

## PART I - INTRODUCTION

Welcome and thank you for choosing ViuSasa.

Your use of the ViuSasa platform, its content and all services relating thereto is subject to the terms of a legal agreement between you and Content Aggregation Limited, a company incorporated in the Republic of Kenya with its principal office at Westlands Office Park, Waiyaki Way and of P. O. Box 7468-00300 Nairobi ('CAL') and which owns and operates the platform.

The legal agreement between you and CAL is made up of:

- (1) the ViuSasa Terms and Conditions of Use (the '**Terms and Conditions**') set out under Part IV hereunder; and
- (2) the ViuSasa Privacy Policy (the '**Privacy Policy**') set out under Part V hereunder.

(Both the Terms and Conditions and the Privacy Policy are hereafter collectively referred to as the '**Terms**').

The Terms form a legally binding agreement between you and CAL in relation to your use of the ViuSasa platform and its content. It is important that you read them carefully, understand and accept them in the manner specified herein. Should you need legal advice before accepting the Terms, please obtain such advice at your own convenience and cost.

## PART II - INTERPRETATION

In the Terms, the following words shall have the meanings assigned beside them:

- 1.1. '**Content**' shall mean any text, graphics, audio, visual (including still visual images) and/or audio-visual material, including live TV streaming, or other multimedia content, information and material, including the metadata relating to any such content, availed or to be availed by CAL for streaming by you on the ViuSasa platform, by use of an electronic device which is capable of connecting to the internet, including but not limited to computers, mobile phones, tablets, media players, smart TVs, and other similar devices, which devices comply with the technical requirements to access the Content;
- 1.2. '**Intellectual Property Rights**' means all intellectual property rights including patents, registered designs, trademarks and service marks (whether registered or not), rights in the nature of unfair competition rights, copyright, database right, design right and all similar property rights including those subsisting (in any part of the world) in inventions, designs, drawings, performances, business names, goodwill and the style and presentation of goods or services and applications for protection of any of the above rights;

- 1.3. **'Non-Personal Information'** shall mean any information that is not Personal Information including, without limitation, any information collected by CAL about the service and your use of the ViuSasa platform, device information, log information, and location information;
- 1.4. **'Personal Information'** shall mean personal details related to your account and shall include your name, email address, telephone number or credit or debit card information. For the avoidance of doubt, a post office box number shall not be Personal Information;
- 1.5. **'Third party website'** shall mean any website other than the website on which the ViuSasa platform is hosted and operated and 'third party websites' shall have corresponding meaning.
- 1.6. **'ViuSasa' or 'the ViuSasa platform'** shall mean the ViuSasa website, the ViuSasa Android application and the ViuSasa iOS application to be used by CAL to provide the Content, ViuSasa (by whatever manner, shape or colour styled) being a registered trademark of CAL;
- 1.7. **'ViuSasa service' or 'the service'** shall mean the service provided by CAL on the ViuSasa platform for discovering and watching the Content, including all features and functionalities, recommendations and reviews, the ViuSasa website, the ViuSasa Android application and the ViuSasa iOS application and the user interfaces associated therewith, as well as all content and software associated with the service or the platform.

### PART III - ACCEPTANCE

- 2.1. In order to use the ViuSasa platform, you must first agree to and accept the Terms. You may not use the platform if you do not accept them.
- 2.2. You agree to these Terms and Conditions by registering and signing into the ViuSasa platform or by doing such other thing as may be specified in the ViuSasa platform or otherwise by CAL.
- 2.3. At the point of creating the ViuSasa account or at any time thereafter when signing into the account, CAL may request you to opt in on receiving promotional updates via email, texts and telephone calls. You may opt in by ticking against such request or by doing such other thing as may be specified on the ViuSasa platform. By opting in you allow CAL to send marketing and promotional material regarding the ViuSasa platform or the Content therein to the email address or telephone number provided when creating your ViuSasa account. In addition, and without prejudice to the foregoing, CAL shall be entitled to display informational, advertisement, marketing and

promotional messages within the ViuSasa platform and through push notifications and pop-up messages on your mobile device.

