



## **PEAK MOBILE - TERMS AND CONDITIONS**

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## 1. INTRODUCTION

- 1.1 The Peak Mobile Application is operated and owned by Peak Mobile Solutions Limited registration number PVT-9XUG8MXZ, a company duly registered in Nairobi, Kenya, having its principal address at Lotus Plaza, 1<sup>st</sup> Floor Chiromo Lane.
- 1.2 These Terms and Conditions form an agreement between the **End User** and Peak Mobile Limited.
- 1.3 Your downloading, installation, registration and/or use of the Peak Mobile Application/App will constitute your consent to be bound by the terms as set out herein.
- 1.4 These Terms and Conditions ("Terms") govern your use of our web-based Application and services, including Network Operator Services, Mobile Data Services, and Bulk SMS Services (collectively, the "Services"). By accessing or using our Services, you agree to comply with and be bound by these Terms.

## 2. DEFINITIONS AND INTERPRETATION

In these Terms and Conditions unless the context otherwise requires the following expressions shall have the following meanings:

<b>Access code</b>	Means any of the secret numbers, codes and or combinations used by the End User to access the Application App, including personal identification number (PIN) and or one-time PIN (OTP), card numbers, passwords, usernames and or application App digital identity code.
<b>App/Application</b>	Means the Peak Mobile Application through which the End User can access Peak Mobile services and products.
<b>Device</b>	Means the device the End User uses to access the App such as a laptop, desktop, smartphone and/or tablet or any similar technology.
<b>Disclosing Party</b>	Refers to the Party disclosing confidential information to the other party pursuant to these Terms.
<b>End User</b>	A person who acquires authorization for his/her/its own use and not for the purpose of further sale, also referred to as the customer interchangeably.
<b>Intellectual Property</b>	Means and without limitation, all inventions, specifications patents and designs, trademarks, service marks, trade names and

	all goodwill associated with the foregoing; copyright and copyrightable works, including, but not limited to, all copyright in any logos, devices, designs, multimedia works and computer software programs (in both source and object code form, and including any programmers' or developers' notes, flowcharts, memoranda and design documents); rights protecting goodwill and reputation, proprietary material, know-how, ideas, concepts, trade secrets, methods techniques, graphics, schematics, marketing, sales and user data; domain names and URLs; databases and rights in databases, confidential information and all other intellectual property rights and rights of similar character whether registered or capable of registration, rights in the nature of any of the above items whether registered or unregistered in any country or jurisdiction and all applications and rights to apply for protection of any of the same.
<b>Intellectual Property Rights</b>	All rights in and to Intellectual Property.
<b>ISP</b>	Means Internet Service Provider, which is an organization that provides access to the Internet.
<b>Party and Parties</b>	Refers to either Party or both Parties to these Terms
<b>Personal Information</b>	Means information about an identifiable, natural or juristic person, including but not limited to, information about race, gender, marital status, nationality, ethnic or social origin, sexual orientation, age, physical or mental health, religion, belief, disability, language, birth, education, identity number, telephone number, email, postal or street address, location through your Device's GPS, biometric information and financial, criminal or employment history as well as correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence sent that would reveal the contents of the original correspondence.
<b>Process</b>	Means any operation or activity, whether automated or not, concerning Personal Information, including: collection; receipt; recording; organization; collation; storage updating or modification; retrieval; alteration; consultation; use; dissemination by means of transmission, distribution or making available in any other form; merging, linking as well as blocking,

	degradation, erasure or destruction of information. Processing will have a similar meaning.
<b>Profile</b>	Means the digital identity the End User create when they register for the Application/ App. The End User will get a digital identity code for their secure login process, for us to identify you. You may not have more than one account linked to a Profile.
<b>Receiving Party</b>	Refers to the party receiving confidential information from the other party.
<b>Terms</b>	Means the terms and conditions for the Peak Mobile Application/ App as set out in this document
<b>Transactions</b>	The different transactions or activities performed by you using the functionalities of the Peak Mobile Application/ App which includes vending and distribution of products, order and purchase of products from us
<b>URL</b>	Uniform Resource Locator
<b>We, us, our</b>	Peak Mobile (Pty) Limited (Registration number: PVT-9XUG8MXZ) and its successors or assigns, including the Group.
<b>You or your:</b>	The person who is registered for use of the Application/ App

### 3. SERVICES

- 3.1 Network Operator Services: Connectivity solutions and network management.
- 3.2 Mobile Data Services: Provision of mobile data plans and data management.
- 3.3 Bulk SMS Services: Sending bulk SMS messages for marketing, notifications, and other purposes.

