

Surf@Home
Fixed Wireless Residential Internet Service
Subscriber Agreement

This Agreement is between **Surf (“Surf”)** and (“**Subscriber**”), an individual, for Surf@Home and Surf@Work fixed wireless internet service “**Surf@Home**”. This Agreement sets forth the terms and conditions under which the Subscriber agrees to use the **Surf@Home** service. Payment for installation and/or ongoing monthly Surf@Home service implies Subscriber has accepted of this agreement.

The options for Surf at Home are:

Surf Internet Service Selection and Charges		
Service Name *	Speed	Monthly Service Charge (includes VAT)*
<input type="checkbox"/> Small Surf@Home	Up to 5 Mbps	3,447 KShs
<input type="checkbox"/> Medium Surf@Home	Up to 10 Mbps	6,897 KShs
<input type="checkbox"/> Large Surf@Home	Up to 20 Mbps	13,797 KShs
Surf Internet Service Installation Charges		
Install Type	Description	One-Time Charge
<input type="checkbox"/> Apartment Building	Ethernet cable and wireless router. Include 1000 KShs Equipment Deposit for home router	3,000 KShs
<input type="checkbox"/> Home	Receiver, Ethernet cable and wireless router. Include 1,000 KShs Equipment Deposit for home router	10,500 KShs

*Service names and prices may change over time.

Installation and Billing Information
<p>Billing Process: The Subscriber will prepay for the installation and first month of service. The installation day is the first day of service when you account becomes active and is also billing date (“Bill Date”). After the first payment, the Subscriber will pay the monthly service fee (Monthly Fee) on or before the Bill Date. An notice will be emailed to the Subscriber at least 5 days before the expiry of monthly subscription with the Bill Date and amount of the next Monthly Fee. If payment is not received for any reason on or before by the Bill Date, the subscriber will be disconnected on the Bill Date after midnight.</p>
Payment
<p>Payment via M-Pesa: Surf only accepts M-Pesa as the payment vehicle for Surf@Home. To pay, go to M-Pesa menu. Select Lipa Na M-Pesa. Select Buy Goods and Services. Enter Till Number – 285485. Enter the amount of your monthly fee. You will receive payment confirmation from M-Pesa.</p>

1. Subscriber Agreement form

In this Agreement, unless otherwise indicated, the words defined below will have the following means assigned to them:

- 1.1. "Activation" means provisioning and enabling of an Internet service at Surf's premises by Surf to operate on the network in terms of this Agreement.
- 1.2. "Agreement" means the fee schedule and these Terms and Conditions;
- 1.3. "Charges" means installation charges and monthly service charges described by Surf to the Subscriber as detailed in the Pricing Guide from time to time.
- 1.4. "Installation Charge" means the charge levied by Surf on the Subscriber for installation of the wireless equipment, mounting gear other devices required to provide Internet service. Wireless equipment, mounting gear and other devices are owned by Surf unless specified in the Agreement.
- 1.5. "Installation" means to install wireless connectivity equipment, mounting devices, local area network equipment and wireless routers owned by Surf at a location specified as service address location in Subscriber Order.
- 1.6. "Month" means a period which commences at midnight on a particular calendar day determined by Surf and shall endure until 23:59:59 of the same day of the following month.
- 1.7. "Monthly Service Charge" means the monthly charge levied by Surf in consideration for the Subscribers access to, and use of the network services as detailed in the Pricing list from time to time.
- 1.8. "Network" means the broadband network operated and or leased by Surf.
- 1.9. "Network Services" means the broadband network services, and any included value added services, made available to the Subscriber through this Agreement.
- 1.10. "Order" means an Order placed by a Subscriber for Surf, as per the schedule or in any other form approved by Surf, for the provision and/or installation of connectivity equipment and/or use of the network services.
- 1.11. "Service Option" means any one of the Pricing Plans under which the network services may be made available to Subscribers, which Pricing Plans are set out in the Pricing Guide and vary according to the rate of usage charges, value added services and other variables determined by Surf from time to time, but subject to the requirements, conditions and/or approvals of the regulatory authority where applicable.
- 1.12. "Provisioning" means enabling of an Internet service at Surf premises by Surf to operate on the network in terms of this Agreement;
- 1.13. "Pricing Guide" means that schedule on which the charges levied by Surf are recorded, as amended from time to time, which Pricing Guide is available upon request by Surf.
- 1.14. "Schedule" means the order or application form section of this Agreement to which these terms and conditions are attached.
- 1.15. "Wireless Equipment" means the Wireless equipment and accessories used by the Subscriber to use the Internet Service conveyed by the network.
- 1.16. "Usage Charges" mean the charges charged by Surf to the Subscriber for recorded usage of the network services, as detailed in the Pricing guide from time to time.
- 1.17. "Value Added Services" means those secondary services provided by Surf, which are a part of the network services [but may be provided only to Subscribers under certain package options or to the exclusion of other Subscribers], or may be provided at additional charges. They may be introduced or withdrawn by Surf at its discretion.
- 1.18. "Surf Premises" means the offices of Surf, Purshottam Place, 4th Floor,

Westlands Road.

