

## Contract Ts & Cs

### 1. Important Notices

This Agreement contains the Terms and Conditions on which Swazi Mobile Ltd provides telecommunication services and Devices to you our Customer.

- 1.1 This Agreement replaces all prior Terms and Conditions previously agreed between you and Swazi Mobile that relate to the same subject matter as this Agreement.
- 1.2 Offers are valid while stocks last. Swazi Mobile reserves the right to alter or withdraw any deals advertised without notice. Handset will be purchased separately and/or may be bundled with any of the packages. For more details ask in store or visit [www.swazimobile.com](http://www.swazimobile.com) . E & OE (Errors & Omissions excluded). All prices shown include VAT.

### 2. Definitions

- 2.1 In this Agreement, certain words and phrases appearing in Title Case are given particular meanings. These words and phrases and the meanings they are intended to have are recorded below –
  - 2.1.1 "Activation Date" shall mean the date of the activation of the SIM card on the Network;
  - 2.1.2 "Agreement" shall mean these terms and conditions together with all schedules, and documents attached to these terms and conditions, as well as all amendments that may be made to these terms and conditions from time to time in terms of clause 23 below.
  - 2.1.3 "Business day" shall mean any day other than a Saturday, Sunday or official holiday.
  - 2.1.4 "Bill statement" shall mean the itemized amounts charged to you and due for payment for using the services of Swazi Mobile each month.
  - 2.1.5 "Calendar day" shall mean Monday, Tuesday, Wednesday, Thursday, Friday, Saturday and Sunday.
  - 2.1.6 "Call Charge" shall mean the amount of money charged to you for a specified amount of call time or use of Swazi Mobile's data services (such as internet browsing or content downloads) as set out in the Tariff plan from time to time;
  - 2.1.7 "Cellphone Number" shall mean the number allocated to you for the purposes of making use of the Services, also known as the Mobile Station Integrated Services Digital Network Number;
  - 2.1.8 "Customer" shall mean the natural or juristic person entering into this Agreement with Swazi Mobile;
  - 2.1.9 "Devices" means any mobile, transportable or portable cellular mobile terminal, handset, laptop, computer, modem or other Devices which is approved by the Regulatory Authority and which is capable of connection by radio interface to the Network;
  - 2.1.10 "Initial Period" shall mean a period as agreed upon by the parties.
  - 2.1.11 "Network" shall mean the public mobile telecommunications system operated and made available by Swazi Mobile Ltd
  - 2.1.12 "Prepaid Account" shall mean an account held with Swazi Mobile on your behalf which, when credited with a pre-determined value of airtime purchased by you, enables you to use the Services until such airtime is depleted;
  - 2.1.13 "Package" shall mean a group of bundles comprising of voice, sms and data bundles offered on a monthly basis.
  - 2.1.14 "Parties" shall mean Swazi Mobile Limited and a customer.
  - 2.1.15 "Regulatory Authority" shall mean the Swaziland Communications Commission (SCCOM) or any similar authority that is established in the future to perform or take over the functions of SCCOM;
  - 2.1.16 "Renewal Period" means a period as expressly agreed by the parties, which period shall commence on or after the expiry of the Initial Period;
  - 2.1.17 "The services" shall mean:
    - 2.1.17.1 The cellular telecommunications service provided by means of the Network as well as such other additional related services or equipment;
    - 2.1.17.2 Value Added Services defined as non-core services, or in short, all services beyond standard voice calls, the content of which may not have anything to do with Swazi Mobile's mobile network and/or services.
  - 2.1.18 "SIM card" shall mean the Subscriber Identity Module Card allocated to you to enable you to gain access to the Network by using the SIM card in the Devices;
  - 2.1.19 "Subscription Fee" shall mean the monthly fee payable by you in respect of access to the Network by means of the Cellphone Number, as recorded in the consumer application form;
  - 2.1.20 "Swazi Mobile" shall mean Swazi Mobile Ltd with whom you have entered into this Agreement for the provision of the Services;
  - 2.1.21 "Tariff" shall mean the tariff of charges and fees (monetary amounts) payable by you to Swazi Mobile in respect of the Services, as published by Swazi Mobile from time to time.
  - 2.1.22 "Top Up" shall mean the loading of airtime once you have depleted your monthly bundles to continue to use the services offered by Swazi Mobile;
  - 2.1.23 "Upgrade" shall mean the transaction, which will take place during, on or after the expiry of the Initial Period, in terms of which Swazi Mobile may supply you with a new Device(s) for which partial or complete payment may be required and the simultaneous renewal of this Agreement by you for the Renewal Period.

