

# Faiba Mobile Prepaid Terms and Conditions

## Conditions of Use of the Faiba Mobile Prepaid Services

### 1. DEFINITIONS

1. “**Conditions of Use**” means these terms and conditions;
2. “**Equipment**” includes your mobile phone handset or other equipment which when used together with the SIM Card allows access to our Network;
3. “**MSISDN**” means the mobile station international subscriber directory number issued to you, which is your mobile phone number;
4. “**Network**” means the mobile cellular network operated by us and covering those areas as stipulated by us from time to time;
5. “**Re-charge**” means the process of crediting your MSISDN account with us so as to access the Services by using our recharge voucher or by any other means approved by us;
6. “**Services**” means the prepaid services including but without limitation to basic voice, international dialing, international roaming, short message service (“**SMS**”), voice mail, emergency access numbers (112/999) and any other services offered via our Network that we agree to make available to you from time to time;
7. “**SIM Card**” means the subscriber identity module card issued to you by us through which you can access our Services using the Equipment;
8. “**Starter Pack**” means the packaged SIM card sold to you by us together with the PIN (Personal Identification Number) and PUK (Pin Unblocking Key), and or any additional products and information that maybe included from time to time;
9. “**Unauthorised use**” means the use of your SIM Card for any act we deem illegal, unofficial, unwarranted, unapproved, unsanctioned;
10. “**Tariffs**” means our charges for use of the Services as varied by us from time to time;
11. “**Tariff Guide**” means a guidance catalogue published by us from time to time;
12. “**We**” or “**us**” means **Faiba Mobile** (its successors and or permitted assigns); “**you**” means the customer;

### 2. THE SERVICES

The Services are made available to you subject to these Conditions of Use;

- a. Although we shall try to ensure that you are able to make full use of the Services to access the Network within the coverage area, we do not guarantee that the Services shall be available at all times and we shall not be responsible or liable for any loss whatsoever and howsoever arising as a consequence of any non-availability of the Services. The Services are not fault free and factors including (but not limited to) acts of God, geographical topography, weather conditions, planned maintenance or rectification work on the Network may interfere adversely with the quality and provision of the Services. Access to roaming networks will depend upon the arrangements between the foreign operators and us and will be subject to the availability of the foreign operator's network, gateway restrictions and charges
- b. The SIM Card is issued to you together with the MSISDN subject to these Conditions of Use. In the event of damage to, loss or theft of the same, you are obliged to inform us immediately of such damage or loss thereto or theft thereof. We will then disable such damaged, lost or stolen SIM Card; a replacement or repair fee may be applicable (you will be responsible for all usage charges up to the time of informing us of the damage, loss or theft);
- c. We may at our discretion and without prior notification, discontinue the provision of the services or any part thereof without incurring any liability to you;

- d. Access to all or any part of the Services may be subject to the payment of additional charges on such terms and conditions as we may determine;
- e. For details of areas covered by us, please contact our Customer Service Hotline;
- f. Please note that the confidentiality of your communications *via* our Network is not guaranteed. You are advised that for reasons beyond our control, there is a risk that your communications may be unlawfully intercepted or accessed by those other than the intended recipient. We cannot accept any liability for any loss, injury or damage whether direct or consequential arising out of any such compromise of confidentiality;
- g. You accept that we may disclose and/or receive and/or record any details of your use of the Services including but not limited to your calls, emails, SMS's, data, your personal information or documents obtained from you for the purposes below:
  - i. Fraud prevention and law enforcement;
  - ii. For reasonable commercial purposes connected to your use of the mobile service, such as marketing and research related activities;
  - iii. Use in our telephone directory enquiry service in printed or electronic format;
  - iv. To comply with any legal, governmental or regulatory requirement;
  - v. For use by our lawyers in connection with any legal proceedings;
  - vi. In business practices including but not limited to quality control, training and ensuring effective systems operation.
- h. You must comply with any instructions that we may give you from time to time about the use of the Services;
- i. With the exception of calls made to our Customer Service Hotline numbers and to any other designated toll free numbers, a variable minimum network access credit requirement shall be applied and shall depend on the Tariff used by the Customer.