#### **PART IV – VIUSASA TERMS AND CONDITIONS OF USE**

### **3. Use of the ViuSasa Platform**

- 3.1. You may not use the ViuSasa platform and may not accept the Terms if:
  - 3.1.1. you are not of legal age or are otherwise legally incapacitated to enter into a legally binding contract with CAL. If you are legally incapacitated, you may only use the service under supervision by a person with legal capacity; or
  - 3.1.2. you are barred or otherwise legally prohibited from receiving or using any part of the Content under any applicable law.
- 3.2. In order to access the ViuSasa platform and the service, you will need to create a ViuSasa account, with a username and a password (“your log-in credentials”). Creation of a ViuSasa account permits you to purchase limited rights to the Content. When creating your account, you will be required to provide certain information. You agree that you shall provide all information that CAL may require you to provide for purposes of creation of your ViuSasa account. If you fail to provide the information required on the ViuSasa platform or as requested by CAL from time to time, CAL shall have the right to discontinue the service without any further notices or reference to you.
- 3.3. You further agree that CAL retains the absolute discretion to accept or reject your request to create a ViuSasa account on the platform.
- 3.4. You are required to keep your ViuSasa account password and other account credentials and details secure and confidential.
- 3.5. You agree that you will be solely responsible (to CAL, and to other parties) for any activity that occurs under your ViuSasa account or otherwise with your log-in credentials, and shall indemnify and keep indemnified CAL from any claims or liabilities whatsoever that may arise from such activity.
- 3.6. Your ViuSasa account will be operated based on daily, weekly and monthly subscription packages. Charges for the various packages will be determined by CAL in its absolute discretion, and will be paid as specified in these Terms or otherwise as CAL may specify.
- 3.7. To use the CAL service you must have internet access and a compatible device.

- 3.8. Should you access any Content without paying for a subscription package or access more or better Content than is otherwise available in the subscription package you paid for, you authorize CAL to, in addition to any other rights and remedies available to CAL under this agreement and the applicable law, charge the subscription fees or the difference, as the case may be, (and any other charges that may result from your use of the service) to your ViuSasa account.
- 3.9. You can find specific details regarding your subscription status by logging onto your ViuSasa account.
- 3.10. The ViuSasa platform and any Content viewed through the service are for your personal and non-commercial use only. During your CAL subscription we grant you a limited, non-exclusive, non-transferable license to access the ViuSasa platform and view the Content. Except for the foregoing limited license, no right, title or other interest whatsoever on any part of the Content shall be transferred to, or be claimed by, you. You agree not to use the service for any purpose or in any manner that will or is likely to infringe on any Intellectual Property Right.

#### **4. Passwords and Account Access**

- 4.1. Once you create a ViuSasa account, you will have access and control over the account. To maintain control over the account and to prevent undesired access to your account, you shall maintain control over any devices that you have used to access the service and not reveal the password or other account details to anyone whom you do not intend to give access to your account.
- 4.2. You are responsible for updating and maintaining your account information and ensuring its accuracy.
- 4.3. CAL may close or suspend access to your account in order to protect you, CAL or any of its partners or other users from identity theft or other fraudulent or unlawful activity. Provided that CAL shall not be liable for any losses, infringements, injuries or other liabilities that may arise, directly or indirectly, from such activity.

#### **5. Payment and Billing**

- 5.1. Content on the ViuSasa platform will be accessed from your ViuSasa account upon payment of the charges specified by CAL with regard to the relevant subscription package. You agree that the amount, quality and nature of Content available to you will depend on the package paid for.
- 5.2. Payment for subscription packages shall be done through available mobile money payment services, credit cards and debit cards, online payment

systems (e-wallets), or such other method as CAL may specify from time to time.

Amounts charged will include any other charges you may incur in connection with your use of the ViuSasa platform, such as taxes, payment transaction fees, and any subscription payments then owing (“Extra Charges”). CAL may demand that you pay due and owing Extra Charges before you are able to pay for your current subscription.

