TERMS & CONDITIONS FOR SAFARICOM ZIDISHA PLUS™ MOBILE VOICE & MOBILE DATA BUNDLES

1. APPLICATION OF TERMS AND CONDITIONS

1.1 These Terms and Conditions form the contract between Safaricom and the Customer for the purchase and use of the Bundles.

1.2 These Terms and Conditions shall be binding on Safaricom and the Customer upon the Customer makes the purchase of Zidisha Plus Mobile Voice and Mobile Data Bundles.

1.3 For: (i) existing Safaricom subscribers who have previously purchased *Zidisha Plus*™ bundles; and (ii) merchants with tills for Safaricom's *Lipa Na Mpesa* mobile payment service, these Terms and Conditions shall be binding on Safaricom and the Customer once the Customer accepts these Terms and Conditions via the USSD (Unstructured Supplementary Service Data) Menu in accordance with section 3 below.

1.4 Capitalised terms used above shall have the meanings assigned below.

2. DEFINITIONS & INTERPRETATION

2.1 Definitions

In these Terms and Conditions:

(a) **"Activation"** or **"Activate"** means granting the Customer Mobile Number access to the USSD Menu as further defined in section 3. This shall be expanded to Applications and Web.

(b) **"Bundle"** means a prepaid Voice Bundle or a prepaid Data Bundle as indicated on the USSD menu.

(c) **"Bundle Price"** means the price indicated on the USSD journey for a Bundle.

(d) **"Content"** means any call, data or any other material transmitted or communicated through the use of Safaricom services.

(e) **"Data Bundle"** means a mobile data product: (i) which has a fixed validity period; and (ii) which is sold in various defined denominations and capacities. The Data Bundles which can be purchased by a Customer are listed on the USSD Menu.

(f) **"Data Bundle Validity Period"** means the thirty (30) day validity period for the Data Bundle and the same shall not be rolled over.

(g) **"Devices"** means a desk phone, router, mobile phone handset, modem or other terminal device supplied to the Sponsor by Safaricom. **"Device Manufacturer"** means the manufacturer of a Device.

(h) **Force Majeure Event**" means any happening or event which is beyond the reasonable control of a Party and which affects a Party's performance of its obligations or makes such performance impossible or impracticable in the circumstances. Force Majeure Events include acts of God, riots, war, armed conflict, vandalism, sabotage, civil unrest, acts of terrorism, acts of government or Regulators, fire, power outages, adverse weather conditions.

(i) **"Governing Law"** means the laws of the Republic of Kenya.

(j) **"MPESA"** means Safaricom's mobile money service.

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(k) **"Offending Material"** means any Content whose communication, transmission, storage or hosting is prohibited by Governing Law including Content which is abusive, defamatory, obscene, pornographic, offensive or furthers an illegal act or purpose.

(l) **"Okoa Jahazi"** means a Safaricom service that enables Safaricom prepay subscribers who meet the defined eligibility criteria to receive from Safaricom airtime on credit on the terms and conditions defined by Safaricom. The terms and conditions and details on the Okoa Jahazi product can be viewed at:

http://www.safaricom.co.ke/images/Downloads/Terms_and_Conditions/okoa_jahazi_service_terms_and_conditions.pdf

(n) **"Prevailing Tariffs"** means (i) Safaricom's standard rates or charges for all services other than Qualifying Services including the standard rates for international and local SMS, roaming, premium rate services and international calls to all destinations other than the destinations indicated on the Order Form as enjoying Preferential Tariffs; (ii) Safaricom's standard rate for out of bundle mobile data usage, currently four Kenya Shillings (Kshs 4/-) per MB.

(o) "**Qualifying Services**" has the meaning assigned in section 6.1.

(p) **"Recipient"** means a Safaricom subscriber.

(q) **"Recipient Number"** means the Recipient's prepaid mobile number (MSISDN).

