



*This Licence is issued subject to the Kenya Information and Communications Act (Cap. 411A), attendant Regulations and the Terms and Conditions of the Licence*

**LICENCE DETAILS**

<b>License Category</b>	
<b>Licensee Name</b>	
<b>Licence Number</b>	
<b>Licensed Service</b>	
<b>Licence Term</b>	
<b>Effective Date</b>	[ _____ ]
<b>Expiry Date</b>	[ _____ ]
<b>Registered Address</b>	

**For and on behalf of the Communications Authority of Kenya:**

Name: \_\_\_\_\_

**Director General/CEO**

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

NB: An annual compliance certificate will be issued subject to fulfilment of applicable regulatory requirements.

## THE LICENCE TERMS

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The Communications Authority of Kenya (hereinafter referred to as the “**Authority**”), in accordance with the Kenya Information & Communications Act, Cap. 411A (hereinafter referred to as the “**Act**”), hereby authorises the Licensee to establish and provide electronic communications services (hereinafter referred to as the “**Licensed Services**”) in the Republic of Kenya in accordance with the Terms and Conditions set out in this Licence.

1. This Licence is granted for a period of Fifteen (15) or Twenty-Five (25) years (the “**Licence Term**”) from the Effective Date unless it is revoked earlier in accordance with the Licence Conditions herein.
2. The Licensee is authorised to provide any Content Services using its systems/platforms, provided that following a written request submitted by the Licensee, the Authority has approved the provision of such Content Service
3. The Content Services shall be accessed by means of facilities of Network Facilities Providers and/or services of Application Service Providers licensed by the Authority.
4. The Licensee is authorised to provide the Licensed Services provided that:
  - 4.1. The Licensee has the related authorisations from Governmental Authorities and such an authorisation has been filed with the Authority;
  - 1.1. The Licensee has filed details of the specific service to be provided and obtained the Authority’s approval, provided that no separate licence is required for that service.
5. The licensee shall ensure that all equipment and devices used in the provision of the Licensed Services are of an approved standard, duly type - approved by the Authority and conform to the Regulations as may be issued from time to time.
6. The licensee shall only utilize the numbering resources that have been authorized by the Authority.
7. This Licence is subject to the provisions of the Act including, but not limited to, licence modifications, enforcements and sanctions. The Authority may impose penalties, for the contravention of any license terms, conditions or directive (s) issued by the Authority, based on a consideration of several factors, which include, but are not limited to the following:

- 7.1. a determination of whether the contravention was deliberate or as a result of the Licensee's recklessness;
  - 7.2. the duration of the contravention;
  - 7.3. the cooperation or lack thereof of the Licensee in the investigation of any matter relating to the contravention;
  - 7.4. Any demonstrable steps, or lack thereof, taken by the Licensee to remedy the contravention;
  - 7.5. Any financial gain resulting from the contravention, including any unjustifiable cost incurred by consumers because of the contravention;
  - 7.6. Whether or not the Licensee is a repeat offender of the condition or other Licence conditions.
  - 7.7. Duration of operation without a compliance certificate for not having met all the compliance requirements
8. Words importing the singular shall include the plural and vice versa; words denoting persons shall include bodies corporate and unincorporated associations of persons and vice versa.
  9. The Licensee shall not assign, delegate, transfer or encumber in any manner the rights, interests or obligations under this Licence without the prior, express and written consent of the Authority, such consent not to be unreasonably withheld or delayed
  10. In this Licence the following terms shall have the following meanings:
    - 10.1. "**Act**" means Kenya Information and Communications Act, Cap 411A, any successor legislation and any subsequent amendments made thereto;
    - 10.2. "**Application Services**" means electronic communications services which are normally provided for remuneration and consists wholly or mainly in the conveyance of signals on electronic communications networks including telecommunications and transmission services over electronic communications networks.
    - 10.3. "**Application Service Provider (ASP)**" means a licensee authorised by the Authority to provide Application Services;
    - 10.4. "**Compliance Report**" means a report to be prepared periodically by the Licensee detailing its performance in respect of every licence condition;
    - 10.5. "**Compliance Certificate**" means a certificate to be issued by the Authority to a licensee following the licensee's compliance with all regulatory requirements including periodic submission to the Authority of duly completed compliance report and the subsequent receipt and satisfactory review of the same by the Authority;