### 3. Provision of the Services

- 3.1 Subject to the terms and conditions set out in this Agreement, Swazi Mobile shall activate the SIM card and maintain the availability of the Services to you throughout the duration of this Agreement.
- 3.2 The service quality and coverage available to you shall be limited to that provided by the Network in accordance with the requirements of the Electronic Communications Act, No. 9 of 2013 or as amended) and any Regulatory Authority requirements. The Services may, from time to time, be adversely affected by physical features such as buildings and underpass, as well as atmospheric conditions and other causes of interference.

### 4. Commencement and termination

- 4.1 This Agreement will start on the Activation Date and, subject to the terms and conditions of this Agreement shall continue for the Initial Period. After the Initial Period this Agreement will automatically continue on a month to month basis, subject to any changes which we would have notified you of unless you or Swazi Mobile terminate it on at least 20 (twenty) business days written notice.
- 4.2 Despite clause 4.1, you may terminate this Agreement during the Initial Period or a Renewal Period by giving Swazi Mobile at least 20 (twenty) business days' notice in writing. If you so choose, you will be liable to pay Swazi Mobile all subscriptions which would have been payable to Swazi Mobile in respect of the remainder of the period of this agreement. You will also have to pay all other outstanding amounts in respect of the Services and/or Devices related to the Services.

### 5. Charges payable by you and your payment obligations

- 5.1 The Subscription Fee shall be due and payable by the subscriber to Swazi Mobile as indicated on the bill statement received from Swazi Mobile, but in any event, by no later than the 3<sup>rd</sup> day of the following of each subsequent month until expiry of the Initial Period and/or Renewal Period.
- 5.2 You will be required to set a credit limit on the maximum value of the total charges you may incur in relation to the Services provided by Swazi Mobile during any one billing period. You may increase the credit limit if your usage patterns change but this will be subject to Swazi Mobile's approval;
- 5.3 In addition to the monthly Subscription Fee(s) and Call Charges levied by Swazi Mobile, you will also pay to Swazi Mobile all other charges relating to any other service, incurred in respect of the Services and/or any Devices or other equipment purchased by you from Swazi Mobile within 14 (fourteen) days of date of Swazi Mobile's bill statement.
- 5.4 Prior to the activation of your Cellphone Number or other services on the Network, Swazi Mobile shall be entitled to require you to pay to it a deposit equivalent to 1 (One) month subscriptions. Such deposit shall be paid by you and shall be retained by Swazi Mobile as security for any other charge that you may become liable to pay to Swazi Mobile and may be appropriated either wholly or in part towards payment of any amount that may be due by you to Swazi Mobile. The deposit or any balance thereof shall be refunded to you after all your obligations hereunder have been fully discharged.
- 5.5 An invoice, setting out the amount due by you to Swazi Mobile shall be taken as proof, in the absence of any evidence to the contrary, of such amounts as well as the due date thereof and Swazi Mobile shall not be required to provide further proof of the indebtedness unless you can show, on the face of it, that the amount set out in the invoice is incorrect.
- 5.6 If so required by Swazi Mobile in its sole discretion you must make payment of all amounts due to Swazi Mobile by means of a direct debit/stop order against your banking account or via EFT. You shall not be entitled to withdraw or revoke the authority of Swazi Mobile to draw against your banking account for the duration of this Agreement without the written consent of Swazi Mobile.
- 5.7 All fees, charges and prices set out in this Agreement and/or any price list from time to time are inclusive of Value-Added Tax which shall be borne and paid for by you unless otherwise stated.

