

## **ELIMU HOLDINGS LIMITED**

### **GENERAL TERMS AND CONDITIONS**

#### **Agreement to Terms**

These terms constitute a legally binding agreement made between you, whether personally or on behalf of an entity (“you”) and Elimu Holdings Limited (“Company”, “we”, “us” or “our”), concerning your access to and use of this website and any other website where the Company is the registrant as well as any other media form, media channel, document, mobile website or mobile application related, linked or otherwise connected thereto (collectively the “Site”).

You agree that by accessing the Site, you have read, understood, and agreed to be bound by all of these Terms of Use. **If you do not agree with all of these Terms of Use, then you are expressly prohibited from using the site and you must discontinue use immediately.**

Supplemental terms and conditions or documents that may be posted on the Site from time to time are hereby expressly incorporated herein by reference, we reserve the right, in our sole discretion, to make changes or modifications to these Terms of Use at any time and for any reason. We will alert you about any changes by updating the “last updated” date of these Terms of Use, and you waive any right to receive specific notice of each such change. It is your responsibility to periodically review these Terms of Use to stay informed of updates. You will be subject to and will be deemed to have been made aware of and to have accepted, the changes in any revised Terms of Use by your continued use of the Site after the date of such revised Terms of Use are posted.

The information provided on the Site is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject us to any registration requirement within such jurisdiction or country. Accordingly, those persons who choose to access the Site from other locations do so on their own initiative and are solely responsible for compliance with local laws, if and to the extent that local laws are applicable.

The Site is intended for users who are at least thirteen (13) years of age. All users who are minors in the jurisdiction in which they reside (generally under the age of 18) must have the permission of, and be directly supervised by their parent or guardian to use the Site. If you are a minor, you must have your parent or guardian read and agree to these Terms of Use prior to you using the Site.

#### **INTELLECTUAL PROPERTY RIGHTS**

Unless otherwise indicated, the Site is our proprietary property and all source code databases, functionality, domain names, software, website designs, audio, video, text, documents, downloadable content, photographs and graphics on the Site (collectively “the Content”) and the trademarks, service marks, and logos contained therein (the “Marks”) are

owned and controlled by us or licensed to us, and are protected by copyright and trademark laws and various other intellectual property rights and competition laws of Kenya, international copyright laws and international conventions. The Content and the Marks are provided on the Site “as is” for your information and personal use only. Except as expressly provided in these Terms of Use, no part of the Site and no Content or Marks may be copied, reproduced, aggregated, republished, uploaded, posted, publicly displayed, encoded translated, transmitted, distributed, sold, licensed or otherwise exploited for any commercial purposes whatsoever, without or express prior written permission.

Provided that you are eligible to use the Site, you are granted a limited license to access and use the Site and to download or print a copy of any portion of the Content for which you have paid for and have properly gained access to solely for your personal, non-commercial use. We reserve all rights not expressly granted to you in and to the Site, the Content and the Marks.

### **USER REPRESENTATIONS**

By using the Site, you represent and warrant that:

- 1) You have the legal capacity and you agree to comply with these Terms of Use;
- 2) You are not under the age of thirteen (13);
- 3) You are not a minor in the jurisdiction in which you reside, or if a minor, you have received parental permission to use the Site;
- 4) You will not access the Site through automated or non-human means, whether through a bot, script or otherwise;
- 5) You will not use the Site any illegal or unauthorized purpose; and
- 6) Your use of the site will not violate any applicable law or regulation.

If you provide any information that is untrue, inaccurate, not current or incomplete, we will have the right to withhold or restrict the use of Content on the Site and refuse any and all current or future use of the Site (or any portion thereof).

### **PRODUCTS**

All products are subject to availability. We reserve the right to discontinue any products at any time and for any reason. Prices for all products are subject to change.

### **PURCHASES AND PAYMENTS**

All payments on the Site will be made via our M-Pesa Till number, M-Pesa Paybill number, bank deposits or electronic funds transfers to our authorized bank accounts.

You agree to provide current, complete, and accurate purchase and account information for all the purchases made via the Site. You further agree to promptly update account and payment information, including email address and phone number details so that we can complete your transactions and contact you as needed. Taxes will be included in the price of purchases as deemed required by us. We may change prices at any time. All payments shall be in Kenya shillings.

You agree to pay all charges at the prices then in effect for your purchases and any applicable taxes and you authorize us to charge your inputted mobile or telephone number for any such amounts upon placing your order. We reserve the right to correct any errors or mistakes in pricing even if we have already requested or received payment.

We reserve the right to refuse any order placed through the Site. We may, in our sole discretion, reserve the right to limit or prohibit orders that, in our sole judgment, appear to be placed by dealers, resellers or distributors.

### **REFUNDS POLICY**

All sales are final and no refunds will be issued.

### **PROHIBITED ACTIVITIES**

You may not access or use the Site for any purpose other than that for which we make the Site available. The Site may not be used in connection with any commercial endeavours except those that are specifically endorsed or approved by us.

