

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

### SERVICES.

poa! (the "**Service**") is a wireless internet connectivity service provided by Poa Internet Kenya Limited. ("**Poa**") which provides you with Internet connectivity for WiFi enabled smartphones, tablets, and laptops and other devices via the Poa data communication network ("**Poa Network**"). The Terms and Conditions of this Service and any other rules or policies posted on the 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 IT FORMS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND POA. IF YOU DO NOT AGREE TO THIS AGREEMENT AND TO BE BOUND BY ALL THE TERMS AND CONDITIONS IT CONTAINS 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.

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 or on poa.co.ke. (both collectively the "**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 Poa (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 Poa Network. The username and password which you select shall remain the sole property of Poa 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. 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 them with other parties. Further, you agree that you will not use the username and/or password of any other person. You agree to notify Poa 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.

### SERVICE USAGE.

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). Poa may supply you with a software application to enable access to the Service from your Device ("**Application**"). If an Application is supplied, then Poa may require that 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. Poa reserves the right and you agree to allow Poa to automatically download updates of the Application to your Device(s) as needed. From time to time, and in Poa's sole discretion, Poa may need to temporarily suspend the Service in order to perform various updates or maintenance of the Service. Where possible Poa will notify you in advance of such update or maintenance using the Web Site.

Any Internet bandwidth speeds quoted in relation to the Service are local speeds from a point of access to the Poa Network and Poa's data centre in Nairobi. Bandwidth between your point of access to the Poa Network and Poa's data centre is contended between you and other users of the Service in your local area. Because of this you may receive bandwidth speeds that differ from those advertised depending on the volume of users of the Poa Network. In addition, the international bandwidth component of the Service is contended by all users of the Service. By using the Service, you agree to the use of locally contended bandwidth, recognised that the delivered bandwidth may not be the same as quoted speeds and that the locally contended Internet bandwidth speeds are not the same as, the international contended bandwidth. Any representation by anyone, including Poa's agents, to the contrary is not valid.

## **HOME SERVICE.**

Poa at its sole discretion may decide to offer you an optional service ("**Home Service**") that extends the Service and provides access to the Internet to Devices in your home. ("**Premises**").

In order to use the Home Service, you must have registered to use the Service, including creating an Account. The Home Service is an extension of the Service and all the terms and conditions that apply to your use of the Service shall also apply to the Home Service. In addition, the following terms will also apply:

You will agree to receive and use the Home Service by completing an application form and placing an order ("**Order**"). The application form may be electronic and hosted on the Web Site. Following placing an order you will be required to make payment for the installation of the Router (see below) and purchase a Bundle for use of the Home Service. You will deposit credit in your Account and make purchase via the Web Site (as set out in Payments and Charges below). If you do not make the necessary payments and purchases within 30 days of placing an Order, then Poa, at its discretion, may cancel your Order. If after you place an Order, Poa at its sole discretion concludes that it is not technically viable to install the Home Services in your Premises then it shall cancel the Order and refund any payment or purchases you have made in relation to the Home Service.

For the duration of the time which you use to the Home Service, Poa will provide you with a number of pieces of electronic equipment, associated cabling and software that will be installed by Poa in your Premises ("**Router**"). The Router will be connected to the Poa Network. When in your Premise, your Devices shall connect to the Service through the Router. The Router will remain the property of Poa at all times and your use of the Router does not confer any right of title to the Router. Should you no longer use the Home Service (as defined below) then you should return the Router to Poa or use all reasonable efforts to allow Poa or its appointed agents to recover the Router including but not limited allowing access to your Premise.

You shall, at your own expense, to facilitate the installation and use of the Router at your Premise:

- obtain all necessary consents, way leaves, rights of way, including consents for any necessary alterations to buildings where your Premise is located;
- provide a suitable environment, accommodation and foundations, including all necessary

- trunking, conduits and cable trays in accordance with the relevant installation standards;
- take up or remove any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers as Poa advises are necessary, and carry out afterwards any making good or decorator's work required;
- provide any electricity and connection points required by Poa; and
- carry out all other preliminary works including as are communicated to the you by Poa as required to be in place prior to any installation of the Router and its connection to the Poa Network.