5.8 Terms and conditions specific to your Package Plan may be published on our website on [www.swazimobile.com](http://www.swazimobile.com)

## 6. Migration and Conversion

- 6.1 With the prior written permission of Swazi Mobile which can be withheld at any time, for any reason, you may be entitled to convert to any other package excluding any special discounted Tariffs, offered by Swazi Mobile from time to time provided that –
- 6.1.1 Any charge levied by Swazi Mobile in respect thereof has been paid by you; and
- 6.1.2 All relevant documents required by Swazi Mobile have been signed by you indicating acceptance of any terms and conditions applicable thereto.
- 6.2 If you migrate from a package which includes free bundled minutes to a Package which does not include free bundled minutes, all outstanding minutes shall be automatically forfeited, and you shall have no claim of whatsoever nature against Swazi Mobile in respect thereof, it being your responsibility to ensure that any free bundled minutes are used up prior to migrating to another package.
- 6.3 Any migration to a new package will only be effective on the beginning of a new cycle.
- 6.4 If you migrate to a higher package, you shall be required to top up the difference between the two packages to match your new subscription.
- 6.5 Migration to a lower package will only be permitted after six (6) months from activation date.

## 7. Bundled Usage

- 7.1 You acknowledge and agree that should the Package selected incorporate any bundled minutes, then –
- 7.1.1 All calls made after the bundled minutes have been used up will be charged at the then current out-of-bundle rate as set out in the Tariff.
- 7.1.2 Upon termination of this Agreement for any reason whatsoever, any accumulated Airtime or unused bundled minutes existing at the termination of this Agreement shall be forfeited and you shall have no claim of whatsoever nature against Swazi Mobile in respect thereof, it being your responsibility to ensure that any accumulated Airtime or unused bundled minutes are used up prior to termination should the Customer wish to use such accumulated Airtime or unused bundled minutes; and
- 7.1.3 Calls or connections to Value Added Services are excluded from the bundled minutes and will be charged for separately at the current rate as set out in the Tariff.
- 7.2 You acknowledge and agree that should the Package selected include any bundled data, then:
- 7.2.1 All data used after depletion of the bundled data will be charged at the current out-of-bundle rate as set out in the Tariff plan;
- 7.2.2 No carry-over of unused data may be allowed to the next billing period.
- 7.2.3 If you migrate to any other Package, migration rules will apply, and you may forfeit all of the unused data bundle for that billing period.
- 7.2.4 Upon termination of this Agreement for any reason whatsoever, any unused bundled Data shall be forfeited, and you shall have no claim of any nature against Swazi Mobile in respect thereof.
- 7.3 You acknowledge and agree that should the Package selected incorporate any bundled SMS, then:
- 7.3.1 All SMSs sent after depletion of the SMS bundle will be charged at the current out-of-bundle rate as set out in the Tariff;
- 7.3.2 Upon termination of this Agreement for any reason whatsoever, any unused bundled SMS shall be forfeited, and you shall have no claim of any nature against Swazi Mobile in respect thereof.
- 7.3.3 Unused SMS may not be carried over to the next billing period but will be forfeited after each billing cycle
- 7.3.4 The following SMS categories shall be excluded from all SMS bundles and/or the SMS for life early bird:
- i. International
  - ii. Premium rated
  - iii. Content services
  - iv. VAS services

## 8. Value-Added Services

- 8.1 You acknowledge and agree that should you subscribe to any value-added service(s) provided by Swazi Mobile, the provision of such service(s) will be subject to Swazi Mobile's standard terms and conditions applicable to those services from time to time with which you undertake to make yourself familiar; and
- 8.2 If you subscribe to a Package which includes a subscription to any Value-Added Service(s), then such subscription to those Service(s) may only be terminated prior to the expiry of the Initial Period or the Renewal Period by giving Swazi Mobile at least 20 (twenty) business days' notice in writing. If you do choose to terminate those Value-Added Services during the Initial Period or a Renewal Period, you will be subject to payment of a reasonable premature cancellation charge, determined by Swazi Mobile.

## 9. Risk and Ownership

- 9.1 In the event of Swazi Mobile providing you with Device(s), then: –
- 9.1.1 From the moment you take possession of the Devices, you will be responsible for and liable for all risk in and to the Devices which will include but not be limited to loss, damage, accidental damage, liquid damage, theft, or unauthorised use of the Devices subject to any applicable warranty provided with such Devices or imposed by operation of law; and
- 9.1.2 Swazi Mobile will remain the owner of the Devices for the duration of the Initial Period until the Device(s) is fully paid by you.
- 9.2 All risk in and to the SIM card which will include but not be limited to the loss, damage, accidental damage, liquid damage, theft and unauthorised use etc of the SIM Card shall pass to you upon delivery of the SIM Card.
- 9.3 The provisions of clause 9.1 shall also apply, with the necessary changes, to the Renewal Period where you have chosen an Upgrade.