- 5.3. CAL may, at its absolute discretion, change the price of the service (or any part thereof) from time to time.
- 5.4. If a selected package has not been activated after payment, you shall notify this to CAL whereupon you may choose for CAL to refund the subscription payment to you or carry forward the payment and activate the relevant package during the next subscription period.
- 5.5. In the event that you are charged multiple times for a single subscription package or you otherwise overpay for the service, you shall promptly notify CAL, whereupon you may choose for CAL to refund the amount overpaid to you or carry it forward and activate the relevant subscription package during the next subscription period.
- 5.6. In the event you have made a payment to CAL through any of the methods specified herein but have not created a ViuSasa account, the payment transaction shall be reversed and a refund shall be made to you. Provided that CAL shall not be responsible for the loss of any amount so paid or for any delay in processing transaction reversals or refunds.

## 6. Your Covenants

- 6.1. By accepting these Terms and Conditions, you agree:
  - 6.1.1. to use the ViuSasa platform, including all features, contents and functionalities associated therewith, in accordance with all applicable laws, rules and regulations, or other restrictions applying to the use of the ViuSasa platform or content therein;
  - 6.1.2. not to , unless expressly permitted by CAL, record, copy, distribute, publish, perform, modify, download, transmit, transfer, sell, license, reproduce, archive, create derivative works from or based upon, distribute, post, publicly display, offer for sale, frame, link, or in any other way exploit any part of the Content and information contained on or obtained from or through the ViuSasa platform or otherwise by the use of the service;

- 6.1.3. not to:
- a. circumvent, remove, alter, deactivate, degrade or thwart any of the Content on the ViuSasa platform;
  - b. reverse engineer or disassemble or otherwise interfere with any software or other products or processes accessible through the ViuSasa platform;
  - c. insert any code or product or manipulate the content of the ViuSasa platform, including the Content, in any way; or
  - d. upload, post, e-mail or otherwise send or transmit any material designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment associated with the service, including any software viruses or any other destructive computer codes, files or programs.
- 6.2. Without prejudice to any other rights and remedies that CAL have under the Terms or the applicable law, CAL may terminate, suspend or restrict your use of the service if you violate any of the above covenants or are otherwise engaged in illegal, fraudulent or otherwise improper use of the service.

## **7. Quality of Content and Limitation of Liability**

- 7.1. CAL appreciates, and you acknowledge, that most of the Content is supplied by third parties to CAL. While CAL will take all reasonable steps to ensure that the service provided on the ViuSasa platform will be of high quality, the service is provided 'as is' and without warranty or representation on the part of CAL. In particular, and without limitation, CAL does not represent or warrant to you that:
- 7.1.1. your use of the service will meet your requirements;
  - 7.1.2. your use of the service will be uninterrupted, timely, secure or free from error;
  - 7.1.3. any information obtained by you as a result of your use of the service will be accurate or reliable; and
  - 7.1.4. any defects in the operation or functionality of any software related to the service will be corrected.
- 7.2. The quality of the display of the Content on the ViuSasa platform may vary from device to device, and may be affected by a variety of factors, such as your location, the bandwidth available through and/or speed of your

internet connection, and the subscription package you pay for. The time it takes to load Content on the ViuSasa platform may vary based on a number of factors, including your location, available bandwidth at the time, the Content you have selected and the configuration of your device.

