



TERMS AND CONDITIONS

AIRTOUCH SMSLINE / BAMBIKA



LET'S PUT IT IN BLACK AND WHITE

01

Individual Usage:

If you are using the service as an individual, you represent that you are over the age of 18 or have parental consent to be bound to this agreement (the "service agreement" or "the agreement"), when you agree with the statement on our website registration form: "I AGREE TO THE TERMS AND CONDITIONS."

02

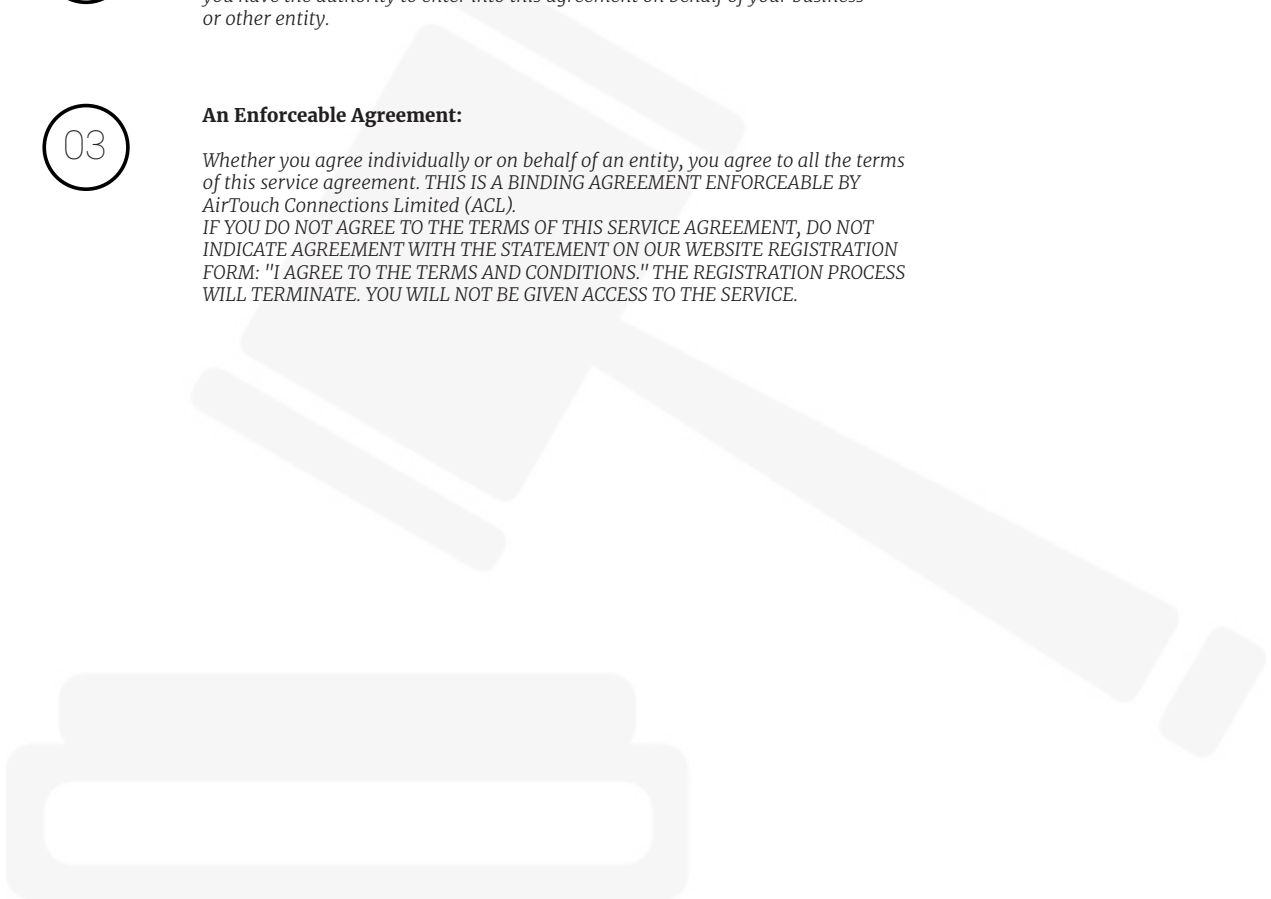
Usage As A Business or Other Entity:

If you are using the service for your business or other entity, you represent that you have the authority to enter into this agreement on behalf of your business or other entity.