## 10. Listing of Devices

- 10.1 Should you fail to meet any payment obligations during the Initial Period or the Renewal Period then Swazi Mobile shall be entitled to prevent the further use of your Devices and you indemnify Swazi Mobile in respect of any claim whatsoever arising from Swazi Mobile exercising its right in terms hereof.
- 10.2 In the event of the theft or loss of Devices, you shall be obliged in terms of law to inform Swazi Mobile of such theft or loss for Swazi Mobile to list such Devices on the blacklists as determined by the prevailing policy of Swazi Mobile from time to time. Swazi Mobile shall effect such listing provided that all required information has been supplied by you.
- 10.3 For the purposes of this clause 10.2, "blacklist" shall mean the disablement by electronic or other means, of a Device(s), thereby preventing its further use.
- 10.4 Swazi Mobile shall be entitled to levy a reasonable charge for the listing referred to in clause 10.2 above and/or the removal of a Device(s) from the blacklist.

## 11. Disclosure of Information

- 11.1 You consent that Swazi Mobile may, to the extent permitted by law, receive or disclose your personal information, documents, detailed call records, credit profile information and/or any other credit information from or to –
- 11.1.1 any credit providers, credit bureau or credit reporting agencies;
- 11.1.2 any law enforcement agencies that require the information for the prevention or investigation of criminal activities;
- 11.1.3 any of Swazi Mobile's shareholders, related entities, suppliers, agents, professional advisors or any company partnering with the Swazi Mobile for marketing purposes, subject to your right to restrict receipt of unwanted marketing material or other rights.
- 11.1.4 any of Swazi Mobile's shareholders, related entities, suppliers, agents or professional advisors for reporting, accounting, product supply and service and/or auditing purposes;
- 11.1.5 any company partnering with Swazi Mobile for any purpose connected with the Services or the Network.
- 11.2 Despite any part of this Agreement that may indicate otherwise, Swazi Mobile shall be entitled to utilize your detailed call records for any lawful purpose including but not limited to tracing and/or collection purposes.

## 12. Your Acknowledgement

You acknowledge and agree that –

- 12.1 The service quality and coverage available to you shall be limited to that provided by the Network in accordance with the requirements of the Electronic Communications Act (or as amended) and the Regulatory Authority requirements. The Services may, from time to time, be adversely affected by physical features such as buildings and underpass, as well as atmospheric conditions and other causes of interference; and
- 12.2 To the extent permitted by law, Swazi Mobile shall not be liable for non-availability of the Services.

### 13. Liability

- 13.1 You indemnify and hold Swazi Mobile and any company partnering with Swazi Mobile harmless against any expense, loss, claim, harm or damage brought against, suffered or sustained by Swazi Mobile, which arises directly or indirectly out of a breach of the terms of this Agreement by you or by your use of the Services and/or the Devices, other than in respect of losses caused by the negligence or intentional misconduct of Swazi Mobile or any company partnering with Swazi Mobile or any of their respective employees, directors or agents.
- 13.2 Without affecting the generality of 13.1 above, Swazi Mobile shall not be liable to you for any breach of this Agreement or failure on Swazi Mobile's part to perform any obligations because of technical problems relating to the Network, termination of any licence to operate or use the Network, act of God, government control, restrictions or prohibitions or other government act or omission, whether local or national, industrial disputes or any other cause beyond the control of Swazi Mobile.

### 14. Your Undertakings

You shall –

- 14.1 Comply with all instructions issued by Swazi Mobile which concern your use of the services, the Devices or related matters; and
- 14.2 Not be entitled to commercially exploit the services in any manner whatsoever without Swazi Mobile's prior written consent, including without limitation, the provision of telephony services to third parties; and
- 14.3 Provide Swazi Mobile with all such necessary information as Swazi Mobile may, in its sole discretion, reasonably and lawfully require;
- 14.4 Always engage with Swazi Mobile, other members of companies partnering with Swazi Mobile and their respective staff and agents in a courteous, cordial and respectful manner.