(r) **"Regulator"** means the Communications Authority of Kenya (CA) and any other person exercising regulatory, supervisory or governmental authority under Governing Law.

(s) **"Safaricom"** means Safaricom Limited whose offices are located at Safaricom House, Waiyaki Way, Westlands, Nairobi.

(v) "**Terms and Conditions"** means these terms and conditions.

(w) **"Top Up"** means the purchase of a Bundle by the Customer as is further described in these Terms and Conditions.

(x) **"USSD Menu"** means Safaricom's interactive menu which can be accessed by the Customer through by dialing *485# or any other code which may be notified to the Customer by Safaricom from time to time.

(y) **"Voice Bundle"** means a mobile telephony product: (i) which has a fixed validity period; and (ii) which is sold in various defined denominations referred to as "*voice plans*" and (iii) can be used for voice calls, SMS and data and whose usage is billed at a blended rate comprising of preferential tariffs and the Safaricom standard published tariffs depending on the Recipient's usage. The Voice Bundles which can be purchased by a Customer are listed on the USSD Menu.

(z) "**Voice Bundle Validity Period**" means thirty (30) days from the date of a Top Up and there shall be no roll over of resources.

2.2 Interpretation

Except where the context otherwise requires:

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(a) clause, sections and schedule headings are included for convenience only and will not affect the construction or interpretation of these Terms and Conditions.

(b) any phrase introduced by the words "**including**", "**includes**", "**in particular**", "**for example**" or similar shall be construed as illustrative and without limitation to the generality of the related general words.

(c) unless expressly stated otherwise, any reference to a clause, section or schedule is to the relevant clause, section or schedule of these Terms and Conditions.

(d) use of the singular includes the plural and vice versa.

(e) all references to the Parties includes their permitted successors and assigns.

(f) Safaricom and the Customer are each individually referred to as a **"Party"** and together as **"Parties."**

3. PURCHASE OF BUNDLES

Customer will dial the USSD code *485# and be able to see and purchase the Bundle.

4 TOP UPS & USE OF BUNDLES

Bundles cannot be transferred from one Recipient Number to another Recipient Number. Bundles or any unutilized value or capacity on a Bundle cannot be redeemed for cash or airtime.

5. VOICE BUNDLES

5.1 In this section,

"Other Services" means all Safaricom mobile voice and mobile data services except for Qualifying Services.

"Qualifying Services" means (i) on-net calls (ii) off-net calls; (iii) local data usage; and (iv) international voice calls to the destinations indicated on the Order Form and in section 5.4 below and marked as Zone A.

"Preferential Tariffs" means the tariffs indicated as being "Preferential" on the Order Form and in section 5.4 below for the Qualifying Services.

5.2 Use of Voice Bundles

(a) The resources on a Voice Bundles can be used for voice calls and SMS. Voice Bundles may be used for mobile data services where the Recipient Number is not subscribed to any other Safaricom mobile data plan.

(b) The resources on a Voice Bundle can be used until the expiry of the Voice Bundle Validity Period. The resources on a Voice Bundle may be depleted before the expiry of the Voice Bundle Validity Period based on the usage of the Voice Bundle.

5.3 Billing

Use of the resources in a Voice Bundle shall be billed at the Preferential Tariffs or the Prevailing Tariffs, as the case may be.

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(a) Preferential Tariffs

(i) Preferential Tariffs shall be valid only for a period of thirty (30) days from the date of the Top Up of the Voice Bundle ("**Preferential Tariff Validity Period**"). Preferential Tariffs shall be valid only for Qualifying Services.

(ii) If the resources in a Voice Bundle are exhausted within the Preferential Tariff Validity Period the use of Qualifying Services will be billed at the Preferential Tariff.

(iii) On or before the expiry date for the Preferential Tariff Validity Period, the Recipient must perform a Top Up in order to continue enjoying the Preferential Tariff. When the Customer performs a Top Up any unutilized value on a Voice Bundle on the Recipient's Number will adopt the Preferential Tariffs of the latest Voice Bundle purchased by the Customer.

