

1<sup>st</sup> April 2016

## Terms of Use for the poa! Wireless Internet Connectivity Service

### SERVICES.

poa! (the "**Service**") is a wireless internet connectivity service provided by Argon Telecom Services Limited. ("**Argon**") which provides you with Internet connectivity for WiFi enabled smartphones, tablets, and laptops and other devices to the Argon Wi-Fi network ("**Argon Wi-Fi Network**"). The Terms and Conditions of this Service and any other rules or policies posted on the Poa Web Site or referred to in this Agreement set forth the legally binding terms governing your use of the Service ("**Agreement**").

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SERVICE AS THIS FORMS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND ARGON. IF YOU DO NOT AGREE TO THIS AGREEMENT AND TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS YOU MAY NOT USE THE SERVICE.

BY CREATING AN ACCOUNT, AS DEFINED BELOW, AND/OR USING THE SERVICE YOU CONFIRM THAT YOU ARE AT LEAST 18 YEARS OF AGE.

### SERVICE REGISTRATION.

In order to use the Service and become a user, you must first create a user account ("**Account**") by registering for the Service on the login page of the poa! portal, a web site provided to users of the Service. ("**Web Site**").

When creating an Account, you must provide complete information, including but not limited to your mobile phone number and other personal information as required by Argon (collectively "**Information**"). You represent and warrant that: (a) all Information that you provide is accurate; and (b) that you will update the Information as necessary to maintain its accuracy. When registering, you will be asked to create a username and secure password. Your username and the password are used to access your account information as well as provide you access to the Argon Wi-Fi Network. The username and password which you select shall remain the sole property of Argon and you will have no right or title in and to your username or password. You will be able to update and change your Account information, including your password, upon accessing the Web Site via the Service. You can also reset your password via the Web Site. You are solely responsible for maintaining the confidentiality of your username and password and will not share with other parties. Further, you agree that you will not use the username and/or password of any other person. You agree to notify Argon immediately if you suspect that your Information has been compromised or if you suspect any unauthorised use of the Service, your username and/or password. Notwithstanding, you agree that you are solely responsible for any fees accrued by use of the Service attributed to your Account.

In order to access the Service, you will need a compatible laptop, tablet, smartphone and/or other device with Wi-Fi technology (a "**Device**"). It is your responsibility to ensure that your Device(s) is compatible with the Service. You agree that you are solely responsible for any fees associated with the use of the Service on your selected Device(s). Argon may supply you with a software application to enable access to the Service from your Device ("**Application**"). If an Application is supplied, you must install the Application in order access the Services. Further, you must install all updates of the Application within thirty (30) days after they are published date or you may lose access to or certain functionality of the Service. Argon reserves the right and you agree to allow Argon to automatically download updates of the Application to your Device(s) as needed. From time to time, and in Argon's

sole discretion, Argon may need to temporarily suspend the Service in order to perform various updates or maintenance of the Service. Where possible Argon will notify you in advance of such update or maintenance using the Web Site.

#### **SERVICE LICENSE.**

Subject to the terms of this Agreement and during the term of this Agreement, Argon hereby grants you a non-exclusive, non-transferable, terminable right to install the Application (if so supplied) and use the Service on up to four (4) Devices for your own personal use. You acknowledge that the Service, Web Site and its related software contain the valuable secrets of Argon and you agree not to cause or permit the reverse engineering, translation, disassembly, or decompilation of, or otherwise attempt to derive the source code of, the Service and its software, whether in whole or in part. You will not use, reproduce, modify, prepare derivative works of, distribute, sublicense, loan, sell, or otherwise transfer the Service and its software in any manner or for any purpose except as expressly permitted herein. Argon will retain all title, copyright and other proprietary and intellectual property rights in and to the Service, Web Site and its software, and any other technology, services, or materials that Argon may provide to you hereunder or in conjunction with the Service. All rights in and to the foregoing not expressly granted to you in this Agreement are reserved by Argon. In particular, but without limiting the generality of the foregoing, no right to or license in the source code for the Service and its software is granted hereunder. You will not obfuscate, alter, or remove any copyright, trademark, or other proprietary notice or legend on or in the Service and its software. Further, you agree that you will not: (1) resell any part of the Service; (2) share your Service connection with anyone; or (3) access the Service simultaneously through the use of multiple Devices unless otherwise permitted under your price plan.