- 10.6. **“Content”** means any information (short message or multimedia and similar) that is created or produced by a provider and that can be or is sent to an end-user’s mobile phone for free or at a fee
- 10.7. **“Content Services”** means information of any kind normally provided at a fee and is delivered over electronic communications networks and services. They include financial information services and other information services.
- 10.8. **“Content Service Provider (CSP)”** means a person authorised by the Authority to provide content services;
- 10.9. **“Consumer”** means any entity or natural person who uses or requests a publicly available electronic communications service or product.
- 10.10. **“Customer Service Outlet”** means a physical location to be established by the Licensee to, among other things, provide customer service to walk-in customers and manage customer queries
- 10.11. **“Effective Date”** means the date when the Licence was first issued to the licensee, or in the case of a Licence replacement, the date when the original Licence was issued;
- 10.12. **“End-User”** means a User not providing Public Communications Networks or publicly available electronic communications services;
- 10.13. **“Expiry Date”** means the date on which the Licence Term lapses.
- 10.14. **“Government”** means the Government of the Republic of Kenya;
- 10.15. **Issuance Date”** means the date when the licensee was issued with this license.
- 10.16. **“License Term”** means the period stated in the license during which the license remains in force unless otherwise revoked.
- 10.17. **“National Emergency Numbers”** these are numbers designated by the Authority for provision of Public Emergency Services including, but not limited to Police, Fire, Ambulance and Child helpline.
- 10.18. **“Emergency Services”** means services installed and provided for use by public at no cost to access a Public Emergency Service Providers;
- 10.19. **“Network Facilities Provider (NFP)”** means a licensee authorised by the Authority to build and commercially operate Telecommunication/electronic communications Systems;

- 10.20. "**Regulations**" means the Regulations made pursuant to Kenya Information and Communications Act, CAP 411A as may be amended.
- 10.21. "**Renewal Date**" means the date when the license is re-issued on completion of the initial licence term or such other term as may be contained in the subsequent license.
- 10.22. "**Subscriber**" means any natural person or legal entity who or which is party to a contract with the provider of publicly available electronic communications services for the supply of such services;
- 10.23. "**User**" means a legal entity or natural person using or requesting a publicly available electronic communications service;

# THE LICENCE CONDITIONS

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## 1. CONDITION 1: PROVISION OF LICENSED SERVICES

- 1.1. The Licensee shall ensure that the Licensed Services offered are suitable for the public and that the content, services and related promotional material do **NOT**:
  - 1.1.1. **Unlawful content or conduct:** breach the law, omit anything required by law, or facilitate or encourage any unlawful act.
  - 1.1.2. **Violent, offensive or degrading material:** contain material involving violence, sadism, cruelty, foul language, repulsive or disturbing content, grave or widespread offence, or content that debases, degrades or demeans any person.
  - 1.1.3. **Immoral or harmful conduct:** promote or facilitate immoral acts, including prostitution, or encourage any person to engage in dangerous practices or use harmful substances.
  - 1.1.4. **Misleading information:** mislead Consumers through inaccuracy, ambiguity, exaggeration, omission or otherwise. Where information is time-sensitive, Consumers must be clearly informed when it was last updated.
  - 1.1.5. **Privacy, fear or vulnerability:** result in any unreasonable invasion of privacy, induce an unacceptable sense of fear or anxiety, or take unfair advantage of any characteristic or circumstance that may make Consumers vulnerable.
  - 1.1.6. **Social disharmony:** induce or promote tribal, racial or other social disharmony.
- 1.2. The Licensee shall, to the extent possible, ensure that a Licensed Service and any promotional material do not reach those for whom the service concerned is not appropriate

## 2. CONDITION 2: UNIVERSAL ACCESS AND SERVICE OBLIGATIONS

- 2.1. The Licensee shall be required to participate in the provision of Universal Services as may be specified by the Authority from time to time.
- 2.2. The licensee shall ensure that its services and products are accessible to persons with disabilities as prescribed in guidelines or regulations.