Poa will notify you of when it intends to install the Router. If you are not able to provide access to the Premise at that time you should notify Poa and Poa will provide an alternative installation time shall be provided. If Poa is unable to gain access to the Premise at the notified time, Poa will notify you and attempt to gain access two further times. If after the third attempt Poa is unable to gain access, Poa may at its discretion refused to install the Router and any purchases you have made will not be refunded.

Poa may provide you with assistance to facilitate the installation of the Router and the connection of your Devices to the same. You shall be deemed to have consented to accept any such assistance upon giving Poa access to your Premises. Poa shall provide such assistance in a professional and workmanlike manner, however, at no time shall Poa be liable to you or any third party for damages, costs or expenses or losses howsoever they may occur in the process of providing such assistance.

To enable Poa to carry out its obligations under this Agreement or to recover any Router from the Premises, you shall provide Poa employees and anyone acting on Poa's behalf, who produces a valid Poa identity card access to any Premise. Poa will normally only require access with your prior agreement or at your request but may from time request the you to provide access at other times if Poa reasonably believes that the your installation is interfering with the Poa Network as a whole or parts of the Poa Network, or in order to recover Poa Equipment subject to the terms of this Agreement.

Poa employees and anyone acting on Poa's behalf will observe your reasonable site access regulations as advised by you during the site visit.

Poa shall use reasonable endeavours to meet any agreed delivery dates for the supply of the Router and related accessories and provision of the Home Service. Time will however not be of the essence with regard to such supply and Poa will not be liable for any costs and expenses incurred by you or any third-party as a consequence of such delay.

Poa may without your consent employ the services of a sub-contractor to install or uninstall the Router and undertake any works thereto.

Poa provides you with the Router to assure compatibility with the Poa Network. You must not in any way interfere, alter or modify the Router or any embedded software supplied as part of the Router nor allow anyone (other than an authorised Poa representative) to do so.

Poa may provide you with a Router of varying capabilities based on your order, your location and the technical requirements to provide the Home Service in your Premises.

If you decide or are required to vacate your Premise at any time, you should notify Poa and give Poa access to the Premises in order to recover the Router.

You agree to be fully responsible for good care of the Router during the term of this Agreement and to immediately notify and cooperate for the uninstallation and recovery of the equipment by an authorised Poa agent upon, stopping use of the Home Service or the termination of this Agreement as provided herein, including allowing Poa access, without delay, to your Premises to uninstall and recover the Router.

You are responsible for the care and safety of the Router and must not add to, modify, reverse engineer, decompile or in any way interfere with the Router or any embedded software supplied as part of the Router nor allow anyone (other than an authorised Poa representative) to do so.

You are responsible for ensuring that any Devices connected to the Router or otherwise used to access the Service must be technically compatible with the Router and the Home Service and shall be connected and used in accordance with such reasonable instructions, safety and security procedures as may be advised by Poa from time to time.

You shall be liable to Poa for any loss of or damage to the Router, except where such loss or damage is due to fair wear and tear or is caused by Poa, or anyone acting on Poa's instructions.

You recognise that you have no right, title or interest in the software contained in the Router.

Poa accepts no liability for any loss suffered by you or any third party as a result of your misuse of the Router or for any accidental damage.

You shall immediately notify Poa of any fault, damage, loss, or theft of any Router and shall be responsible for its replacement costs at the prevailing retail costs of the equipment. Such replaced Router shall remain the property of Poa.

Without prejudice, Poa shall only be responsible for the replacement of the Router in the case of manufacturer's defects covered by Warranty. Poa shall use reasonable endeavours to extend to you the benefit of any warranty as may be provided to Poa (subject to any limitations and restrictions thereon) by the manufacturers of such Equipment, provided that any expense reasonably incurred by Poa in extending such benefit shall be levied to your account and payable by you.

Save for the above, all conditions or warranties in relation to Router are excluded to the fullest extent provided by law including but not limited to any warranties and conditions expressed or implied by statute. Any warranty in relation to the Router will be deemed null and void should any damage or failure be as a result of failure to protect the Equipment by use of appropriate uninterruptible power supply or power surge systems, or as a result of any misuse of or tampering or interference with the Router or Poa Network by you.