### 4. INTERPRETATION

- 4.1 Reference to:
  - 4.1.1 One gender includes all genders;
  - 4.1.2 the singular form of the word includes the plural and vice versa;
  - 4.1.3 natural persons include juristic persons and vice versa;
  - 4.1.4 a person shall include a reference to a person's authorized representative, employees, agents or contractors;
  - 4.1.5 a law or regulation is a reference to that law or regulation as amended from time to time;
- 4.2 Where a number of days is prescribed, the same shall, unless otherwise specifically stated, be reckoned as excluding the first and including the last.,

unless the last day is not a Business Day, in which case the last day shall be deemed to fall on the very next Business Day.

## **5. REGISTRATION**

- 5.1 You will be required to register for the App application by providing the required Personal/organizational Information by following the required data fields accessed via a URL provided and the prompts displayed after you have downloaded the App or accessed via URLs onto your Device.
- 5.2 Where Peak Mobile registers you on your behalf, you will be required to provide the required registration information in digital format preferably email, and you will be required to change the credentials on access
- 5.3 We will verify, record and store your identity and Personal Information as may be required by our application and legislation.
- 5.4 Upon registration, you will/may be required to update your profile with accurate, current, and complete information.
- 5.5 You must create a Profile for the secure use of the App.
- 5.6 Keep your login credentials confidential and secure.
- 5.7 You are required to notify us immediately of any unauthorized use of your account via our support channels.

## **6. ACCEPTANCE OF TERMS**

- 6.1 By registering you agree and accept to be bound by these Terms.
- 6.2 By agreeing to accept these Terms, you declare that you are legally competent to accept and agree to these Terms.

## **7. USE**

- 7.1 You agree to use our Services only for lawful purposes and in accordance with these Terms. You shall not:
  - 7.1.1 Use our Services in any manner that could damage, disable, overburden, or impair our servers or networks.
  - 7.1.2 Attempt to gain unauthorized access to any part of our Services, other accounts, computer systems, or networks.
  - 7.1.3 Use any automated means to access our Services.
  - 7.1.4 Use our Services to send spam, unsolicited messages, or other unauthorized communications.
  - 7.1.5 Engage in any conduct that could harm our reputation or interfere with the operation of our Services
- 7.2 You should only use the latest version of the App. If using on mobile, the App Store will notify you of any upgrades/ updates that are available to

you. If you do not install the latest version, the App may not function correctly and you may experience security and /or data breach and flaws, for which we will not be liable under any circumstances.

7.3 You should use the application only on a device for which it is intended, and as per the recommended system specifications. as allowed by the usage rules set out in your Mobile App Store's terms of service.

7.4 The operation of the application requires your device to have a cellular network or a WIFI connection:

7.4.1 You are responsible for any and all network connection Wi-Fi, data network connection costs and or charges levied by your cellular network provider or operator in connection with the use of our application.

7.4.2 We cannot guarantee reception of cell phone network/s in the area where you may be situated at any given time.

7.4.3 You acknowledge and accept that information transmitted through network/s connections through cell phone network is susceptible to interception, unlawful access, distortion, and monitoring and you therefore use the application entirely at your own risk.

7.4.4 If the cell phone network connection for your device is not working, you will be unable to perform any transactions and or activities on the application. We will not be liable for any loss or damage occasioned by this failure.

7.5 You are not authorized to allow anyone else to utilize the application on your access code. We will assume that any transaction using your access code and/ or profile is authorized by you.

7.6 You must log out of the application when you have finished using it to prevent anyone else from using it.

## **8. FEES AND COMMISSIONS AND DISCOUNTS**

8.1 Certain Services may be subject to fees. All fees are non-refundable unless otherwise specified. You agree to pay all applicable fees associated with your use of the Services in a timely manner.