(b) Prevailing Tariffs

(i) Other Services shall be billed at the Prevailing Tariffs.

(ii) If for any reason the Recipient does not purchase a Bundle at the expiry of the Preferential Tariff Validity Period, use of all services after the expiry of the Preferential Tariff Validity Period shall be billed at the Prevailing Tariffs.

5.4 Voice Bundles & Preferential Tariffs

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	PRODUCT ID		ZIDISHA PLUS VOICE BUNDLES	REVAMPED
KES 250/- (Weekly) : NEW		On-net Rate per minute	N/A	2.5
		Off-net Rate per minute	N/A	2.5
		SMS Rate	N/A	1
		Mobile Data Browsing rate per MB	N/A	1
		International calling rate (Zone A)	N/A	5
	NEW	Validity	N/A	7 Days
KES 500/-		On-net Rate per minute	3	2.5
		Off-net Rate per minute	3.5	2.5
		SMS Rate	N/A	1
		Mobile Data Browsing rate per MB	3	1
		International calling rate (Zone A)	3	4.5
	2061087 & Auto: 2082784	Validity	30 Days	30 Days
KES 1,000/-		On-net Rate per minute	2.5	2
		Off-net Rate per minute	3	2
		SMS Rate	N/A	1
		Mobile Data Browsing rate per MB	2.5	1
		International calling rate (Zone A)	3	4.5
	1280620 & Auto: 2082781	Validity	30 Days	30 Days
KES 2,000/-		On-net Rate per minute	2	1.5
		Off-net Rate per minute	2.5	1.5
		SMS Rate	N/A	0.5
		Mobile Data Browsing rate per MB	2	0.5
		International calling rate (Zone A)	3	4
	1280621 & Auto: 2082786	Validity	30 Days	30 Days
KES 3,000/-		On-net Rate per minute	1.25	1.25
		Off-net Rate per minute	2.5	1.25
		SMS Rate	N/A	0.5
		Mobile Data Browsing rate per MB	2	0.5
		International calling rate (Zone A)	2.5	3.5
	1280622 & Auto: 2082788	Validity	30 Days	30 Days
KES 5,000/-		On-net Rate per minute	1.25	1.2
		Off-net Rate per minute	2.5	1.2
		SMS Rate	N/A	0.5
		Mobile Data Browsing rate per MB	2	0.5
		International calling rate (Zone A)	2.5	3
	1280623 & Auto: 2082790	Validity	30 Days	30 Days

6. DATA BUNDLES

6.1 In this section:
"Preferential out of Bundle Rate" means the preferential out of bundle rates for use of mobile data services as indicated on the USSD Menu and in section 7.4 below.

6.2 Use of Data Bundles

(a) Data Bundles can only be used for data services.
(b) The resources on Data Bundles can be used until the expiry of the Data Bundle Validity Period.
(c) The capacity allocated to a Data Bundle may be depleted before the expiry of the Data Bundle Validity Period based on the usage of a Data Bundle.
(d) Upon the expiry of the Data Bundle Validity Period, any unused capacity on the Data Bundle will be lost.

7.4 Data Bundles and Preferential Out of Bundle Rates

	PRODUCT ID		ZIDISHA PLUS DATA BUNDLES	REVAMPED

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KES 500/-	2061085	Data Bundle	2GB	3GB + Free Whatsapp
	Autorenew: 2082801	Validity	30 Days	30 Days
KES 1,000/-	1280626	Data Bundle	5GB	10GB + Free Whatsapp
	Autorenew: 2082803	Validity	30 Days	30 Days
KES 2,000/-	1280627	Data Bundle	15GB	25GB + Free Whatsapp
	Autorenew: 2082805	Validity	30 Days	30 Days
KES 3,000/-	1280628	Data Bundle	25GB	40GB + Free Whatsapp
	Autorenew: 2082807	Validity	30 Days	30 Days
KES 5,750/-	2076181	Data Bundle	Unlimited (Speed to reduce to 1Mbps after 80GB)	Unlimited (Speed to reduce to 1Mbps after 80GB)
		Validity	30 Days	30 Days
KES 6,750/-	1280630	Data Bundle	Unlimited (Speed to reduce to 1Mbps after 100GB)	Unlimited (Speed to reduce to 1Mbps after 100GB)
		Validity	30 Days	