Once the Router is installed in your Premise in order to access the Internet via the Home Service you must Purchase a Bundle (see Payments and Charges below). If you do not have an active Bundle you will not be able to use the Router to access the Home Service. If you have not had an active Bundle for a period of 30 days or more Poa may deem you to have stopped using the Home Service and at its discretion will begin the process of recovering the Router. If Poa is unable to recover the Router, it may at its discretion charge you a fee equivalent to the retail price of the Router.

#### **SERVICE LICENSE.**

Subject to the terms of this Agreement and during the term of this Agreement, Poa hereby grants you a non-exclusive, non-transferable, terminable right to install the Application (if so supplied) and

use the Service on up to five (5) Devices for your own personal use. You acknowledge that the Application, Router, Home Service, Service, Web Site and its related software contain the valuable secrets of Poa 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. Poa 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 Poa 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 Poa. 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 unless permitted under your price plan or expressly permitted by this Agreement; or (3) access the Service simultaneously through the use of multiple Devices unless otherwise permitted under your price plan or expressly permitted by this Agreement.

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

This Agreement shall commence once Poa 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. Poa 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 Poa decides to stop providing the Service; or (4) for Poa'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. Return any Router that is in your possession to Poa. Any termination of the Agreement or your Account may mean the permanent deletion of your Account Information and you agree that Poa 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 Poa'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 Poa authorised retailers, making payment using mobile wallets or other methods made available by Poa from time to time. Once you have purchased a credit voucher you must credit this to your Account using the Web Site. Vouchers acquired using mobile wallets will be automatically credited to your Account. Using credit in your account you may purchase bundles ("**Bundles**"). that will give you access to the Internet for a specific time period ("**Time Bundle**") or for a specific amount of uploaded and downloaded data ("**Data Bundles**"). Details of the currently available Bundles their pricing and any changes to the same will be published via the Web Site. The Bundles available to you if you subscribe to the Home Service may be different than if you do not. When you purchase a 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.

The Service provides a mechanism that will automatically purchase Bundles so long as you have sufficient credit in your Account. Under this mechanism when you add credit to your account, the most expensive Bundle that you can afford with the total credit available in your account will be automatically purchased. By using the Service, you give your permission for bundles to be automatically purchased on your behalf.

Once you purchase a Bundle it will immediately be activated. This will enable you to access the Internet. Once you have used all of the data or time 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 fully use all of the data or time associated with a Bundle within 360 days of purchase you will forfeit the remaining data or time. 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 current amount of credit associated with your account and a history of transactions using the Web Site.

Poa at its sole discretion from time to time may elect to stop selling certain bundles ("**Retired Bundles**"). In such circumstance Poa may at its sole discretion choose to cancel any remaining data or time left from any Retired Bundles you have purchased and to either all or a pro-rata amount of credit used to purchase the Retired Bundles, or issue you with new Bundles of an equivalent or greater value ("**Swap Bundles**"). Poa will notify you of any its intention to Swap Bundles" via SMS with at least 5 days prior Notice. If you do not wish to have your Retired Bundles swapped for new Bundles or credit issuance, but instead wish to have a cash refund, you should contact Poa before the date of the intended swap or credit issuance at [refund@poainternet.net](mailto:refund@poainternet.net) stating your username and the mobile phone number associated with your account.

#### **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 Poa at [help@poa.co.ke](mailto:help@poa.co.ke) 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 Poa 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 Poa acceptable use policy located on the Web Site and incorporated herein by reference ("**Acceptable Use Policy**"). Poa reserves the right to investigate any breach and or suspected breach of the Acceptable Use Policy. Poa 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 Poa privacy policy located on the Web Site and incorporate herein by reference ("**Privacy Policy**"). You accept that certain uses of the data gathered by Poa because of your use of the Service are necessary to enable provision of the Service to you and accordingly, if you withdraw your consent for Poa 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. Poa shall not be responsible for any damages suffered by you and/or any person because of obtaining Internet access. Poa 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 POA 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 POA EMPLOYEES, REPRESENTATIVES, OR AGENTS, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT AS REPRESENTATIONS OR WARRANTIES OF ANY KIND. POA 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. POA 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 POA 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 POA.

LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL POA 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, POA' 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 Poa 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 Poa' acceptable use policy; or (d) material breach of this Agreement.

**AMENDMENTS.**

Poa 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 Poa. 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 Poa. 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 Poa 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)  
POA INTERNET KENYA LTD  
P.O. BOX 42713

GPO 00100 NAIROBI