

## TERMS OF USE – Bulk SMS Service

**Onfon Media Limited** (hereinafter referred as, “We,” “Us,” “Our”) is offering an online self-service SMS messaging platform (the “Service” or “Program”), which you agree to use and participate in subject to these Online SMS Service Messaging Terms and Conditions and Data Privacy Statement (the “Agreement”). By opting in to or participating in any of our Services, you accept and agree to these terms and conditions, including, without limitation, your agreement to resolve any disputes with us through binding, individual-only arbitration, as detailed in the “Dispute Resolution” section below and binding Laws of Kenya. This Agreement is limited to the Services and is not intended to modify other Terms and Conditions or Privacy Policy that may govern the relationship between you and us in other contexts.

**User Opt In:** The Service allows Users to purchase SMSs directly from our Portal by affirmatively opting into the Service, such as through online or application-based enrolment forms. Regardless of the opt-in method you utilized to join our Services, you agree that this Agreement applies to your participation in the Program. By participating in the Program, you agree to **automatically purchase** at the comfort of your phone number associated with your opt-in, and you understand that consent is not required to make any purchase from us therefore. While you consent to receive/purchase the SMSs sent using our auto dialer, the foregoing shall not be interpreted to suggest or imply that any or all of our mobile messages are sent using an automatic telephone dialing system (“ATDS” or “auto dialer”). **Message and data rates may apply.**

**User Opt Out:** If you do not wish to continue purchasing our online SMSs or no longer agree to this Agreement, you agree to reply STOP, END, CANCEL, UNSUBSCRIBE, or QUIT to any SMSs from Us in order to opt out of the Service. You may receive an additional mobile message confirming your decision to opt out.

You understand and agree that the foregoing options are the only reasonable methods of opting out. You also understand and agree that any other method of opting out, including, but not limited to, texting words other than those set forth above or verbally requesting one of our employees to remove you from our list, is not a reasonable means of opting out.

**SMSs content Language:** The SMS content language shall at all times be in the preferred Language as selected by you during opting in to our services and shall be either **English** or **Kiswahili** depending on your choice of language on the Platform when opting in. You shall be required to make changes on your personal details when you want to change the language from English to Kiswahili or from Kiswahili to English.

We are at liberty to include additional languages upon confirmation and the same procedure to update your preferred language shall apply at all times.

**Duty to Notify and Indemnify:** If at any time you intend to stop using the mobile telephone number that has been used to subscribe to our Services, including canceling your service plan or transferring the phone number to another party, you agree that you will complete the User Opt Out process set forth above prior to ending your use of the mobile telephone number.

You understand and agree that your agreement to do so is a material part of these terms and conditions. You further agree that, **if you discontinue the use of your mobile telephone number without notifying Us of such change, you agree that you will be responsible for all costs (including attorneys' fees) and liabilities incurred by us, or any party that assists in the delivery of the mobile messages, as a result of claims brought by individual(s) who are later assigned that mobile telephone number.** This duty and agreement shall survive any cancellation or termination of your agreement to purchase our Services.

**YOU AGREE THAT YOU SHALL INDEMNIFY, DEFEND, AND HOLD US HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM YOUR FAILURE TO NOTIFY US OF A CHANGE IN THE INFORMATION YOU HAVE PROVIDED,**

**Service Description:** Without limiting the scope of our Services, users that opt into the Program can expect to receive messages all areas of interests and topics of their choice according to their selected options.

**Cost and Frequency:** Message and data rates may apply. The Program involves recurring SMS messages, and additional mobile messages may be sent periodically based on your interaction with Us.

**Support Instructions:** For support regarding the Services, text "HELP" to the number you received messages from or email us at provided support email. Please note that the use of this email address is not an acceptable method of opting out of the program. Opt outs must be submitted in accordance with the procedures set forth above.

**Our Disclaimer of Warranty:** This Program is offered on an "as-is" basis and may not be available in all areas at all times and may not continue to work in the event of software, coverage or other changes made by your wireless carrier. We will not be liable for any delays or failures in the receipt of any SMS connected with this Program. Delivery of SMS is subject to effective transmission from your wireless service provider/network operator and is outside of Our control.

**Participant Requirements:** You must have INTERNET connection or any wireless device of your own, capable of two-way messaging, be using a participating wireless carrier, and be a wireless service subscriber with text messaging service. Check your device's capabilities for specific SMS instructions.