03

An Enforceable Agreement:

Whether you agree individually or on behalf of an entity, you agree to all the terms of this service agreement. THIS IS A BINDING AGREEMENT ENFORCEABLE BY AirTouch Connections Limited (ACL). IF YOU DO NOT AGREE TO THE TERMS OF THIS SERVICE AGREEMENT, DO NOT INDICATE AGREEMENT WITH THE STATEMENT ON OUR WEBSITE REGISTRATION FORM: "I AGREE TO THE TERMS AND CONDITIONS." THE REGISTRATION PROCESS WILL TERMINATE. YOU WILL NOT BE GIVEN ACCESS TO THE SERVICE.



TERMS AND CONDITIONS ...they always apply

Definitions:

The definitions below and any definitions used elsewhere in this agreement are binding upon the parties.

1. *The Service.* The "Service" consists of a browser interface, data transmission, data access (as available) and, if applicable, data storage. The "Service" includes a website under the domain names (and others from time to time) and as controlled by ACL.
2. *ACL is the Company providing the Service*
3. *You and Yours.* "You" and "yours" means each user or customer accessing the Service by means of a valid account established by you. If you are entering into this agreement on behalf of your entity, the term "you" in this agreement means your entity and all of its directors, officers, managers, shareholders, employees, agents, members, or other personnel.
4. *Unlawful Activities.* "Unlawful activities" include, but is not limited to, making direct or indirect threats of physical harm, engaging in any conspiracy of any type, violation of any Kenyan law or ordinance, violation of any international treaty, storing, distributing or transmitting any unlawful material, or attempting to compromise the security of any networked account or site.
5. *Internet Service Provider.* "Internet Service Provider" or "ISP" is any entity which allows access to the internet or worldwide web.
6. *"Sender ID" is the identity that shows as the sender of any message on a person's mobile phone as a result of using the service as a broadcasting media.*
7. *ACL Software submits messages from internet browsers via our own software to certain messaging servers that are designed to send messages to short messaging service compatible devices such as mobile phones and is proprietary.*
8. *The Agreement.* The "Agreement" or the "Service Agreement" refers to the electronic document which sets forth the rights of the parties in their entirety.
9. *Our or We.* "Our" or "we" refers to ACL.
10. *"Systems".* "The Systems" consists of computer equipment including servers, telecommunications devices, internet connection devices and digital storage media.
11. *"Text Message".* Short Messaging System utilized by modern mobile communications devices to send plain text data to other devices.
12. *"Keyword".* A keyword is a word which is chosen upon applying for the service. The keyword is used for a person or persons to register or "opt in" to the service by text message.
13. *"Short Code".* Our service consists of a 5 digit short code i.e. '22910' to enable a person to communicate with our systems by text message using a keyword.
14. *"Reverse Billing".* A message delivered to a handset which charges the end user a predetermined amount for receiving the message.
15. *"Premium Rate Service".* A service that is provided to send 'Reverse Billing' Messages.
16. *"Out-payments".* Payments made to you from revenue generated by using Premium Rate Services.

11. Where the service is being used for Charity Donations, ACL makes a small charge of 5% of any donation received to cover our costs in providing such a service. No gift aid or similar benefit is claimed by ACL in respect of any donation. All donations are subject to the normal network/aggregator fees.
12. Payment of fees from reverse billing services: All monies are paid approximately 45 days in arrears of the billing month end and are subject to out-payment from the network. Each network pays differently in respect of each amount. An online report is available to check revenue generated and any amount owed to you. We will confirm in writing the amount due to you on request between the 15th and the 25th of each month. We will also supply the date, number, network and time of each successful and unsuccessful request made. The report will be full and final and subject to our out-payment chart which is available on request.
13. Marketing of Reverse Billing and Premium Rate services: When offering a premium rate service, you must clearly state the charges that the customer will pay. This should consist of the reverse billed charge being applied and that the user will also pay one standard text message at that network rate. Premium rate services must also clearly state who it is available to. This will normally be persons over the age of 18 or those with permission from the bill payer. Incorrectly displaying the charges of the service, not displaying the charges, making the charges illegible or providing misleading information to customers may result in immediate termination of the reverse billing service without notice and may result in action against you by CA.
14. Subscription Services: Where a reverse billed subscription service is provided to clients, the message sent to the client must contain clear opt out instructions.
15. Use of own data: We provide a facility to upload your own data and numbers to the system. Any person added to the system should be sent a message informing them of the intended use of their personal data and details of the service you are providing and giving clear opt out instructions. Where a customer requests to stop the service, an email will be sent to you asking for their number to be removed. Numbers will be removed automatically from any online data that we hold, but the responsibility to ensure no more messages are sent to the client remains with you.