8.2 We reserve the right to change our fees at any time, and we will notify you of any such changes in advance.

## **9. RISK AND OWNERSHIP**

9.1 All risk shall pass to you upon successful account creation.

## **10. INDEMNITY**

- 10.1 You hereby indemnify us from and against all losses, damages, claims, legal proceedings and otherwise, howsoever arising from, or in connection with the non-fulfilment of any of your obligations under these Terms or arising out of your infringement of any applicable laws and/ or regulations, including but not limited to prevailing legislation.
- 10.2 We will not in any circumstances be liable for any consequential or indirect loss however these may arise or for any other unusual losses. In particular we will not be liable for any financial loss, loss of business, profit, savings, revenue or goodwill suffered or sustained by you howsoever arising.
- 10.3 We will not be liable for any claims, loss or damage resulting from claims that products or services are defective where we act as an agent for the supplier thereof.
- 10.4 You indemnify us for any loss suffered, whether direct or consequential, or claims instituted against us by virtue of your use of the application.
- 10.5 You agree to indemnify and hold Peak Mobile Solutions, its affiliates, officers, agents, and employees harmless from any claim, demand, damages, or expenses, including reasonable attorneys' fees, arising out of or related to your use of the Services, your violation of these Terms, or your violation of any rights of another.
- 10.6 Nothing in this Agreement shall limit or exclude your liability under or in connection with this Agreement (i) for fraud or fraudulent misrepresentation or (ii) for any liability which may not be excluded or limited as a matter of law.

## **11. CONFIDENTIALITY**

- 11.1 All information identified by us as confidential or which you should reasonably identify as confidential, including business, commercial (discounts and/or other), end-user, scientific or technical information, as well as any price list whether current or not, received by or made available to you pursuant to your relationship with us shall be regarded by you as confidential and shall be treated accordingly, and not be disclosed to third parties, or used for any purpose other than that for which it was disclosed, without our prior written consent.
- 11.2 The provisions of this clause shall survive the termination of this Agreement.



- 11.3 You shall not, unless compelled to do so by any court of competent jurisdiction, disclose to any third party any Confidential Information from us.
- 11.4 You shall treat as confidential all information relating to us, our products and services and shall take all steps necessary to prevent such information from being disclosed to any unauthorized person or made public by any of their respective directors, officers, employees, or agents whether or not bound by the provisions of this Agreement.
- 11.5 The provisions of this Clause shall not apply to any of the Confidential Information which:
- 11.5.1 is or becomes generally available to the public other than as a result of any act or omission of the Receiving Party.
  - 11.5.2 after the Commencement Date comes into the possession of the Receiving Party and is received from a person lawfully in possession of the information and owing no obligation of confidentiality to the Disclosing Party in respect of the information.
  - 11.5.3 is disclosed with the prior written consent of the Disclosing Party; or
  - 11.5.4 is required to be disclosed by the Receiving Party by any court or legal or governmental or administrative authority competent to require disclosure.
- 11.6 The confidentiality obligations contained in this clause shall survive the termination of this Agreement and the Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

## **12. TERMINATION AND SUSPENSION**

- 12.1 We reserve the right are entitled to cancel, terminate or suspend your use of the Application immediately in respect of all transactions or selected types of transactions, or any combination of these actions, as may be permissible in law, without prejudice to any of our other rights (that is, without barring or limiting any future action), if:
- 12.1.1 We have reason to believe that the Application is or is likely to be misused;
  - 12.1.2 We suspect illegal use of the Application or its functionalities;
  - 12.1.3 You supply us with false or incorrect information;
  - 12.1.4 You commit a breach of these Terms;

12.1.5 It is in furtherance of protecting our interests.

12.1.6 without attracting liability.