- 2.3. The licensee shall contribute to the universal service fund as may be prescribed by the Authority from time to time.

### **3. CONDITION 3: PROVISION OF CUSTOMER CARE SERVICES**

- 3.1. The Licensee shall establish and maintain efficient information services to assist any person to answer questions regarding products, services, and any other reasonable questions relating to the Licensed Services.
- 3.2. The Licensee shall submit a customer care, complaints handling procedures to the Authority within thirty (30) days prior to launch of a service or as prescribed in the Act and regulations
- 3.3. Pursuant to 3.1 above, the licensee shall provide, facilities for the provision of customer care services which shall include but not limited to:
  - 3.3.1. Dedicated customer care lines accessible at no fee
  - 3.3.2. Customer care offices/points
  - 3.3.3. Facilities for persons with disabilities
- 3.4. The licensee shall provide facilities for customer cares services that meet the standards as specified by the Authority from time to time.
- 3.5. The obligation in 3.1 shall not apply if it is not, in the Authority's view, reasonable to require the Licensee to provide the service requested.

### **4. CONDITION 4: REQUIREMENT TO PUBLISH THE CHARGES, TERMS AND CONDITIONS OF LICENSED SERVICE**

- 4.1. Prior to offering a Licensed Service or adjusting the charges, terms and conditions of an existing service, the Licensee shall file the following for approval, with the Authority:
  - 4.1.1. the description and scope of the service,
  - 4.1.2. terms and conditions of the service,
  - 4.1.3. dispute resolution mechanisms, and
  - 4.1.4. charges, (excluding special offers)upon which it proposes to offer the Licensed Services

- 4.2. Notwithstanding the penalty that may be imposed, a licensee that has imposed unapproved charges, terms and conditions of any new service shall refund to the customer who may be aggrieved by the service any charges or cost incurred in obtaining and using the service.
- 4.3. The Licensee shall provide the Licensed Services on Charges, Terms and Conditions approved in accordance with 4.1. A copy of the current version of the Charges, Terms and Conditions shall be published and provided to any person who reasonably requests.
- 4.4. Notwithstanding condition 4.1 and 4.2, the Licensee shall ensure that the charge for each service is clearly stated in all promotions.
  - 4.4.1. Prices shall be noted in the form of a numerical price, inclusive of all taxes, or the total cost to the Consumer of a service:
  - 4.4.2. Textual pricing information must be legible, prominent, horizontal and presented in a way that does not require close examination. The font size of tariffs should be no less than 75% of the size of the number through which services are obtained.
  - 4.4.3. In the case of promotions transmitted via audio-visual device such as television broadcast, the pricing information must be spoken as well as visually displayed.
- 4.5. In any case, the Licensee shall place a short, distinct pricing message during a service promotion.
- 4.6. No product or service may be promoted as being free or being described in a way that implies it is free if it attracts a charge.

## **5. CONDITION 5: NUMBERING**

- 5.1. The Licensee shall upon application and approval, only utilise the numbering resource(s) assigned to it in line with numbering regulations and guidelines that may be issued from time to time.
- 5.2. The Licensee shall operate the Licensed Services/platforms in accordance with the national Numbering Plan(s) unless and until the Authority, upon reasonable notice, prescribes a new numbering plan(s) amending or replacing the Initial Numbering Plan(s). Any new numbering plan shall contain transitional provisions.
- 5.3. The licensee shall not facilitate origination or termination of traffic from/to numbers that do not exist in the national numbering plan.