### 15. Suspension/Disconnection

- 15.1 Swazi Mobile may from time to time, by giving you notice in advance where reasonably practicable and dependent on the circumstances, suspend the Services or disconnect your Cellphone Number from the Network for a period to be determined by Swazi Mobile, in any one of the following circumstances –
- 15.1.1 During any technical failure, modification or maintenance of the Network; or
- 15.1.2 If you fail to comply with any of the terms and conditions of this Agreement; or
- 15.1.3 If so directed by the Regulatory Authority; or
- 15.1.4 In any other instance specifically provided for in this Agreement, and in such event, the provisions of clause 13 and where applicable will apply with the necessary changes.
- 15.2 Having regard to the circumstances at the time of suspension, disconnection or reconnection Swazi Mobile shall be entitled to levy a reasonable fee in respect of such suspension, disconnection and/or any reconnection.
- 15.3 Where this Agreement is terminated at your instance in accordance with clause 4.1 or 4.2 above Swazi Mobile shall be entitled to disconnect your Cellphone Number at any time on the relevant date of termination and at which time the provisions of clause 16.6 shall apply, with the necessary changes, and you shall have no claim of whatsoever nature against Swazi Mobile as a result of Swazi Mobile exercising its right under this clause.

### 16. Termination

- 16.1 If you do not comply with your obligations under this Agreement and you do not correct your failure to comply after receiving a notice from Swazi Mobile requesting you to comply within the stipulated period, then Swazi Mobile may immediately terminate this Agreement.
- 16.2 If this Agreement is terminated by Swazi Mobile because you have failed to remedy a material failure to comply with or a breach of the Agreement as contemplated in clause 16.1, you shall pay to Swazi Mobile all outstanding charges for access to the Network.
- 16.3 You shall repay to Swazi Mobile on demand all costs which Swazi Mobile incurs because of your failure to comply with the Terms and Conditions of this Agreement or any termination hereof, which may include but not limited to –
- 16.3.1 costs in connection with tracing you and/or the Devices;
- 16.3.2 all legal costs on the attorney client scale;
- 16.3.3 collection commission that may legally be recovered from you by Swazi Mobile's attorneys or collection agents on amounts collected;
- 16.3.4 the costs incurred in obtaining possession of the Devices as well as the cost relating to the valuation, removal, transport, repair, maintenance and storage thereof; alternatively; and the replacement cost of the Devices.
- 16.4 To the extent that it is appropriate, the provisions of clause 16.3.2 above apply reciprocally to you, read with the necessary changes.
- 16.5 It shall be in the sole discretion of Swazi Mobile as to whether it elects to levy the replacement cost of the Device (s) or the charges referred to in clause 16.3.4 above.
- 16.6 After necessary efforts to recover have been made, Swazi Mobile shall submit your particulars to ITC for blacklisting.

### 17. Communication

You hereby consent to the dispatch or transmission by Swazi Mobile of all and any necessary communications in terms of the Electronic Communications Act No 9/2013. You are entitled to inform Swazi Mobile if you do not wish to receive any communications for purposes of direct marketing and in this instance, Swazi Mobile will desist from circulating any further such material to you.

### 18. Credit Limit

- 18.1 You may be subject to a monthly approved credit limit for your contract duration period.
- 18.2 Changing the credit limit may be possible after three (3) months depending on assessment of your overall credit profile by Swazi Mobile.
- 18.3 The credit limit is prescribed by you and approved by Swazi Mobile; and is set on the usage of your cellphone e.g. calls, data and SMS only.
- 18.4 You will receive threshold SMS notifications once your usage has reached the 80% & 100% mark.
- 18.5 Once your usage limit has been reached, you will not be able to make calls, send SMSs or use data until the start of the new bill cycle or until you top-up. You will however still be able to receive calls and SMSs during this time and make calls to any Emergency Services and Swazi Mobile Customer Care line.
- 18.6 The usage limit is not a guaranteed service and you will remain liable for all charges incurred, whether more than the limit set or not.