For Individual Mobile subscribers, you need to know the following while subscribing to our services:

01. The service subscribing to
02. The cost of the service
03. Frequency of the service
04. Deactivation method – for Safaricom this is by dialing *100# for prepaid users or *200# for postpaid users
05. Helpline – customer care number as published in our websites
06. Summary of the most critical terms and conditions
07. URL for the terms and conditions (optional)

E.g. To get Rose Muhando on Skiza, send the word ROSE to 12345 @ 10/- per SMS, 3times/week. To deactivate dial *100# or *200#. For help call 0722000000. Ts and Cs www.skiza.com

You have additional responsibilities set forth elsewhere in this agreement.

2. OUR RESPONSIBILITIES.

A. What You Receive Under This Agreement.

ACL grants to you an individual, personal, non-sub licensable, non-exclusive and non-transferable license or right to use our service pursuant to the terms and conditions set forth in this agreement and as they may be modified on our web site.

ACL does not guarantee the continuous availability of the service or of any specific feature. ACL will inform you via its websites only of any significant changes to the Service or this Agreement.

ACL provides a built in system to monitor the throughput of messages. Messages "not accepted" at submission to the network are credited back to you automatically in real time.

ACL cannot guarantee message delivery to the end user once the network has accepted your message as third party networks form part of the service. Reports are provided for you to identify why messages cannot be delivered and it is your responsibility to de-activate or quarantine undeliverable/problem numbers. Any message accepted by the network is chargeable. ACL are not responsible for validating the numbers contained in your database or uploaded files except for checking if each number has the correct number of digits or is the correct format.

ACL only provides the service for use in Kenya.



B. Our Privacy Policy and Confidentiality.

It is our policy to respect the privacy of our users.

We will not share, rent, sell, or trade personal information (including mobile numbers or e-mail addresses) identifying our customers or users to third parties.

We will not share, rent, sell, or trade data contained in your account. We, however, may use this information to contact you to ensure that you are satisfied with our products and services, to learn about any ideas you may have to improve our offerings, to call your attention to additional or new offerings or services, and communicate other information.

We may send e-mail to your registered e-mail address concerning our news.

We may ask you to provide demographic or personal preference data. If you provide such data, we may use it to analyze the characteristics of our customers and visitors. We may also use the data to customize the specific information provided to you, or tailor it to better meet your needs.

Your data is confidential. Our privacy policy is subject only to our obligation to comply with applicable laws and lawful government requests, to operate our business properly, and to protect our users or ourselves.

We reserve the right to contact you about your account status or changes or alterations to the service, or additional offerings or services. You may request that you do not receive e-mail messages that are not related to your account activity or current use by e-mailing to cs@airtouch.co.ke.

ACL reserves the right to change its privacy policy. Notice may be sent by e-mail to your registered address.

ACL delivers messages through a variety of private and public systems. We do not guarantee privacy.

ACL will cooperate with any legitimate law enforcement agency if our messaging services are suspected of use for any unlawful or improper purpose.

C. Warranty and Disclaimer.

THE SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. ACL DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

ACL DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THIS SITE OR THE SERVER THAT MAKES IT AVAILABLE, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