## **6. CONDITION 6: PUBLIC EMERGENCIES**

- 6.1. In case of a major disaster such as earthquakes, floods and similar events or any other situation of emergency or a crisis of either local, regional or national crisis and similar events which require emergency communication services, the Licensee shall facilitate provision of information to the public as may be directed by the Government giving priority to the support activities required to overcome the emergency. For this purpose, the Licensee shall co-ordinate with and follow the instructions of the Authority as the Authority may direct.
- 6.2. In case the emergency or crisis is related to aspects of national security, the Licensee shall co-ordinate with the competent entity indicated by the Authority and provide the necessary services in accordance with the instructions of the Authority or the competent entity indicated thereby.
- 6.3. Within nine (9) months following the Transfer, the Licensee shall submit to the Authority its plan for procedures and operations it shall follow in the event of any such emergency and shall update such plan upon request by the Authority.
- 6.4. The Licensee may be entitled to reimbursement by the Government of its direct costs for the provision of the services mentioned in 6.1 and 6.2 if the Authority is convinced such costs are reasonable after evidence of such incurred costs is provided.

## **7. CONDITION 7: INTERCONNECTION & PROTECTION OF THIRD PARTY FACILITIES**

- 7.1. Interconnection procedures shall be in accordance with the Regulations
- 7.2. The Licensee shall install suitable equipment for compatibility with the systems of other licensees to enable the provision of the Licensed Services.
- 7.3. The Licensee shall ensure that its equipment, platforms, facilities, or operations do not interfere, damage or harm any third-party property, systems, installations, facilities, or operations.
- 7.4. In case such damage, harm or interference occurs, the Licensee shall immediately switch off its offending equipment, facilities or operations and inform the Authority and the affected operator as a matter of urgency.
- 7.5. Such information shall in no way prejudice the Authority's or third-party rights or claims they may have against the Licensee for the interference, damage, harm or for financial loss that may have been occasioned.

- 7.6. The Licensee shall render the said equipment, platforms, facilities or operations harmless and/or compensate those third parties that may suffer damage, because of its equipment, facilities, systems or operations causing harm or interference.

## **8. CONDITION 8: INTERRUPTIONS TO THE LICENSED SERVICES**

- 8.1. The Licensee shall not intentionally interrupt, suspend nor terminate the provision of any type of Licensed Service without having first notified the Authority in writing and having provided reasonable advance notice to persons affected by such interruption, suspension or termination.
- 8.2. In the event of an unintentional/unforeseen interruption of the Licensed Services or part thereof, which are significant in nature, the Licensee shall inform the public and notify the Authority in writing within 24 hours outlining the cause of such interruption and the steps being undertaken to rectify such interruption.
- 8.3. The provision in 8.1 shall not apply if, the interruption or suspension is to a person to whom the Licensee provides the Licensed Service and whose system or apparatus (or use thereof) is endangering the integrity of the Licensee's operations.
- 8.4. The Licensee shall inform its Consumers the period a Licensed Services is to run and, in any case, notify the Consumers of the termination date of that Licensed Service at least when the period of offering that Licensed Service is quarter way to its termination date.
- 8.5. The provision in 8.1 shall not apply if the interruption of service is the result of Consumer's non-payment or contractual reasons.

## **9. CONDITION 9: ACCESS TO SITES AND RECORDS**

- 9.1. The Licensee shall permit the Authority (or a person authorised by the Authority) to inspect its premises, facilities, platforms, and have access to all its files, records and other data (including what is considered confidential data) to enable it to exercise its functions under the Act.
- 9.2. The Licensee shall upon request provide unlimited access to all equipment sites and operational areas to duly authorised staff of the Authority, any person authorised by the Authority or law enforcement agency for the said to effectively perform their duties.
- 9.3. The Licensee shall establish and maintain information records in regard to its operations, in a format prescribed by the Authority from time to time, for a minimum period of three (3) years from the date such records came into being, for purposes of availing such information on request by the Authority, any person authorised by the Authority or any law enforcement agency.