**Age Restriction:** You may not use or engage with the Platform if you are under eighteen (18) years of age. If you use or engage with the Platform and you are below the eighteen (18) years of age, you must have your parent's or legal guardian's permission to do so or you are of adult age in your jurisdiction. By using or engaging with the Platform, you also acknowledge and agree that you are permitted by your jurisdiction's Applicable Law to use and/or engage with the Platform.

**Prohibited Content:** You acknowledge and agree to not send any prohibited content over the Platform. Prohibited content includes:

- a. Any fraudulent, libelous, defamatory, scandalous, threatening, harassing, or stalking activity;
- b. Misuse of Service to propagate crime or any other prohibited activities, including profanity, obscenity, violence, bigotry, hatred, and discrimination on the basis of race, sex, gender, religion, nationality, disability, sexual orientation, or age;
- c. Pirated computer programs, viruses, worms, Trojan horses, or other harmful code;
- d. Any product, service, or promotion that is unlawful where such product, service, or promotion thereof is received;
- e. Any unsolicited messaging including misinformation or Disinformation on the platform;
- f. Any other content that is prohibited by Applicable Law in the jurisdiction from which the message is sent and the Laws of Kenya.

**Dispute Resolution:** In the event that there is a dispute, claim, or controversy between you and Us or any other third-party service provider acting on Our behalf to transmit the SMS within the scope of the Program, arising out of or relating the state statutory claims or common law claims, this Agreement, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, such dispute, claim, or controversy will be, to the fullest extent permitted by law, determined by arbitration in **Nairobi, Kenya** before one arbitrator, any other Alternative to Dispute Resolution Methods as governed by the laws of Kenya.

The parties agree to submit the dispute to binding arbitration in accordance with the Laws of Kenya. Except as otherwise provided herein, the arbitrator shall apply the substantive laws of the principle place where the business is located, without regard to any other laws. Within 30 (thirty) calendar days after the arbitration demand is served upon a party, the parties must jointly select an arbitrator with at least five years' experience in that capacity and who has knowledge of and experience with the subject matter of the dispute. If the parties do not agree on an arbitrator within thirty (30)

calendar days, a party may petition for the appointment of an arbitrator by the Court, who must satisfy the same experience requirement.

The parties agree that the arbitrator shall have the authority to award Advocates' fees only to the extent expressly authorized by statute or contract. The arbitrator shall have no authority to award punitive damages and each party hereby waives any right to seek or recover punitive damages with respect to any dispute resolved by arbitration. The parties agree to arbitrate solely on an individual basis, and this agreement does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of both parties, unless to protect or pursue a legal right. If any term or provision of this Section is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Section or invalidate or render unenforceable such term or provision in any other jurisdiction. If for any reason a dispute proceeds in court rather than in arbitration, the parties hereby waive any right to a Court trial. This arbitration provision shall survive any cancellation or termination of your agreement to purchase any of our Services.

**Miscellaneous:** You warrant and represent to Us that you have all necessary rights, power, and authority to agree to these Terms of Use and perform your obligations hereunder, and nothing contained in this Agreement or in the performance of such obligations will place you in breach of any other contract or obligation. The failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of this Terms and Conditions is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Terms will otherwise remain in full force and effect and enforceable. Any new features, changes, updates or improvements of the Program shall be subject to this Terms/Agreement unless explicitly stated otherwise in writing. **We reserve the right to change this Terms of Use and Data Privacy Statement from time to time.** Any updates to this Terms shall be communicated to you. You acknowledge your responsibility to review this Terms and Conditions from time to time and to be aware of any such changes. By continuing to purchase our SMS service after any such changes, you accept this Terms, as modified.

## **DATA PRIVACY STATEMENT**

### **1.0 Introduction**

Our Customer's privacy is paramount to that effect when you opt in and out of our SMS services and at all times. This privacy statement expounds on our Customer's personal information that you provide to us when you subscribe to our Services and when you update the same. We later collect this personal information and use them in allowing you Access our online SMS self-service platform in order to purchase the available SMSs depending on your personal interests and theme.

This privacy statement must be read at all times together with the Terms of Use of our Online SMS services and with full regard to any conflict that may arise, this Privacy statement will prevail.

This Data Privacy Statement applies to all our esteemed Customers and all visitors frequenting any of the services in this platform

### **2.0 Definitions**

**“You”** means: the customer- the person who subscribes to, uses or purchases any of our online SMS services or accesses our websites and includes any person who accesses any of the services you have subscribed to.

**“Any visitor”** that is any person, new subscribers and/or any third parties who gains access to our Services.

**“SMS”** the Short Message Services on our platform available for purchase, including Bible Verses, Love messages, inspirational quotes, News updates, Quotes and any daily subscriptions generated from our online SMS platform.