- 1.19. "Surf" is a trademark of Boelist Investments Limited, PO Box 52759-00100, Valley Arcade Nairobi, Kenya. KRA PIN P051567698G

2. **Commencement and Termination**

- 2.1. This Agreement shall commence on the date of activation of the service initialized by Surf for the Subscriber and shall continue for the first month of service. Thereafter the Agreement will continue automatically for an unlimited number of renewal periods as extended by payment for monthly service unless terminated:
- 2.2. By the Subscriber, in expiry of the contract period or renewal period, by giving Surf written notice of termination to Surf customer service email or text/SMS helpline not less than 5 days and not more than 60 days before the expiration of the contract or renewal period as the case may be and/or;
- 2.3. By Surf on written notice to the Subscriber, if the license issued to Surf under which terms Surf is authorized to give Subscribers access to the network services is terminated for any reason.

3. **Installation and Supplier of Internet Services**

- 3.1. The Order placed by the Subscriber is subject to Surf's approval in its sole discretion. Surf shall not be under any obligation to the Subscriber to give reasons for its decision.
- 3.2. Surf shall try to promptly comply with any supply and/or delivery and/or installation requirements recorded in the Order, but shall not be liable to the Subscriber in the event that such supply is delayed or cancelled for whatsoever reason. Surf may refer the Subscriber to a third party to undertake the installation in its own name.
- 3.3. The Subscriber shall obtain necessary approvals and authorities required for the purpose of any such supply and/or delivery and/or installation and the Subscriber hereby indemnifies Surf against any claim or liability suffered by Surf if such approvals and authorities are not obtained.

4. **Subscriber Use Policies**

- 4.1. The Subscriber's right to use this service is subject to Surf's Fair Use Policy which can be found on Surf's website.
- 4.2. The equipment and mounting gear installed to provider Surf Service is owned and operated by Surf unless specified in the Agreement. Subscriber may not use equipment and or mounting gear for other purposes than to access Surf services.
- 4.3. Subscriber is responsible for providing the power source for equipment. Surf is not responsible for quality of power or protection from power surges. If a power surge ruins one or more equipment items, Subscriber may be responsible for payment for their replacement.
- 4.4. Subscriber may not resell Surf services.

5. **Charges and Subscription Changes**

- 5.1. In consideration for the provision for and activation of network services and any other services supplied by Surf to the Subscriber, the Subscriber shall pay Surf the applicable charges, as detailed in the Pricing Guide, whether or not the services have been or are being used by the Subscriber.
- 5.2. Surf may, by written notice the to the Subscriber, vary future Charges, either in whole or in part, with effect specified in such notice.
- 5.3. The Subscriber shall make payment to Surf:
 - 5.3.1. For the installation in full on presentation of invoice and prior to delivery of any equipment and/or other devices required to perform installation
 - 5.3.2. Of monthly services charges in advance on or before the Billing Date.
 - 5.3.3. The Subscriber shall have dis-charged its obligations only when the payment is received at Surf at its premises.

- 5.3.4. Surf may at any time on reasonable written notice to the Subscriber vary its invoicing and bill payment procedures and requirements.
- 5.3.5. Surf shall send the monthly invoice to the Subscriber at the email address in the schedule. The Subscriber shall check the invoice in order to ensure that the contents thereof are correct. Unless a query is raised in respect of the contents of a bill within 30 (thirty) days from the date thereof, it shall be deemed correct.
- 5.3.6. Any change from one service option to another for the duration of this Agreement may be subject to Surf' approval in its discretion and Surf shall be entitled to levy fees for charges, which fees may not exceed the amounts approved or fixed by the responsible regulatory authority from time to time.
- 5.3.7. If Subscriber moves to another Surf service area
 - 5.3.7.1. For the installation, Surf reserves the right to levy installation charges to paid in full on presentation of invoice and prior to delivery of any equipment and/or other devices required to perform installation
 - 5.3.7.2. Subscriber must give adequate notice of a minimum of 10 working days to notice of termination to Surf customer service email or text/SMS helpline to ensure service is not interrupted. Surf does not guarantee service delivery at the new location, nor does it guarantee service continuity.
 - 5.3.7.3. All fees and charges set out in this Agreement and any Pricing Guide are inclusive of VAT.