- 9.4. The licensee shall provide, upon request by the Authority (or a person authorised by the Authority), any information it requires during an inspection including access to any subscriber billing information and information logs. Such information shall be generated from the systems in the presence of Authority's inspectors at the time of the inspection.

#### **10.CONDITION 10: BILLING ACCURACY**

- 10.1. The licensee shall ensure that its billing system is accurate.
- 10.2. The Licensee shall establish a procedure to ensure the accuracy of its billing system, which must be submitted to the Authority for approval. Such an approval shall not be unreasonably delayed or withheld and in any event, the Authority shall give its approval or disapproval within three (3) months from date of receipt of the said submission.
- 10.3. Where the Authority gives the terms of its approval or disapproval, pursuant to Condition 10.2, the Licensee shall take all reasonable steps to comply with such terms issued by the Authority within the shortest time possible but in any event not more than thirty (30) days from the date the terms are issued
- 10.4. The Authority reserves the right to test and examine the billing system before and after it is operational for the Authority to be satisfied that the billing system is accurate.
- 10.5. The Authority may appoint an independent agent to examine and/or test the licensee's billing system on its behalf.:
- 10.6. The Licensee shall not render any bill in respect of any Licensed Systems unless every amount stated in the bill is derived in accordance with the procedure approved by the Authority in 10.1 or/and 10.2 above.
- 10.7. The Licensee shall keep such records as may be necessary or may be determined by the Authority to be necessary for the purpose of satisfying the Authority that the billing process has the characteristics required above and shall retain any records at least three (3)years from the date on which they came into being.
- 10.8. The licensee shall, where required by the Authority, produce a billing record of any subscriber and that at the very minimum should contain, subscriber number/identity, medium/manner of subscription/registration/application for service, service/content subscribed, date of the request for the service/content, date service provided, service/information provided, charges for the service /content, date service was terminated, deactivated or unsubscribed and any other detail as the Authority may deem necessary to enable it discharge its duties with regards to this license.

- 10.9. Any changes to the Licensee's billing system shall be notified to the Authority and shall be subject to the requirements under this Condition.

**11. CONDITION 11: PRIVACY AND CONFIDENTIALITY**

- 11.1. The Licensee shall use all reasonable endeavours to ensure the privacy and confidentiality of subscriber and proprietary business information or secrets obtained during its business from any person to whom it provides the Licensed Systems/services by establishing and implementing reasonable procedures for maintaining confidentiality of such information.
- 11.2. The Licensee shall maintain and submit to the Authority, 180 days from the Issuance Date, sufficient information on its confidentiality procedures to satisfy the Authority, at its reasonable request, that the requirements of 11.1 are being met.
- 11.3. The Licensee shall not use or allow to be used any apparatus comprised in the Licensed Systems (except for the purpose of law enforcement, national interest in accordance with any statute in force in Kenya) which is capable of recording, silently monitoring, or intruding into its Subscriber's communications traffic unless the Licensee complies with 11.4 and 11.5 below.
- 11.4. Except in the instances mentioned 11.3, the Licensee shall make every reasonable effort to inform the parties whose traffic is to be recorded, silently monitored or intruded into before commencing the recording, silent monitoring or intrusion, that the traffic is to be or may be recorded, silently monitored or intruded into.
- 11.5. The Licensee shall, within 180 days from the issuance date, maintain and submit to the Authority a record of how parties will be informed that their traffic is or may be recorded, silently monitored or intruded into, and the purpose of such recording. The Licensee shall provide this information to the Authority upon request.
- 11.6. Where a Licensee enters any contractual arrangement with any other Licensee, person or business for purposes of providing new services under a separate licence, the Licensee shall seek each subscriber's express consent to provide the new services provided that:
- 11.6.1. The manner in which such consent is obtained makes adequate provision for a customer to fully understand that his/her confidential information shall be made accessible to a third party.
- 11.6.2. The process used by the third party enables the Licensee to determine, using its own systems, that the subscriber has provided explicit consent to the third-party provider of a service.