**“Includes”** means all that follows, including all the listed examples given and situations included in the meaning or explanation of that text.

### **3.0 Collection of Information**

Once a customer opts in to our services, we automatically collect all their personal information with their knowledge and consent when they do any of the following; (please note that this list is not exhaustive):

- a) Register for a specific service, this includes any of the SMS topics of interest and daily subscriptions.
- b) Purchase, subscribe to or use our SMS services online, on a mobile or other devices, via our Website.
- c) Subscribe to our SMS premium rates services, Short Message Service (SMS), email or social media platforms;
- d) Ask us for more information about our SMS service or contact us with a query or complaint;
- e) Respond to or participate in a survey, marketing promotion, prize competition or special offer;
- f) Visit, access or use our websites;
- g) We may also collect your personal details from other organizations including credit-reference bureaus, fraud prevention agencies and business directories;
- h) We may collect your personal details when you interact with us as a visitor as prescribed in this statement;
- i) We also collect personal details when you visit any of our premises.

3.1 The information we collect and store about you includes but is not limited to the following: Your identity, including your name, age, gender, photograph, address, location, phone number, identity document type and number, date of birth, email address.

3.2 Your preferences for particular SMS services, based on information provided by you, Your contact with us, such as when you: call us or interact with us through social media, our email (we may record your conversations, social media or other interactions with us), register your biometric information such as your voice, finger prints etc., visit our Office, Your call data records: phone numbers that you call or send messages to (or receive calls and messages from), messages or data sessions from our network and your approximate location (save for customer service interactions as noted above we do not record or store message or call contents).

3.3 The information will be retained by us in the event of any incidents and claims for damages.

#### **4.0 Age limit**

Our Services are not accessible to persons under the age of majority and we do not onboard minors (any person under 18 years of age) except where you additionally register on their behalf as their Parent and/ or legal guardian. If you allow a child to use our services, you should be aware that their personal information could be collected as described in this statement.

#### **5.0 Use of Information**

We may use and analyze your information for the following purposes:

5.1 Processing SMS services that you have purchased from us on our online self-service platform

5.2 Billing you for using our services or purchasing our Services

5.3 Responding to any of your queries or concerns;

5.4 Verifying your identity information through publicly available and/or restricted government databases in order to comply with applicable regulatory requirements;

5.5 Keeping you informed generally about new services and contacting you with offers or promotions based on how you use our online SMS services unless you opt out of receiving such messages (you may contact us at any time to opt out of receiving such messages);

5.7 To comply with any legal, governmental or regulatory requirement or for use by our lawyers in connection with any legal proceedings;

5.8 To protect our Services and Website including to manage the volume of queries, texts, calls and other use of our network;

5.9 To understand how you use our services for purposes of developing or improving the same;

5.10 Preventing and detecting any fraud or other cyber-crimes.

## **6.0. Categories of Data**

Personal Data as defined in the Data Protection Act of Kenya may be processed depending on the particular types of services you have subscribed to in our Website/Platform.

6.1. We will collect and process your personal information based on any of the lawful basis provided for under the Data Protection Law:

6.2. The performance of a Service Agreement with you;

6.3. Our legitimate business interests;

6.4. Compliance with a mandatory legal obligation;

6.5. Consent you provide;

6.6. Your vital interest.

6.7. Retention of Information We will only retain your personal data for as long as reasonably necessary to fulfil the purposes we collected it for, including for the purposes of satisfying any legal, regulatory, tax, accounting or reporting requirements.

We may retain your personal data for a longer period in the event of a complaint or if we reasonably believe there is a prospect of litigation in respect to our relationship with you. To determine the appropriate retention period for personal data, we consider the amount, nature and sensitivity of the personal data, the potential risk of harm from unauthorized use or disclosure of your personal data, the purposes for which we process your personal data and whether we can achieve those purposes through other means, the need to comply with our internal policy and the applicable legal, regulatory, tax, accounting or other requirements.

## **7.0 Disclosure of Information**

7.1 Any disclosure of your information shall be in accordance with applicable law and regulations. We shall assess and review each application for information and may decline to grant such information to the requesting party.

7.2 We may disclose your information to: any law-enforcement agencies, regulatory authorities, courts or other statutory authorities in response to a demand issued with the appropriate lawful mandate and where the form and scope of the demand is compliant with the law, our subsidiaries, associates, partners, software developers or agents who are involved in delivering our Online services you purchase or use; Emergency service providers when you make an emergency call (or where such disclosure to emergency service providers is necessary for your rescue, health and safety) including your approximate location and any other person that we deem legitimately necessary to share the data with.