- 7.3. The software used by CAL on the platform may have been developed and designed to enable viewing of Content through certain devices. The software may vary by device and medium, and functionalities and features may also differ between devices. It is your responsibility to procure a compatible device.
- 7.4. You acknowledge that the use of the service may require that your device have third party software that is subject to third party licenses. Should this be the case, it shall be your responsibility to procure such software and licences.
- 7.5. CAL shall not be liable to you or any other person for:
  - 7.5.1. any indirect or consequential losses which may be incurred by you as a direct or indirect result of use of the service including any loss of profit, loss of goodwill or business reputation, loss of opportunity, or loss of data;
  - 7.5.2. any loss or damage which may be incurred by you or any other party as a result of:
    - 7.5.2.1. any reliance placed by you or any other party on the completeness, accuracy or existence of any advertising, or as a result of any relationship or transaction between you and any advertiser or sponsor whose advertisement appears on the ViuSasa platform;
    - 7.5.2.2. any changes which CAL may make to the service, or for any permanent or temporary cessation in the provision of the service;
    - 7.5.2.3. the deletion, corruption or other interruption of any Content;
    - 7.5.2.4. your failure to provide CAL with accurate account information; and
    - 7.5.2.5. your failure to keep your password or account details secure.

## PART V: VIUSASA PRIVACY POLICY

CAL is committed to maintaining robust protection of private information for information obtained from users of the ViuSasa platform and the service. This Privacy Policy sets out our information use and privacy to help you make informed decisions when using the service.

### 8. Personal Information

- 8.1. In addition to any information that may be provided automatically by your browser or mobile device when you visit the ViuSasa platform through the website, Android application and/or iOS application, CAL receives and maintains certain information that you used to create your ViuSasa account or which you may otherwise provide to CAL. Some of this information is Personal Information.
- 8.2. By creating a ViuSasa account, you are authorizing CAL to store and use this information, including your email address and phone, as specified in these Terms.

### 9. Use of Information

- 9.1. Except as otherwise stated in these Terms, CAL shall not sell, trade, rent or otherwise share for marketing purposes your Personal Information with third parties without your consent.
- 9.2. CAL may share your Personal Information with persons who are performing any services for CAL including, without limitation, employees, contractors and agents who need to know that information in order to perform such services. CAL shall ensure that these persons are subject to strict contractual confidentiality obligations with regard to your Personal Information.
- 9.3. CAL may use your Personal Information to communicate with you including, without limitation, contacting you in response to questions, to solicit feedback from you, to provide technical support, subject to these terms, to send marketing and promotion messages, and to inform you about promotional offers, new products and incidental matters.
- 9.4. Whenever you contact CAL, CAL may keep a record of your communication to help solve any issues you might be facing and for any other lawful purpose.
- 9.5. CAL may use your email address, telephone number and other contact information to inform you about CAL's services, such as letting you know about upcoming changes or improvements.
- 9.6. If any Personal Information provided is wrong, CAL shall give you ways to update it quickly or to delete it unless CAL decides to keep that information

for legitimate business or legal purposes. When updating your Personal Information, CAL may ask you to verify your identity before acting on your update request. CAL may at its discretion reject your update request.

- 9.7. CAL may track certain information about your visits to the ViuSasa platform and your content preferences and may use various technologies to collect and store information when you use the ViuSasa platform, including using cookies or similar technologies to identify your browser or device. This information may be used by CAL internally to improve the service and for service delivery development and marketing purposes generally.
- 9.8. CAL may, at its discretion, provide Non-Personal Information to advertisers and other third parties. No part of this Privacy Policy shall be read or interpreted to limit in any way CAL's use or disclosure of Non-Personal Information.
- 9.9. In the event that CAL exercises its right to transfer its rights and obligations under the Terms for any reason, your Personal Information and Non-Personal Information may be among the assets transferred. You acknowledge and consent that such transfers may occur and are permitted by this Privacy Policy, and that any acquirer of our assets may continue to possess and use your Personal Information and Non-Personal Information as set forth in this Privacy Policy.

## **10. Rights Regarding the Use of Your Personal Information**

- 10.1. You have the right at any time to prevent CAL from contacting you for marketing purposes. When CAL sends promotional communication to you, you may, subject to these Terms, opt out of further promotional communication by:
  - 10.1.1. following the unsubscribe instructions provided in each promotional communication; or
  - 10.1.2. writing to or calling CAL.
- 10.2. You agree that notwithstanding the promotional preferences you indicate, CAL may continue to send you administrative emails including, without limitation, changes to the Terms.