#### **TERM AND TERMINATION.**

This Agreement shall commence once Argon has validated your Information and created an Account and shall remain in full legal force and effect unless and until either party cancels or terminates the Agreement according to the terms herein. Argon may terminate the Agreement or suspend your Account if: (1) it believes, in its sole discretion, that you are in breach of this Agreement, including breach of any payment obligation; (2) if an Account has been inactive for twelve (12) consecutive months; (3) if Argon decides to stop providing the Service; or (4) for Argon's convenience. You will be sent an SMS to the mobile phone number stored on your Account upon termination of the Agreement or suspension of Service. You agree to discontinue your use of the Service and remove and any the Application from your Devices immediately upon notification of termination. Any termination of the Agreement or your Account may mean the permanent deletion of your Account Information and you agree that Argon shall have no liability for any such termination. You may terminate this Agreement and Account, at any time, by sending an email requesting termination to [termination@poa.co.ke](mailto:termination@poa.co.ke) You agree that you will be responsible for all fees incurred on your Account prior to Argon's actual termination of the Agreement.

#### **PAYMENTS AND CHARGES.**

Access to the Internet via the Service requires pre-payment. You are able to pre-pay for use by making purchase of credit vouchers at Argon authorised retailers, payment using mobile wallets or other methods made available by Argon from time to time. Once you have purchased a credit voucher you must credit this to your Account using the Web Site. Purchases made using mobile wallets will be automatically credited to your Account. Using credit in your account you may purchase data bundles that will give you access to the Internet for a specific period of time or for a specific amount of uploaded and downloaded data. Details of the currently available data bundles

their pricing and any changes to the same will be published via the Web Site. When you purchase a data bundle you will be charged for the purchase and the corresponding price for that bundle will be deducted from the credit associated to your Account. Once you have used all of the data from the bundle you have purchased you will no longer be able to access the Internet until you purchase a further bundle. If you do not use all of the purchased data within 360 days of purchase you will forfeit the remaining data. If you do not access the Service for 1 year you will forfeit any credit associated with your Account. You are entitled to transfer credit from your Account to the Account of another customer of the Service using the Web Site. If you make a transfer the corresponding credit will be deducted from your Account and added to the other customer's account. You are responsible for ensuring that you transfer credit to the correct account. Any credit transferred in error or by mistake is non-refundable. You are able to view the the current amount of data and credit associated with your account and a history of transactions against both balances using the Web Site.

#### **COMPLAINTS AND BILLING DISPUTES.**

You are responsible for monitoring the balances of credit and data stored against your Account. If you believe you have been charged in error or if credit you have applied to your Account is in error, you must notify Argon at [email address] within six (6) months of purchase of a data bundle or addition of credit to your Account. This email should include details of the transaction and the error you believe has occurred. If Argon believes at its sole discretion that an error has been made, then the corresponding amount of data or credit will be refunded to your Account. You agree that you have waived any right to dispute erroneous charges if not claimed within six (6) months of the transaction.

#### **ACCEPTABLE USE.**

You agree that you will not use the Service in a manner contrary to the Argon acceptable use policy located on the Web Site and incorporated herein by reference ("**Acceptable Use Policy**"). Argon reserves the right to investigate any breach and or suspected breach of the Acceptable Use Policy. Argon may suspend or terminate provision of the Service if, in its sole discretion, it suspects that you have violated the Acceptable Use Policy.. If your access to the Service is suspended or terminated, you will be notified of the suspension and the reasons for suspension by SMS to the mobile telephone number stored on your account

#### **PRIVACY.**

You agree to the terms of the Argon privacy policy located on the Web Site and incorporate herein by reference ("**Privacy Policy**"). You accept that certain uses of the data gathered by Argon as a result of your use of the Service are necessary to enable provision of the Service to you and accordingly, if you withdraw your consent for Argon to use your data as is detailed in its Privacy Policy, the supply of the Service to you may be terminated.

#### **WARRANTY AND DISCLAIMERS.**

By its very nature, the Internet contains offensive and/or harmful material, in some cases under descriptions that have been mislabelled or are otherwise deceptive. Argon shall not be responsible for any damages suffered by you and/or any person as a result of obtaining Internet access. Argon exercises no control whatsoever over the content of the information passing through its systems. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND

ARGON DISCLAIMS AND MAKES NO REPRESENTATIONS OR WARRANTIES AND THERE ARE NO CONDITIONS OF ANY KIND, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF NON-INTERFERENCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR USE OF THE SERVICE. ANY STATEMENTS MADE IN ANY WRITTEN OR ELECTRONIC DOCUMENTS, OR BY ANY ARGON EMPLOYEES, REPRESENTATIVES, OR AGENTS, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT AS REPRESENTATIONS OR WARRANTIES OF ANY KIND. ARGON DOES NOT WARRANT THAT SERVICE WILL BE UNINTERRUPTED, ERROR FREE, OR FREE FROM SERVICE DEGRADATION, OR THAT ANY INFORMATION, SOFTWARE, OR OTHER MATERIAL ACCESSIBLE ON THE SERVICE ARE FREE FROM VIRUSES, WORMS, TROJAN HORSES, OR OTHER CODE THAT MANIFESTS CONTAMINATING, INTERFERING, OR DESTRUCTIVE PROPERTIES. ARGON CANNOT AND DOES NOT GUARANTEE THE SECURITY OR INTEGRITY OF DATA TRANSMISSION or STORAGE, OR THAT VIRUSES, WORMS, TROJAN HORSES, OR OTHER CODE THAT MANIFESTS CONTAMINATING OR DESTRUCTIVE PROPERTIES WILL BE DETECTED OR REMEDIATED BY THE SERVICE. SERVICE IS ONLY AVAILABLE WITHIN THE COVERAGE AREA OF THE ARGON WIFI NETWORK, WHICH IS SUBJECT TO CHANGE. YOU ACKNOWLEDGE THAT SERVICE MAY BE TEMPORARILY UNAVAILABLE FOR MAINTENANCE, EQUIPMENT MODIFICATIONS, OR UPGRADES, AND FOR OTHER REASONS WITHIN AND WITHOUT THE DIRECT CONTROL OF ARGON.

LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ARGON BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR INTERRUPTED COMMUNICATIONS, LOST DATA OR LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE SERVICE. NOTWITHSTANDING, ARGON' TOTAL LIABILITY TO YOU FOR ANY DIRECT DAMAGES ARISING FROM YOUR USE OF THE SERVICE SHALL BE LIMITED TO THE TOTAL AMOUNT OF PAYMENTS MADE BY YOU ON YOUR ACCOUNT FOR THE THREE (3) MONTHS PRIOR TO THE EVENT GIVING RISE TO YOUR CLAIM. SOME JURISDICTIONS DO NOT ALLOW FOR A LIMITATION OF LIABILITY AS CONTEMPLATED HEREIN SO THIS LIMITATION MAY NOT APPLY TO YOU.

#### **INDEMNITY.**

You agree to indemnify, defend and hold harmless Argon and its officers, directors, employees, agents, successors and assigns from and against any loss, liability or claim, including claim for reasonable attorney's fees, brought by any third party and arising from (a) your infringement of any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy through use of the Service (b) your violation of any applicable law, statute, ordinance or regulation when using the Service; (c) violation of Argon' acceptable use policy; or (d) material breach of this Agreement.

#### **AMENDMENTS.**

Argon may, in its sole discretion, make amendments to the terms and conditions of this Agreement. The latest version of these Terms of Use will be contained in the Site, you agree to be bound by any such revisions and therefore you should periodically visit the Site to examine the then-current Agreement by which you are bound.

#### **ASSIGNMENT.**

You may not assign the Agreement, the use of the Service or your rights and obligations under this Agreement without the prior written consent of Argon. Any such assignment shall be void.

#### **SURVIVAL.**

The following sections shall survive the termination of this Agreement: Indemnity; Limitation of Liability; Warranty and Disclaimers; Jurisdiction; Privacy; Payments and Charges, and Acceptable Use.

**SEVERABILITY.**

If any provision of the Agreement is held to be invalid, illegal or unenforceable by any court or other competent tribunal then the remaining provisions of the Agreement shall remain in full force and effect.

**CHOICE OF JURISDICTION.**

Choice of jurisdiction is Kenya and the Laws of Kenya shall govern the construction and enforceability of the Agreement. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

**ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between the parties with regard to the Service provided hereunder. All prior agreements, proposals, representations and other understandings whether oral or written, are superseded in their entirety by this Agreement.

**NO WAIVER.**

No alteration or modification of this Agreement will be valid unless made in writing and signed by Argon. In the event of a conflict between the Agreement and any terms and conditions or statements contained in any document related to the Service, the terms of this Agreement will control.

**LEGAL NOTICES**

Communications made through the Web Site or Service will not constitute legal notice to Argon or any of its officers, employees, agents, affiliates, partners or representatives.

You should send written legal notices to:

FOR THE ATTENTION OF LEGAL COUNSEL (NOTICES)  
ARGON TELECOM SERVICES LTD  
P.O. BOX 42713  
GPO 00100 NAIROBI