### **3. ACCEPTANCE AND COMMENCEMENT OF CONDITIONS OF USE**

You are deemed to have accepted these Conditions of Use as amended from time to time and which take effect:-

- a. Upon the Re-charge of your account at any time with any amount using the designated recharge voucher or using any other approved means of Re-charge; or
  - b. Upon your use of our Services or upon you accessing our Network at any time;
- or
- c. Upon initial activation of your SIM Card.

### **4. PAYMENTS**

- a. You must ensure that you have sufficient credit so as to access the Services, as we shall not be liable to you in any manner in the event that you are denied access to the Services due to insufficient credit with us;
- b. The Tariff Guide is available to you only as a guideline and is not a legally binding document. The Tariffs are subject to change without prior notice. Unless otherwise provided therein, all Tariffs listed therein include Value Added Tax but are subject to other applicable levies and taxes at the then prevailing rates.

c. Outgoing and incoming call and text message charges applicable under the Roaming Services shall be those levied by the relevant Network providers (which may include a minimum charge) plus our charges at the prescribed rates.

## **5. SUSPENSION AND DISCONNECTION OF THE SERVICES**

a) We may suspend (bar), restrict or terminate the provision of the Services (in whole or in part) without informing you and without any liability whatsoever (although, we will, where possible, try to inform you that such action is or may be taken) under the following circumstances:-

i. If we are aware or have reason to believe that your Equipment or SIM card is being used in an unauthorised, unlawful, or fraudulent manner (or has been so used previously) or if you choose not to use the Services for a period of over one hundred and eighty (180) days after the end of the validity of your last Re-charge).

ii. "Use" includes, the making any chargeable outbound calls, sending chargeable SMS's, accessing data services, Re-charging of your account and for any other use or access to our other services;

iii. If you do not comply with any of the conditions relating to any part of the Services;

iv. If we believe you are making calls or sending data which is classified in our sole opinion as being illegal, a nuisance, abusive, a hoax, menacing or indecent (including any calls or messages relayed to our customer service operators);

v. If we are aware or have reason to believe that you have Re-charged (or have attempted to Re-charge) your account by using any fraudulent or illegal means, over and above any other remedies we may have, we may also bar the Equipment from accessing the Services and/or bar the MSISDN so that it is no longer available for use or Re-charge with any electronic facility.

vi. If you notify us that your Equipment has been lost or stolen;

vii. If you do anything (or allow anything to be done) with your Equipment which we think may damage or affect the operation or security of the Network or the Services;

viii. For reasons beyond our control.

ix. If your registration details are deemed to be false or inaccurate.

b) Where the continued Use of our Services has been suspended or terminated for any of the above reasons, and your credit balance expires in your account, excluding Faiba Mobile Money credit balance will be forfeited. Where we have suspended or restricted access to the Services for any of the above reasons any reconnection is at our discretion and a reconnection fee may be charged. "Expiry" occurs when your account has been inactive for one hundred and eighty (180) days after the end of the validity period of your last Re-charge. The validity period may vary depending on the value of the Re-charge voucher.

c) After the Expiry of your account, we will reserve the right to deactivate and recycle the MSISDN and make it available for sale to another customer, without further liability to you.

## **6. YOUR RESPONSIBILITIES**

Among other responsibilities:

a. You are responsible for all applicable charges for using the Services using the Equipment whether those Services were used by you or someone else with or without your authority or knowledge;

b. You are responsible for the legal compliance and security of any Equipment used to access the Services. You are also advised to read and understand any manufacturer's instructions for use of the Equipment. We will not accept liability for any malfunction of the Equipment, injury, loss of data or damage to the Equipment;

c. You are solely responsible for any transmitted material and or communication, which is classified as illegal, defamatory, misleading or in breach of any person(s) rights and shall keep us indemnified against any claims and expenses made against us in respect thereof.