### 19. Device Warranty

- 19.1. The warranty from date of purchase lies with the relevant manufacturer for the duration of the implied warranty period, depending on manufacturer and is subject to the manufacturer terms and conditions.
- 19.2. Kindly refer to you Manufacturer User Guide for additional information. It is advisable to keep this guide in a safe place.

### 20. Additional information

- 20.1 Please ensure that your cell phone is insured for the full replacement value with any insurance broker of your choice. Swazi Mobile does not provide insurance cover of any nature.
- 20.2 If you have signed up on an 18-month contract you will be eligible for an upgrade on the 16th month of the 18-month contract.
- 20.3. Only one upgrade in an 18-month period is permitted. Any additional upgrades during that period will be charged at the full retail price.
- 20.4. Swazi Mobile reserves the right to change or adjust offerings on the package as and when it deems fit and shall provide before implementation of such changes or adjustment

### 21. OBF terms and conditions:

- 21.1 An "Out-Of-Box Failure" (OBF) is defined as a new handset / data card / modem that is found to be technically faulty within 7 (seven) days of purchase.
- 21.2. The OBF requirements are defined by the applicable manufacturers. Swazi Mobile will operate in accordance with such requirements and specifications for devices originally purchased through the Swazi Mobile (Pty) Ltd warehouse.
- 21.3. Please Note: Terminology used to refer to OBF's may vary from manufacturer to manufacturer (e.g DAP - Defective After Purchase).
- 21.4. Should a device not meet the OBF criteria and is in the range of devices that Swazi Mobile Repairs are authorised to repair, the standard repair process will apply in terms of resolving the reported fault.

- 21.5. Items must be returned within 7 (seven) calendar days from date of purchase on official invoice (proof of purchase).
- 21.6. Original invoice (proof of purchase) as received at point of sale must be supplied.
- 21.7. All handsets must be assessed by a Swazi Mobile Repairs Technician for any faults reported by the client before being exchanged. This assessment may take up to 2 business calendar days.
- 21.8. Devices that meet the OBF criteria but are faulty due to software issues (incorrect version of software) and that can be resolved by way of a software upgrade are not considered OBF at this stage in the OBF resolution process.
- 21.8.1. A software upgrade will be performed free of charge in an attempt to resolve the fault.
- 21.8.2. Should this software upgrade fail to resolve the fault and the device renders faulty within 7 days of the software upgrade and/or still within a 14-calendar day period from date of purchase/delivery, the device will be approved as an OBF.
- 21.9. All data cards must be assessed by a Swazi Mobile Data Specialist / Swazi Mobile Repair Technician to confirm fault/s (report may be requested) before an exchange can be made.
- 21.10. Items that qualify as OBF will only be swapped for the same make and model.
- 21.11. The original contents of the "box", (handset, original battery, original charger, original antenna, manual and any other accessories) must be complete and packaging intact / in good condition.
- 21.12. The IMEI number on the box must match the IMEI number on the device.

## **22. Assignment**

You shall not transfer (whether it be by cession, assignment, encumbering or delegating) any of your rights or obligations in terms of this Agreement to any third party without the prior written consent of Swazi Mobile.

## **23. Variation**

Save as otherwise expressly provided, no addition to, variation, consensual cancellation or novation (meaning the act of either replacing an obligation to perform with a new obligation or replacing a party to an agreement with a new party) of this agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by or on behalf of the duly authorised representatives of both parties.

## **24. Whole Agreement**

This Agreement constitutes the whole agreement between the parties and no representations or warranties other than those set out herein shall be binding on the parties, save for any amendment effected in terms of clause 23 above.

## **25. Address for Delivery of Notices**

- 25.1 You choose as the address at which you wish to receive any correspondence or notices of a legal nature relating to this Agreement and the rendering of the Services the address set out in the application or order form to which these terms and conditions relate or such other address of which you may notify Swazi Mobile in writing provided such address is not a post office box or other postal address.
- 25.2 All notices given in terms of this Agreement shall be in writing.

## **26. Severability**

In the event of any one or more of these terms and conditions being unenforceable, such terms and conditions will be deemed to be removed from the remainder of this Agreement and the Agreement will remain binding and enforceable.

## **27. Dispute Resolution**

All disputes between the parties as to the validity, execution, performance, interpretation or termination of this Contract will be submitted to the jurisdiction of the Magistrate Courts of Swaziland.