As a user of the Site you agree not to:

- 1) Systematically retrieve data or other content from the Site to create or compile, directly or indirectly, a collection compilation, database, or directory without express, written permission from us.
- 2) Make any unauthorized use of the Site including collecting any data of users by electronic or other means for the purpose of sending any information or collecting any Content by automated means or under false pretences.
- 3) Circumvent, disable, or otherwise interfere with security-related features of the Site, including features that prevent or restrict the use or copying of any Content or enforce limitations on the use of the Site and/or the Content contained therein.
- 4) Engage in any automated use of the system, such as using scripts to send comments or messages, or using any data mining, robots, or similar data gathering and extraction tools.
- 5) Interfere with, disrupt, or create any undue burden on the Site and/or the Content for any revenue-generating endeavour or commercial enterprise.

- 6) Delete the copyright or other proprietary right notice from any Content.
- 7) Except as may be the result of standard search engine or Internet browser usage, develop, or distribute any automated system, including without limitation, any spider, robot, cheat utility, scraper or offline reader that accesses the Site, or using or launching any unauthorized script or other software.
- 8) Use the Site in a manner inconsistent with any applicable laws or regulations.

### **THIRD PARTY WEBSITES AND CONTENT**

The Site may contain links to other websites (“Third-Party Websites”) as well as articles, photographs, text, graphics, documents, designs, music, sound, video, information, applications software and other content or items belonging to third-parties (“Third-Party Content”). Such Third-Party Websites and Third-Party Content are not investigated, monitored, or checked for accuracy, appropriateness, or completeness by us and we are not responsible for any Third-Party Websites accessed through the Site or any Third-Party Content posted on, available through or installed from the Site including the content, accuracy, offensiveness, opinions, reliability, privacy practices or other policies of or contained in Third Party Websites or the Third-Party Content.

We will not be responsible for any purchases made through Third-Party Websites, such purchases are exclusively between you and the applicable third party. You agree and acknowledge that we do not endorse the products or services offered on Third Party Websites and you shall hold us harmless for any harm caused by such purchases or form losses sustained by or any harm arising from purchases made on Third Party Websites.

### **SITE MANAGEMENT**

We reserve the right but not the obligation to:

- 1) Monitor the Site for violations of these Terms of Use;
- 2) Take appropriate legal action against anyone who, in our sole discretion violates the law or these Terms of Use, including without limitation, reporting such user to law enforcement authorities;
- 3) In our sole discretion and without limitation, notice or liability to remove from the Site or otherwise disable all files and content that are excessive in size or are in any way burdensome to our systems; and
- 4) Otherwise manage the Site in a manner designed to protect our rights and property and to facilitate the proper functioning of the Site.

### **TERM TERMINATION**

These Terms of Use shall remain in full force and effect while you use the Site. Without limiting any other provision of these Terms of Use, we reserve the right to, in our sole

discretion and without notice or liability, deny access to and use of the Site, to any person for any and all reasons, including without limitation for breach of any representation, warranty or covenant contained in these Terms of Use or of any applicable law or regulations. We may terminate your use or participation in the Site at any time, without warning, in our sole discretion.

### **MODIFICATIONS AND INTERRUPTIONS**

We reserve the right to change, modify, update or remove the contents of the Site at any time or for any reason at our sole discretion without notice. However, we have no obligation to update any information on our Site, we will not be liable to you or any third party for any modification, price change, suspension, or discontinuance of the Site or any of the Content thereon.

We cannot guarantee that the Site and Content will be available at all times. We may experience hardware, software or other technical difficulties or need to perform maintenance on the Site or update the Content. We reserve the right to change, revise, update, suspend, discontinue, or otherwise modify the Site at any time without notice to you. You agree that we have no liability whatsoever for any loss, damage or inconvenience caused by your inability to access or use the Site or the Content during any downtime or discontinuance of the Site or the Content. Nothing in these Terms of Use will be construed to obligate us to maintain or support the Site or Content or to supply any corrections, updates, or releases in connection therewith.

### **GOVERNING LAW**

These Terms of Use shall be governed by and defined following the laws of the Republic of Kenya. Elimu Holdings Limited and yourself irrevocably consent that the courts of Kenya shall have exclusive jurisdiction to resolve any dispute which may arise in connection with these terms.

### **DISPUTE RESOLUTION**

#### **Informal negotiations:**

To expedite resolution and control the cost of any dispute, controversy or claim related to these Terms of Use (each a "Dispute" and collectively the "Disputes") brought by either you or us (individually a "Party" and collectively the "Parties"), the Parties agree to first attempt to negotiate any Dispute (except those Disputes expressly provided below) informally for at least thirty (30) days before initiating arbitration. Such informal negotiations commence upon written notice from one Party to the other Party.

#### **Binding Arbitration**

Any Dispute arising out of or in connection with these Terms of Use including any question regarding their existence, validity or termination shall be referred to and finally resolved by the Chartered Institute of Arbitration of Kenya according to its governing rules. The number

of arbitrators shall be one (1). The seat or legal place of the arbitration shall be Nairobi, Kenya. The language of the proceedings shall be English. The governing law of the Terms of Use which constitute a binding contract shall be the substantive law of Kenya.