6. **Suspension**

- 6.1. Surf may at any time, without notice to the Subscriber and in any manner whatsoever, suspend the Subscriber's access to the network services or the network:
 - 6.1.1. Any modification, maintenance or remedial work is required to be undertaken pertaining in any manner whatsoever, to the network or service.
 - 6.1.2. The Subscriber fails to perform any of its obligations, or breaches any terms of this Agreement.
- 6.2. If the Subscriber's access to the network is suspended, the Subscriber shall still be liable for the monthly services charges during the period and for the duration of the Agreement period until the account is settled in full.
- 6.3. If subscriber is suspended, Surf will schedule equipment decommissioning after 7 working days. Subscriber must provide best efforts to be available for equipment recovery.

7. **Limitation of Liability**

- 7.1. Surf shall not be liable to the Subscriber for any loss or damage suffered whether same is direct or consequential, if:
 - 7.1.1. Surf fails for any reason whatsoever to supply and/or deliver and/or provide of any connection device either on the required date or at all or;
 - 7.1.2. Surf network services are interrupted, suspended or terminated, for whatsoever reason and/or;
 - 7.1.3. Surf fails to suspend the provision of network services to the Subscriber in terms of an arrangement between Surf and the Subscriber, or after the Subscriber has specifically requested Surf to do so in Order to limit the usage charges and/or;
 - 7.1.4. Such loss or damage was caused by any negligent act or omission on the

part of Surf, its employees or agents

7.1.5. Subscriber does not adhere to Surf's Fair Use Policy.

8. **Breach**

8.1. In the event that the Subscriber breached any term of this Agreement, then without prejudice to Surf's other rights in terms of this Agreement or at law, Surf may terminate this Agreement, or call for specific performance of all the Subscriber's obligations and immediate payment of all sums of money owing at present or in the future for the duration of the Agreement period by the Subscriber, and/or payments of such damages as it may have suffered by reason of such breach of failure. Until Surf has chosen its remedy in terms of this clause, Surf shall not be obliged to perform any of its obligations under this Agreement. The Subscriber shall remain liable for the payments of all amounts owed by the Subscriber in terms of this Agreement, at present and in the future.

9. **General**

9.1. The rights and obligations of the Subscriber in terms of this Agreement may not be ceded or delegated by it to any third party. Surf may cede and delegate its rights and obligations to any party upon written notice to the Subscriber

9.2. Surf may change the Terms and Conditions of this Agreement as a result of changes in taxes, laws, regulations, the Terms and Conditions of the license issued to Surf, or any similar circumstances or events. Surf shall use all reasonable efforts to notify the Subscriber of any of these changes.

9.3. This document contains the entire Agreement between the parties regarding matters concerned herein, and no other warranties, undertakings, and/or representation have been made by Surf or any party or agent of Surf.

9.4. No indulgence, leniency or extension of time, which Surf may show the Subscriber, shall in any way prejudice Surf or prevent Surf from exercising any of its rights in the future.

9.5. This Agreement and all matters or disputes arising therefrom or incidental thereto shall be governed and construed in accordance with the laws of the Republic of Kenya

9.6. A certificate under the hand of any manager of Surf certifying the amount owing by the Subscriber to Surf shall be sufficient proof for the purposes of enabling Surf to obtain any judgment or Order against the Subscriber

9.7. If any term, condition, agreement, requirements or provision shall be of no effect whatsoever upon the binding force or effectiveness of any of the remainder of the Agreement, it being the intention and declaration of the parties that they had known of such enforceability, illegality, invalidity, or that the provision was contrary to public policy, they would have entered into this contract containing all the Terms and Conditions set out in this Agreement.

9.8. The Subscriber hereby authorizes Surf to disclose the user's name, address and personal details to any party when it is deemed reasonable necessary for Surf to properly perform its functions or protect its interests, or for the purpose of enabling Surf to provide emergency network services to the Subscriber or a directory or repair services and information to the network generally, provided that Surf takes all precautions required of it, to protect such information from being disclosed unnecessarily.

9.9. Each of the parties shall be entitled from time to time by written notice to change their address or email address.

9.10. Any notice given and any payment made by a party to the other ("the addressee") which:

9.11. Is delivered by email during normal business hours of the addressee will be

presumed to have been received at the time of delivery. If the delivery is made by the Subscriber or the Subscribers agents, proof of delivery must be obtained by the party making the delivery. Is delivered by hand during normal business hours of the addressee will be presumed to have been received at the time of delivery. If the delivery is made by the Subscriber or the Subscribers agents, proof of delivery must be obtained by the party making the delivery.

- 9.12. Is posted by prepaid registered post from an address in the Republic of Kenya at the address nominated at the time being, will be presumed to have been received by the addressee on the 7th day of the day after the date of posting
- 9.13. If Surf institutes legal proceedings against the Subscriber to recover amounts due to Surf or any other legal steps arising out of this Agreement, the Subscriber shall be liable for legal and/or collection costs.