D. Our Current Premium Rate Services.

01. Code 22910- Info service e.g. Bible/Quran verses, Love tips, Horoscope, Jokes, Facts, Quotes etc. This is a subscription service MT billed by the mobile company on receiving SMS from 22910 @ KES 10.00 each day. To deactivate service send e.g. STOP 1 to stop receiving Love tips. For Safaricom subscribers dial *100# for prepaid users or *200# for postpaid and select Premium Rate Services and proceed. Our customer care number 254 723 403 466 and acsupport@airtouchkenya.com. Check [www.airtouch.co.ke](http://bambika.co.ke) or <http://bambika.co.ke/content/1833> for more details.
02. Code 22710 – Subscription Service for music downloads. You are MT billed @ KES 30.00 per SMS on receiving SMS with download link
03. Code 21144 – On Demand Service. Code used for GBS TV viewer interactive messages. You are MT billed @ KES 4.00 per SMS on receiving SMS from TV station
04. Code 22906 – Used for sending Bulk SMS at no cost to the mobile subscriber. There are several alphanumeric codes associated to this code
05. Code 22712 – On Demand Mpayment Media/Internet Interactive Service. Used while accessing certain services via the internet. You will be prompted to send SMS to 22712 in order to receive activation code that will allow service access. You are MO billed @ KES 30.00 per SMS on sending request to 22712
06. Code 22920 – On Demand School Management Solution and other SMS Query Service. Used while querying information about a student e.g. exam results. You will be prompted to send SMS to 22920 e.g. "Reports,7661,2015,2" in order to receive exam results for student with admission number 76661 for 2015 term 2. You are MO billed @ KES 20.00 per SMS on sending request to 22920
07. Code 22690 – Subscription service for Soccer Live Scores (Events) and Fixtures alerts. Subscription is mainly done via USSD code *869#. Used to receive soccer fixture, scores and all other live events. This is a subscription service MT billed by the mobile company on receiving SMS from 22690 @ KES 6.00 per alert received. To deactivate service dial *869*8#. For Safaricom subscribers dial *100# for prepaid users or *200# for postpaid and select Premium Rate Services and proceed. Our customer care number 254723403466 and acsupport@airtouchkenya.com. Check [www.airtouch.co.ke](http://bambika.co.ke) or <http://bambika.co.ke/content/1833> for more details.
08. Code 40010 – SACCO Transactions/SMS banking on demand Service. Code used for Great Captain SACCO members interactive messages. Members are MO billed @ KES 10.00 per SMS on receiving SMS from Great Captain SACCO
09. Code 60015 – Info service e.g. Bible/Quran verses, Love tips, Horoscope, Jokes, Facts, Quotes etc. This is a subscription service MT billed by the mobile company on receiving SMS from 60015 @ KES 10.00 each day. To deactivate service send e.g. STOP 1 to stop receiving Love tips. For Safaricom subscribers dial *100# for prepaid users or *200# for postpaid and select Premium Rate Services and proceed. Our customer care number 254 723 403 466 and acsupport@airtouchkenya.com. Check [www.airtouch.co.ke](http://bambika.co.ke) or <http://bambika.co.ke/content/1833> for more details

3. LIMITATION OF LIABILITY.

ACL'S LIABILITY (INCLUDING, BUT NOT LIMITED TO, LIABILITY ARISING OUT OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE), WILL BE LIMITED TO THE FEES PAID BY YOU IN THE TWO (2) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY.

ACL SHALL NOT BE LIABLE FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING THE COST OF ANY SUBSTITUTE PROCUREMENT), FORESEEABLE OR NOT AND EVEN IF ACL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS AT YOUR RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR NETWORK, OR LOSS OF DATA THAT RESULTS FROM USE OF THE SERVICE.

4. SUPPORT

ACL, or its designee, shall provide e-mail support to non paying customers and also provide telephone support to paid service customers. It has no obligation to provide you with hard-copy documentation, upgrades, enhancements, modifications, or other support unless there is a separate written contract to that effect.

5. PROVISION OF CONTACT AND BILLING INFORMATION AND PAYMENT OF FEES.

ACL uses the billing services of a third-party, MPESA. Your failure to pay a bill may be considered a breach of this agreement, and ACL may terminate service as a result of your breach.

6. PASSWORDS AND SECURITY.

You will choose all applicable passwords to use in connection with the Service.

You are responsible for maintaining the confidentiality of your passwords and account.

You are entirely responsible for any and all activities that occur under your account. You shall ensure that you exit by form of 'Logout' from your account at the end of each session.

You shall notify ACL immediately of any unauthorized use of your account.

You may not allow any third party, related or unrelated, to use your account, unless they have been granted the use of the service as a Sub User. All Terms and Conditions still apply and it is your responsibility to ensure that your account is operated under these Terms and Conditions.