7.3 We shall not release any information to any individual or entity that is acting beyond its legal mandate.

7.4 We will get your express consent before we share your personal data with any third party for direct marketing purposes.

## **8.0 Opting Out**

You can ask us to stop sending you SMS messages at any time by writing to us or logging into our website, unchecking relevant boxes to adjust your preferences or by following the opt out option on any message sent to you or by attending to us or contacting us at any time through the provided contacts.

8.1 Where you opt out of receiving these SMS messages, this will not apply to personal data provided to us as a result of a service already purchased.

## **9.0 The Use of Cookies**

9.1 We may store some information (using "cookies") on your computer when you visit our websites. This enables us to recognize you during subsequent visits. The type of information gathered is non-personal (such as: The Internet Protocol (IP) address of your computer, the date and time of your visit, which pages you browsed and whether the pages have been delivered successfully).

9.2 We may also use this data in aggregate form to develop customized services - tailored to your individual interests and needs. Should you choose to do so, it is possible (depending on the browser you are using), to be prompted before accepting any cookies, or to prevent your browser from accepting any cookies at all. This will however cause certain features of the web site not to be accessible.

## **10.0 The Use of Hyperlinks**



10.1 Our websites may provide hyperlinks to other locations or websites on the Internet. These hyperlinks lead to websites published or operated by third parties who are not affiliated with or in any way related to us and have been included in our website to enhance your user experience and are presented for information purposes only.

10.2 We do not endorse, recommend, approve or guarantee any third- party products and services by providing hyperlinks to an external website or webpage and do not have any co-operation with such third parties unless otherwise disclosed. We are not in any way responsible for the content of any externally linked website or webpage.

10.3 By clicking on a hyperlink, you will leave the our webpage and accordingly you shall be subject to the terms of use, privacy and cookie policies of the other website that you choose to visit.

### **11.0 Access to and Updating your Information**

To update your information, visit our Website and sign in to look at your personal information. You can change how we get in touch with you and your account details whenever you like.

### **12.0 Safeguarding and Protection of Information**

We have put in place technical and operational measures to ensure integrity and confidentiality of your data via controls around: information classification, access control, cryptography, physical and environmental security and monitoring and compliance.

### **13.0 International Data Transfers**

From time to time we may need to transfer your personal information outside the Republic of Kenya to provide a particular service. Where we send your information outside Kenya, we will make sure that your information is properly protected in accordance with the applicable Data Protection Laws.

### **14.0 Your Rights**

14.1 Subject to legal and contractual exceptions, you have rights under data protection laws in relation to your personal data. These are listed below: -

- a) Right to be informed that we are collecting personal data about you;
- b) Right to access personal data that we hold about you and request for information about how we process it;
- c) Right to request that we correct your personal data where it is inaccurate or incomplete;
- d) Right to request that we erase your personal data noting that we may continue to retain your information if obligated by the law or entitled to do so;
- e) Right to object and withdraw your consent to processing of your personal data. We may continue to process if we have a legitimate or legal reason to do so;

- f) Right to request restricted processing of your personal data noting that we may be entitled or legally obligated to continue processing your data and refuse your request;
- g) Right to request transfer of your personal data in [an electronic format]. If you wish to exercise any of the rights set out above, please contact us via the aailed support email.

14.2 We may need to request specific information from you to help us confirm your identity and ensure your right to access your personal data (or to exercise any of your other rights). This is a security measure to ensure that personal data is not disclosed to any person who has no right to receive it. We may also contact you to ask you for further information in relation to your request to speed up our response.

14.3 We try to respond to all legitimate requests within reasonable time. Occasionally it could take us longer if your request is particularly complex or you have made a number of requests. In this case, we will notify you and keep you updated.

### **15.0 How to Contact Us**

If you would like to contact us on any topics in this Data Privacy, you can email us on provided support email or submit a request via our digital platforms.

### **16.0 Right to Lodge Complaint**

You have the right to lodge a complaint with the relevant supervisory authority that is tasked with personal data protection within the Republic of Kenya.

### **17.0 Non-Compliance with this Statement**

We shall have the right to terminate our services with you for failure to comply with the provisions of this privacy statement and reject any application for information contrary to this statement.

### **18.0 Amendments to this Statement**

We reserve the right to amend and/or modify this statement at any time. Upon updating the new version of this Statement, you can access the current version of the updated privacy statement by refreshing our website so that you will always know how your personal information is being used or shared and any other updates on the platform. Any amendment or modification to this statement will take effect from the date of notification on our website.

Statement Effective Date: 8th Day of November 2022.