## **7. VARIATIONS**

- a. We may change or withdraw the Services (or part thereof) at any time, with or without notice. Where possible we will give reasonable notice of these changes. You will still be able to use any credit that you have accumulated prior to the withdrawal of all of the Services;
- b. We may make changes to these Conditions of Use from time to time and/or to introduce new terms from time to time if there are changes to the law or to the terms of our telecommunications license without notice and/or further reference to you;
- c. By continuing to use the Services you shall be deemed to have agreed to the modifications contemplated in clause 7(a) and (b) above.

## **8. NOTICES**

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 Conditions of Use, modifications/variations to the Services or Tariffs, any promotions and other information will be through advertisement in a daily newspaper, SMS, our website, and/or by using any other suitable means **PROVIDED THAT** you shall be deemed to have been duly notified regardless that the same may not have actually come to your attention.

## **9. LIABILITY AND EXCLUSIONS**

- a. In the event that we are compelled to change or reassign your MSISDN to meet regulatory requirements or for any other reason, we will not have any liability to you;
- b. To the maximum extent permissible by law we exclude warranties of all kinds, either express or implied;
- c. To the fullest extent permissible by law, we are not liable for any costs, loss, liability or damage whether direct, special or consequential, howsoever and whenever arising out of our supply of, or failure to supply, the Services and you shall indemnify and keep us indemnified at all times against any and all costs, expenses, actions, claims, demands and damages howsoever and whenever arising as a result of the use of the Equipment or SIM Card by you or anybody else.

## **10. CHANGING TARIFFS**

You may migrate between Tariffs subject to our conditions, which may be varied upon notification from time to time.

## **11. MISCELLANEOUS**

- a. These Conditions of Use as from time to time amended form a legally binding agreement binding on you and your personal successors and permitted assigns.
- b. Failure by either of us to enforce any rights under these Conditions of Use shall be without prejudice to any available legal remedies and does not constitute a waiver or imply any admission of liability on our part for any alleged breach.
- c. The number and duration of messages that can be left on your voicemail service will be limited. Please call our Customer Service Hotline for further information.
- d. Unless specifically requested in writing to us, the identity of your MSISDN may be sent through the Network so as to be identified by the recipient of your communication. Your MSISDN will always be transmitted if calling 999 or 112 or any other emergency assistance number.

- e. If the facility to eliminate the presentation of the number of an incoming call is made available, we may charge you for the use of such a facility at the price as stated in our Tariff Guide.
- f. For your own protection, you must keep confidential all personal identification or security numbers used with the Services. The numbers/codes which we allow you to use with the Services will remain our property at all times.
- g. We may charge you for inclusion of your information in any publicly available telephone directory enquiry service at the price stated in our Tariff Guide from time to time. Even if you have not requested that your details be included in a directory enquiry service your name and address will still be entered into the database so that the operator can confirm that you are ex-directory. Directory enquiry service information may be passed by us (directly or indirectly) to other organisations so that they may operate their own directory enquiry service.
- h. The intellectual property rights in the SIM Card and all Services (including the software) (“**IPR**”) belongs to us or our suppliers and is supplied to you, under license, by us for proper use with the Services only. We may change the IPR at any time without prior notice to you. You may not copy or change or reverse engineer any of the IPR. If the Equipment is disconnected from the Services or if we change the IPR you must either destroy the SIM Card or return it to us, as we may request.
- i. Unless requested in writing and upon payment of the applicable charge by you or your duly authorised representative we do not provide itemised billing statements or call data information.
- j. The terms of these Conditions of Use are subject to and governed by the laws of Kenya and the parties submit to the exclusive jurisdiction of the courts of Kenya.
- k. If any provision of these Conditions of Use shall be found by any duly appointed arbitrator, court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions herein and all provisions not so affected by such invalidity or unenforceability shall remain in full force and effect.

## **12. DISPUTE RESOLUTION**

- 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 mutually settled 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 injunctive relief, in which case the Parties submit to the exclusive jurisdiction of the High Court of Kenya.

## **13. COMPLETE TERMS AND CONDITIONS**

The complete terms and conditions of our Faiba Mobile Prepaid Services may be accessed through our web page at [www.faiba.co.ke](http://www.faiba.co.ke)