ACL cannot and will not be liable for any loss or damage arising from your failure to comply with these requirements.



7. TERMINATION.

Either party may terminate this Service Agreement by notifying the other party in writing at least thirty (30) days before the termination date.

ACL, in its sole discretion, may terminate your use of the Service if you fail to comply with this Agreement. No refunds will be given and any unused messages will be lost.

You will pay in full for the Service up to and including the last day of the current billing cycle. To cancel the Service or change the type of service, you must contact us in writing. All such requests received prior to ten (10) days of the end of the customer billing cycle will incur no additional charges. Requests for cancelled or changed service received within ten (10) days of the end of the customer billing cycle may incur one additional month of charges.

For Prepay type accounts, any messages remaining on the account will be lost. No refunds will be given.

ACL will remove the data of an account after termination. ACL may, but is not obligated to, delete archived data. We reserve the right to cease offering the Service to no-charge users at any time without notice.

Upon expiration or termination, you will immediately cease all use of the Service, including the ACL Software and any documentation. Termination is not an exclusive remedy. All other remedies will be available. Your payment obligation will survive termination.

If you are dissatisfied with the Service or with any of our terms and conditions, your sole and exclusive remedy is to discontinue the Service.

Refund of fees: A refund of fees may be paid if the account has been used correctly and we are notified in writing within 28 days of account inception. If ACL terminates the service due to a breach of this agreement or any applicable laws governing use of such services, no refund of fees will be given.

8. THIRD PARTY LINKS.

ACL may provide links to other internet sites or resources. We have no control over such sites and resources. You therefore agree that ACL is not responsible for the availability and content of other internet sites or resources.

You agree further that ACL does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources.

You agree that ACL shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

9. NON-WAIVER OF ADDITIONAL RIGHTS.

This Agreement is between ACL and you. It is not for the benefit of any third party, whether directly or indirectly (including any user accessing the Service by means of an account established by you). The failure of either party to exercise any right provided will not be deemed a waiver of any further rights.

10. EFFECT OF INVALIDITY OF A PROVISION OF THIS AGREEMENT.

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

11. NON-ASSIGNABILITY OF THIS AGREEMENT.

This Agreement is not assignable, transferable or sub-licensable by you except with ACL prior written consent.

12. ONE YEAR TO BRING A CLAIM.

You agree that any course of action or claim arising out of or related to this Service and this Agreement must be filed with a court or other governmental agency having jurisdiction within one (1) year after the course of action or claim arose. Otherwise, the course of action or claim is barred.

13. SOLE AGREEMENT OF THE PARTIES.

This Agreement is the complete and exclusive statement of the mutual understandings of the parties. It supersedes and cancels all previous or contemporaneous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All modifications must be in writing signed by both parties, except as otherwise provided herein. There are no oral agreements or side agreements of any type.

14. NO AGENCY CREATED BY THIS AGREEMENT.

No agency, partnership, joint venture, or employment is created as a result of this Agreement. You do not have any authority to bind ACL in any respect.



15. NO SOLICITOR FEES OR COSTS AVAILABLE.

In any action, complaint, administrative proceeding, informal complaint to any court or agency, to enforce rights under this Agreement, neither the prevailing nor the losing party will be entitled to recover costs and/or fees.

16. NOTICES.

All notices must be in writing. A notice is deemed to have been given:

1. When received, if personally delivered;
2. When receipt is electronically confirmed, if transmitted by facsimile or e-mail;
3. The day after it is sent, if sent by next - day delivery by recognized overnight delivery service; and
4. Upon receipt, if sent by certified or registered mail, return receipt requested.

17. AGREEMENT IN ENGLISH.

This Agreement and all related documents have been prepared in English with the consent of the parties.

18. ELECTRONIC NATURE OF THIS AGREEMENT.

The parties acknowledge that they have met over the internet, that they have not met in person and have not had any direct telephonic contact, that this agreement has been provided by ACL to the customer over the internet and through the SMS web site, that this agreement has been executed electronically, that there is no hard or paper copy of this agreement, that the parties consent to the manner and circumstances of the making of this agreement, and that said agreement is to have the full force and effect of any agreement prepared in writing.

1st March 2016

THANK YOU

ASANTE



www.airtouch.co.ke