7.5.1 Priority for Zidisha Data Bundle and Zidisha Voice Bundle

Where a Customer has both Zidisha Plus Voice Bundles and Zidisha Plus Data Bundles whose subscriptions run concurrently, Zidisha Plus Data bundle resources will take priority and will be consumed first over the Zidisha Plus Voice bundles during the validity period.

7.5.2 Priority for Zidisha Data Bundle

(a) Where a Customer has an existing Zidisha Plus Data Bundle or any other data bundle and purchases another Zidisha Plus data bundle, the rates of the first data bundle will take priority.

(b) Where a Customer exhausts their Zidisha Plus Data Bundle capacity (except the 80GB and 100GB Zidisha Data Bundle) within the validity period, the Preferential Out of Bundle Rates for the specific Zidisha Data Bundle will apply.

(c) Where a Customer exhausts their 80GB and 100GB Zidisha Plus Data Bundle capacity within the validity period, the Customer's maximum browsing speed shall be capped at 1Mbps

(d) Where a Customer has exhausted their Zidisha Plus Data Bundle capacity and they purchase any other data bundle, the Customer shall be billed at the rates for the new bundle purchased and the Terms and Conditions of the new bundle will apply.

(e) At the end of the validity period for the 80GB and 100GB Zidisha Data Bundle, the Customer will be unable to browse at a speed of 1Mbps.

7.5.3 Priority for Zidisha Voice Bundle

(a) Where a Customer has an existing Zidisha Plus Voice Bundle or any other data bundle and purchases a subsequent Zidisha data bundle before exhaustion of the capacity of the first bundle, the effect rate of the previous bundle will take priority.

(b) Where the validity period of any Zidisha Voice Bundle expires and the Customer does not renew the Zidisha Voice Bundle, all unused resources will be consumed at prevailing published market rates and will be valid for 30 days. The Customer cannot use the unused resources for data services.

8. DEVICES

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

9. CUSTOMER CARE AND SUPPORT

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

(a) For Prepay customers by calling the number 100, 2222 or by sending an e-mail to customercare@safaricom.co.ke

(b) For Post-pay customers by calling the number 200, 2222 or by sending an e-mail to advantage@safaricom.co.ke

10. SERVICE DELIVERY

10.1 Service Warranties

Safaricom will deliver the services in a professional and workmanlike manner and shall resolve all matters raised by the Customer within a reasonable period.

10.2 Service Availability

(a) The quality and availability of services may be affected by factors including Force Majeure events, maintenance or other works on Safaricom network. Where faults or interruptions in the Services are attributable to Safaricom, Safaricom will remedy the fault or interruption on a best effort basis. Browsing speeds for Data Bundles are dependent on the network connectivity available at the time, which can either be 2G, 3G or 4G. Browsing speeds can be impacted by a number of factors including:

(i) Software and applications used for uploading and/or downloading files (such as Peer to Peer file sharing applications e.g. Torrent clients); or

(ii) spamming, virus activities, spywares and/or malwares on a Device.

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(b) Safaricom may, upon notification to the Customer suspend the Services for any period during which:

(i) Safaricom is required to comply with an order or instruction of or on recommendation from the government or a Regulator or other competent authority;

(ii) Safaricom is investigating an alleged material violation by the Customer of its obligations under this Agreement or misuse of the Bundles by a Recipient.