12.1.7 Upon termination, your right to use the Services will immediately cease

### **13. RIGHTS TO SUSPENSION OF SERVICE**

13.1 We reserve the right to suspend your access to any or all of our Services at our sole discretion, without notice and without liability to you, if we determine or have reasonable grounds to believe that:

13.1.1 Violation of Terms: You have violated any provision of these Terms or any applicable law or regulation.

13.1.2 Security Risk: Your account or use of the Services poses a security risk to us or any third party.

13.1.3 Fraudulent Activity: Your account or use of the Services is suspected of fraudulent or illegal activities.

13.1.4 Non-Payment: You have failed to pay any fees owed for the Services by the due date.

13.1.5 Interference with Services: Your use of the Services may interfere with the normal operation of our Services or networks, or the use and enjoyment of the Services by other users.

13.1.6 Compliance with Law: Suspension is necessary to comply with any applicable law or regulation, or to respond to lawful requests from governmental authorities.

13.2 Reinstatement: If your account has been suspended, you may contact us to request reinstatement. We may, at our sole discretion, reinstate your account subject to any conditions we deem appropriate.

13.3 Effect of Suspension: During the suspension period, you will not have access to the Services. Suspension does not relieve you of your obligation to pay any outstanding fees or charges during the suspension period.

13.4 Termination: If the issues leading to the suspension are not resolved to our satisfaction, we may terminate your account as outlined in the "Termination" section of these Terms.

13.5 By agreeing to these Terms, you acknowledge and accept our right to suspend your access to the Services under the conditions described above.

## **14. BREACH**

- 14.1 Should you breach these Terms and remain in breach despite receiving notice from us to rectify the same within 7 (Seven) days, we may cancel these Terms forthwith.
- 14.2 Any breach of these Terms, in addition to our normal common law remedies, shall entitle us to take legal action without prior notice to you and you agree to reimburse the costs associated with such legal action on an attorney and own client scale.

## **15. INTELLECTUAL PROPERTY**

- 15.1 Subject to any Intellectual Property Rights held by Merchants or any other third parties, we keep all Intellectual Property and the Rights in and to the Application, all content (including, but not limited to, all proprietary information, trademarks and copyright in any logos and other devices or storage media) in or sent to, through and from the Application save where otherwise indicated in writing by us.
- 15.2 We grant you a non-assignable, non-sub-licensable, non-transferable, non-exclusive license to use the Application, which may include updates or upgrades, only for the purposes outlined in these Terms and for no other purposes. You will be asked to accept any additional terms through the Application when they apply to you.
- 15.3 The License granted to you will commence when you are registered, and will continue when you install the App until it is terminated in line with these Terms, which will result in a cancellation of your access to the Application.
- 15.4 On termination of the license granted in these Terms, for any reason, you must immediately stop all use of the Application.
- 15.5 Certain content available on the Application may include content that belongs to third parties. We may provide links to third party websites, such as the Merchants, as a convenience to you. You agree that we are not liable for any of the following:
  - 15.5.1 the content or accuracy of any such content that belongs to third-parties, featured on the Application;
  - 15.5.2 Any content featured on the third-party websites that are accessed through the links found on the Application.
- 15.6 You may not copy, republish, distribute, adapt, modify, alter de-compile, reverse engineer or attempt to derive the source code of or create a derivative of works or, otherwise attempt to reproduce the Application, its

contents, including any Intellectual Property therein, its design, any updates to the Application and or proprietary features in relation to it, or any parts of it. This prohibition extends to any and all content belonging to third-parties that is found on the Application and or any content featured on the third-party websites which are accessed through the links that are found on the Application.

- 15.7 You indemnify us against all actions, claims, costs, demands, expenses and other liabilities suffered or incurred by us as a result of any third-party claims initiated and or instituted against us relating to your unauthorized use of the Application, the content thereon and or any other Intellectual Property and Intellectual Property Rights flowing from the foregoing.

## **16. DATA PROTECTION**

- 16.1 We may, and you expressly consent to, the collecting and Processing of your Personal Information by us to open, administer and operate your Profile and Account; provide any combination of services or analysis linked to the Application; monitor and analyze the conduct on your Profile and Account for fraud, compliance and other risk-related purposes; carry out statistical and other analyses to identify potential markets and trends; and develop new products and services.
- 16.2 You acknowledge that: we will at all times remain responsible for determining the purpose of and means for Processing your Personal Information; we are required by various laws to collect some of your Personal Information, without which we may be unable to offer the Application services to you; and you are giving us your Personal Information voluntarily.