### **Restrictions**

The Parties agree that any arbitration shall be limited to the Dispute between the Parties individually. To the full extent permitted by law,

- a) No arbitration shall be joined with any other proceeding;
- b) There is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

### **Exceptions to Informal Negotiations and Arbitration**

The Parties agree that the following Disputes are not subject to the above provisions concerning informal negotiations and binding arbitration:

- a) Any Disputes seeking to enforce, protect or concerning the validity of any of the intellectual property rights of a Party;
- b) Any Dispute related to arising from allegations of theft, piracy, invasion of privacy or unauthorized use; and
- c) Any claim for injunctive relief.

If this provision is found to be unenforceable for any reason, then neither Party shall elect to arbitrate any Dispute falling within the portion of the provision found to be unenforceable and such Dispute shall be decided by a court of competent jurisdiction and the Parties agree to submit to the jurisdiction of that court.

### **DISCLAIMER**

The Site is provided on an as-is and as-available basis. You agree that your use of this Site and any service provided thereunder will be at your sole risk. To the fullest extent permitted by law, we disclaim all warranties, express or implied, in connection with the Site and your use thereof including but not limited to, the implied warranties of merchantability, fitness for a particular purpose and non-infringement. We make no warranties or representations about the accuracy or completeness of the Site's Content and we assume no liability for any errors, mistakes, inaccuracies, personal injury, property damage of any nature whatsoever arising from your access to or use of the Site or any unauthorized access to or use of the Site. As with the purchase of any product or service through any medium, the onus to use your best judgment and exercise of caution is solely on you.

### **LIMITATION OF LIABILITY**

In no event will we or any of our employees, directors or agents be liable to you for any direct, indirect, consequential, exemplary, incidental, special or punitive damages including lost profit, lost revenue, loss of data or other damages arising from your use of the site even if we

have been advised of the possibility of such damage. Notwithstanding anything to the contrary contained herein, our liability to you for any cause whatsoever and regardless of the form of the action, will at all times be limited to the amount paid, if any, by you to us.

### **INDEMNIFICATION**

You agree to defend, and hold us harmless, including our subsidiaries, affiliates and all our respective officers, agents, partners, employees from and against any damage, loss, liability, claim, demand including reasonable legal fees and expenses arising out of:

- 1) Use of the Site;
- 2) Breach of these Terms of Use;
- 3) Any breach of your representations and warranties set forth in these Terms of Use;
- 4) Your violation of rights of a third party, including but not limited to intellectual property rights; or
- 5) Any overt harmful act toward any other user of the Site.

Notwithstanding the foregoing, we reserve the right to, at your expense, to assume the exclusive defence and control of any matter for which you are required to indemnify us and you agree to cooperate, at your expense, with our defence of such claims.

### **USER DATA**

We will maintain certain data that you transmit to the Site for the purpose of managing performance of the Site, as well as data relating to your use of the Site. Although we perform regular routine backups of data, you are solely responsible for all data that you transmit or that relates to any activity that you have undertaken using the Site. You agree that we shall have no liability to you for any loss or corruption of any such data, and you hereby waive any right of action against us arising from any such loss or corruption of such data.

### **ELECTRONIC COMMUNICATIONS, TRANSACTIONS**

Visiting the Site, sending us emails, and completing online forms constitute electronic communications. You consent to receive electronic communications and you agree that all agreements, notices, disclosures, and other communications we provide to you electronically, via email, SMS, electronic messaging and on the Site, satisfy any legal requirement that such communication shall be in writing. You hereby agree to the use of electronic signatures, contracts, orders and other records and to electronic delivery of notices, policies and records of transactions initiated or completed by us or via the Site. You hereby waive any rights or requirements under any statutes or regulations requiring an original signature, delivery or retention of non-electronic records, or to payments or the granting of credits by any means other than electronic means.

## **MISCELLANEOUS**

These Terms of Use and any policies or operating rules posted by us on the Site or in respect to the Site constitute the entire agreement and understanding between you and Elimu Holdings Limited. Our failure to exercise or enforce any right or provision of these Terms of Use shall not operate as a waiver of such right or provision. These Terms of Use operate to the fullest extent permissible by law.

We reserve the right to assign all and any of our rights and obligations to others at any time. We shall not be responsible or liable for any loss, damage, delay or failure to act caused by any cause beyond our reasonable control. If any provision or part of these Terms of Use is determined to be unlawful, void or unenforceable, that provision is deemed severable from these Terms of Use and does not affect the validity or enforceability of the remaining provisions.

You hereby waive any and all defences you may have based on the electronic form of these Terms of Use and the lack of signing by the parties hereto to execute these Terms of Use.

## **CONTACT US:**

In order to resolve a complaint regarding the Site or to receive further information regarding the use of the Site, please contact us at:

**Elimu Holdings Limited**

**Phone: +254 700 663 000**

**[admin@elimu.co.ke](mailto:admin@elimu.co.ke)**