior approval before they are sent out.
2. CSPs should not use a database of one service to market a different service without

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CSP Bulletin Number: 001/2019



subscriber consent.

In line with the above, we have also reviewed the measures on non-compliance as outlined below:

- On the **first** instance, the CSP shall be issued with their **first** warning letter.
- On a **second** instance, the CSP shall be issued with a **second and final** warning letter. In addition to the second and final warning the following penalties shall also apply:
 - o **Suspension of the partner's service for one month**
 - o Application of liquidated damages of **Kshs. 1.5million or 20% of revenue** for the month whichever is higher.
 - o Increase price of bulk for the CSP onwards to **1ksh.**
 - o On the third instance, the contract will be terminated without prejudice to Safaricom's rights under the aforementioned Agreement and applicable law.

We trust that we will continue to do mutually beneficial and sustainable businesses by striving to keep our customers happy.

Yours faithfully,

For Safaricom PLC


Julius Kundu
Head Of Department- Consumer Products and Services

Cc: Ethics and Compliance, Safaricom PLC
Cc: Legal and Secretarial Services, Safaricom PLC
Cc: Regulatory and Public Policy-Safaricom PLC
Cc: Communications Authority of Kenya.

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FOURTH SCHEDULE: PREMIUM RATE SMS REVENUE SHARE

All revenue collected from Customers in accordance with clause 5.3 of the Agreement, net of all applicable taxes, shall be shared in the proportions set out below:

- a) Network Facilities Provider - to be specified from time to time;
- b) CAL - to be specified from time to time; and
- c) The Client - to be specified from time to time.

If you have any questions or comments regarding these Terms, the Services or the Platform, please contact CAL by sending an email to the address or calling the number specified on the Platform.