11. GOVERNANCE

Each Party represents to the other Party that all consents, approvals, permits or authorizations required under Governing Law or under the constitutional documents of a Party to enable a Party to lawfully perform its obligations hereunder have been obtained or made and are in full force and effect and that each Party will maintain such approvals, permits registrations and authorizations for as long as the Customer uses the Bundles.

12. NO LIABILITY

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

13. FORCE MAJEURE

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

A Party affected by an event of Force Majeure shall notify in writing the other party of such event as soon as possible, and in any event not later than five (5) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

14. DATA USAGE AND PROTECTION

14.1 Safaricom and its personnel shall during the term of this Agreement comply with the Governing Law in connection with the processing of information or data disclosed by the Customer to Safaricom.

14.2 Safaricom may use the data provided by the Sponsor for purposes connected to the delivery of the Services and:

(a) for fraud prevention and law enforcement;
(b) to comply with any legal, governmental or regulatory requirement.

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15. NOTICES AND NO WAIVER

15.1 Any notices for purposes of legal proceedings will be served:

(i) **In the case of the Customer**: By registered post to the address indicated on the Order Form or the address given by the Customer during the subscriber registration process.

(ii) **In the case of Safaricom**: by delivery to Safaricom House, Waiyaki Way, Nairobi and marked for the attention of the Director, Corporate Affairs

15.2 Such notices will be deemed to have been received five (5) Business Days after mailing if forwarded by post and the following business day if hand-delivered or dispatched by e-mail.

"Business Day" for the purposes of this clause 17 means Monday to Friday between the hours of 0900 and 1700, excluding public holidays.

16 DISPUTE RESOLUTION

16.1 Amicable Settlement

The Parties shall use their best efforts to amicably settle any dispute arising from or in connection with these Terms and Conditions.

16.2 Arbitration

(a) If the dispute has not been settled amicably within thirty (30) days (or such longer period as may be agreed upon between the Parties) from when the dispute resolution process was instituted, a Party may elect to institute arbitration proceedings by serving notice ("**Arbitration Notice**") to the other Party.

(b) Upon the service of the Arbitration Notice the Parties shall appoint a single arbitrator within thirty (30) days from the date of service of the Arbitration Notice. If the Parties fail to appoint an arbitrator for any reason within this thirty (30) day period the arbitrator shall be appointed upon the application of either Party by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators.

(c) Such arbitration shall be conducted in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to, and in accordance with the provisions of the Arbitration Act 1995 (as amended).

(d) To the extent permissible by Law, the determination of the arbitrator shall be final, conclusive and binding upon the Parties hereto.

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

17. VARIATION OF THESE TERMS AND CONDITIONS

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

18. SEVERABILITY

If any provision of these Terms and Conditions is declared by any judicial or other competent authority or an arbitrator appointed hereunder to be void, voidable, illegal or otherwise unenforceable, the Parties shall amend that

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provision in such reasonable manner as achieves the intention of the Parties without illegality or at the discretion of Safaricom it may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

19. CUMULATIVE REMEDIES & NO WAIVER

Except where these Terms and Conditions provides otherwise, the rights and remedies contained in these Terms and Conditions are cumulative and not exclusive of the rights or remedies provided by Governing Law. The failure by a Party to enforce at any time or for any period any one or more of the provision of these Terms and Conditions shall not be a waiver of such provisions or a waiver of the right at any time to enforce such provision.

20. RESERVED RIGHTS

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

20.2 Safaricom may vary the Bundle Price or any part of these Terms and Conditions upon notice to the Customer **PROVIDED THAT** such changes or variations shall be applied upon the expiry of the Validity Period of the Bundles in use by a Recipient or such longer period as may be communicated by Safaricom to the Customer.

21. GOVERNING LAW

These Terms and Conditions and the performance of the Parties obligations shall be subject to and interpreted in accordance with the Governing Law.

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