## **11. Information Protection**

- 11.1. You acknowledge and agree that all information provided to CAL is at your sole risk and that while CAL will take all reasonable measures to protect your information, CAL does not guarantee that your information will not be accessed, disclosed, altered or destroyed by breach of such measures or otherwise.

- 11.2. Your ViuSasa account is protected by your account password and we urge you to take steps to keep your personal information safe by not disclosing your password and by logging out of your account after each use.
- 11.3. CAL may further protect your information from potential security breaches by implementing certain technological security measures.

## 12. Third Party Websites

- 12.1. As part of the service or for any other reason, CAL may provide links to third party websites or applications on the ViuSasa platform. However, CAL shall not be responsible for the privacy practices employed by those websites and applications or the information or content they contain.
- 12.2. This Privacy Policy applies solely to information collected by us through the ViuSasa platform and the service. It does not apply to your use of a third party website accessed by selecting a link on the ViuSasa platform.
- 12.3. If you access or use the service through or on an third party website or application, then the privacy policy of that third party website or application will apply to your access or use of that site or application.

## PART VI – GENERAL PROVISIONS

### 13. Termination

- 13.1. CAL may terminate the legal relationship with you, and closing your ViuSasa account, as follows:
  - 13.1.1. For convenience, with or without reason, upon giving you 14 days' notice;
  - 13.1.2. If CAL stops providing the service (or any features within the service) for any reason, upon giving you 21 days' notice. Provided that notice given generally to ViuSasa subscribers shall be deemed sufficient notice for this purpose;
  - 13.1.3. If you have breached any provision of the Terms (or have acted in a manner which shows that you do not intend to, or are unable to comply with the provisions of the Terms), upon giving you 7 days' notice; and
  - 13.1.4. If CAL is required to do so by law or any lawful order, in accordance with such law or order.
- 13.2. You may terminate the legal relationship with CAL at any time by closing your ViuSasa account.

- 13.3. Except as otherwise provided herein, you agree that all payments made to CAL are non-refundable and that CAL will not provide credits for any partial payments upon termination.
- 13.4. Upon termination:
  - 13.4.1. All monies and other payables due from you to CAL shall immediately become due and payable; and
  - 13.4.2. All provisions of the Terms which are expressed to continue after termination shall remain in force be unaffected by the termination.
- 13.5. For the avoidance of doubt, the provisions of this clause 13 shall apply to termination of your relationship with CAL and closure of your Viusasa account. Expiry of a subscription package shall not be considered termination for this purpose.

#### **14. Miscellaneous**

- 14.1. The Terms shall be governed by and construed in accordance with the laws of the Republic of Kenya.
- 14.2. If any provision(s) of the Terms is held by any court or tribunal of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full force and effect.
- 14.3. CAL may at any time change any provision of, or replace, the Terms. Provided that such changes or replacement will take effect once posted on the Viusasa platform. If you do not agree to the changes, you may stop using the service. Your continued use of the service after the date the change or replacement is posted on the Viusasa platform will constitute your acceptance of the changes.
- 14.4. CAL may assign or transfer any of its rights or obligations under the Terms to any other person. Provided that CAL shall notify you of such transfer but failure by CAL to notify you shall not invalidate the transfer.
- 14.5. Communication from CAL to you regarding your use of the Viusasa platform and the Terms will be by way of text messages, telephone calls, electronic mail, displays within the VuSasa platform and push notifications. You authorise CAL to use the email address and telephone number provided on your account for purposes of such communication. Provided that communication done and notices issued through any of the methods specified in this clause shall be deemed effective communication or notice for all purposes.

- 14.6. You agree that you are solely responsible for (and that CAL has no responsibility to you or to any third party for) any breach of your obligations under the Terms and for the consequences (including any loss or damage which CAL may suffer) of any such breach.

*If you have any questions or comments regarding the Terms, the service or the ViuSasa platform, please contact CAL by sending an email to the address or calling the number specified on the ViuSasa platform.*

**27<sup>th</sup> March 2017 (Updated 30<sup>th</sup> January 2018)**