## **17. DISCLAIMER**

- 17.1 We are not responsible for any loss or damage where:
- 17.1.1 Someone finds out your access code;
  - 17.1.2 Any technical or other problem (interruption, malfunction, downtime or other failure) that affects the Application, a third-party system or any part of any database for any reason;
  - 17.1.3 Any Personal Information or other data is directly or indirectly lost or damaged because of technical problems, power failures, unlawful acts (such as data theft), any harmful computer program or virus, or your own negligence;

17.1.4 Any failure or problem affects goods or services provided by any other party for example any telecommunication service provider, ISP, electricity supplier, local or other authority; or

17.1.5 Any event that we have no control over.

## **18. PRIVACY POLICY**

18.1 Your use of our Services is also governed by our Privacy Policy, which can be found at [Privacy Policy URL]. Please review our Privacy Policy to understand how we collect, use, and process your information.

## **19. CHANGES**

19.1 We are entitled to change the type of transactions that can be performed with the Application, amend any feature or benefit as well as the fees, discounts, commissions and costs relating to the transactions from time to time by giving you reasonable prior notice thereof.

19.2 We are further entitled to change these Terms from time to time.

19.3 Your continued use of the Application, in the event of a change to these Terms, will constitute your acceptance of and agreement to such change.

## **20. LIMITATION OF LIABILITY**

20.1 To the maximum extent permitted by law, Peak Mobile Solutions shall not be liable for any indirect, incidental, special, consequential, or punitive damages, or any loss of profits or revenues, whether incurred directly or indirectly, or any loss of data, use, goodwill, or other intangible losses, resulting from:

20.1.1 Your use of or inability to use our Services.

20.1.2 Any unauthorized access to or use of our servers and/or any personal information stored therein.

20.1.3 Any interruption or cessation of transmission to or from our Services.

20.1.4 Any bugs, viruses, trojan horses, or the like that may be transmitted to or through our Services by any third party.

## **21. GENERAL**

21.1 The invalidity, illegality, or unenforceability of any of the clauses in these Terms will not affect the validity, legality, and enforceability of the remaining clauses of these Terms.

21.2 We may terminate your access to the Application any time, without notice. In termination of your registration to the Application, all rights granted to you in respect of the Application will cease immediately.

- 21.3 If your Account is stopped or cancelled for any reason, we may suspend your access to the Application, until you have a new Account registered on the Application.
- 21.4 No indulgence, leniency or extension of time which we may grant or show to you shall in any way prejudice us or preclude us from exercising any of our rights in the future.
- 21.5 We shall not be bound by any representation, express or implied term warranty, promise or the like not recorded herein.
- 21.6 This is the entire agreement between the parties, in respect of the subject matter contained herein and no variation amendment or cancellation hereof shall be valid or of force unless reduced to writing and signed by both parties.

## **22. FORCE MAJEURE**

- 22.1 Neither Party shall be held liable for any failure or delay in the performance of its obligations under this Agreement if such failure or delay is caused by a force majeure event, including but not limited to, Cyber-attack, natural disasters, acts of God, war, terrorism, civil unrest, government actions, labour disputes, or any other event beyond the reasonable control of the affected Party ("Force Majeure Event").
- 22.2 Notice and Mitigation: In the event of a Force Majeure Event, the affected Party shall promptly notify the other Party in writing of the occurrence and expected duration of the Force Majeure Event. The affected Party shall use reasonable efforts to mitigate the effects of the Force Majeure Event and resume the performance of its obligations under this Contract.

## **23. GOVERNING LAW**

- 23.1 These Terms shall be governed by and construed in accordance with the laws of Kenya, without regard to its conflict of law principles. Any disputes arising out of or in connection with these Terms shall be resolved in the courts of Kenya.

## **24. CONTACT US**

- 24.1 If you have any questions about these Terms, please contact us at "[chat@peakmobile.co.ke](mailto:chat@peakmobile.co.ke)" or through our online support page.