## **12.CONDITION 12: FAIR TRADING**

- 12.1. Without prejudice to other obligations imposed on the Licensee under this Licence, the Licensee shall not engage in any activities, whether by act or omission, which have, or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in Kenya (or a part of it), in relation to any business activity relating to the Licensed Systems. Without limiting the generality of the foregoing, any such act or omission shall include:
- 12.1.1. any abuse by the Licensee, either independently or with others, of a dominant position in Kenya which unfairly excludes or limits competition between the Licensee and any other party;
  - 12.1.2. entering into any contract or engaging in any concerted practice with any other party, which unfairly prevents, restricts or distorts competition in Kenya, or
  - 12.1.3. effecting anti-competitive changes in the telecommunications market in Kenya, and anti-competitive mergers and acquisitions in the communications sector.
  - 12.1.4. Levying unjustifiable charges to its competitors or interconnecting parties which unfairly limits competitors or interconnecting parties' competitiveness and business sustainability.
- 12.2. In the event it appears to the Authority that the Licensee is in breach of 12.1, the Authority shall give written notice to the Licensee:
- 12.2.1. stating that the Authority is investigating a possible contravention;
  - 12.2.2. setting out detailed reasons why it appears to the Authority that there is a breach by the Licensee of this Condition, and
  - 12.2.3. setting out the steps the Authority believes the Licensee should take to remedy the alleged breach and giving the Licensee a reasonable time in which to correct the alleged breach.
- 12.3. The Authority shall allow the Licensee thirty (30) days from the date of the notice to make representations to the Authority, before the Authority takes further action.

## **13.CONDITION 13: PROHIBITION ON UNDUE DISCRIMINATION**

- 13.1. Subject to 13.3 without prejudice to the obligations imposed on the Licensee under this Licence, the Licensee shall not (whether in respect of the rates or other terms and conditions applied or otherwise) show undue preference to, or exercise undue discrimination against, particular persons or persons of any class or description in respect to the provision of the Licensed Systems.
- 13.2. Subject to 13.3 the Licensee may be deemed to have shown such undue discrimination if it unfairly favours to a material extent the provision of any communications services to another communication business it carries out to place at a significant competitive disadvantage persons competing with that business.
- 13.3. The Licensee shall not be deemed to have shown undue discrimination to the extent that:
  - 13.3.1. it is due to matters beyond the Licensee's control;
  - 13.3.2. the provision of connectivity would expose any person engaged in its provision to undue risk of health or safety, or
  - 13.3.3. it is not, in the Authority's' view, reasonably practicable or technically feasible (including where the Licensee cannot provide connectivity in a particular area by reason of the fact that its systems are not sufficiently built out).
- 13.4. Any question relating to whether any act done or course of conduct amounts to undue preference or undue discrimination shall be determined by the Authority.

#### **14.CONDITION 14: PROHIBITION OF CROSS-SUBSIDIZATION**

- 14.1. The Licensee shall not subsidise or cross-subsidise, or permit itself to be subsidised or cross-subsidised or give or receive undue preference to or from, as the case may be, any of its associated businesses or persons as concerns the provision of the Licensed Systems and/or any other licences granted to the Licensee by the Authority.
- 14.2. The Licensee shall maintain necessary records to evidence resource transfers between its associated businesses or persons. The Authority may at its discretion request the licensee to submit this or other information related to the licensed businesses to satisfy the Authority that no cross-subsidy is taking place.
- 14.3. If the Authority determines that cross-subsidy has occurred the Authority shall give written notice to the licensee setting out the steps the Authority believes the Licensee should take to remedy the alleged breach and giving the Licensee a reasonable time in which to correct the alleged breach. The Authority shall allow the Licensee 30 days from

the date of the notice to make representations to the Authority, before the Authority takes further action.

- 14.4. Where the Authority deems it necessary and appropriate to supervise compliance with the provisions of this Licence, it may order the Licensee to provide the Licensed Systems through a separate division or divisions, a separate branch or branches or a separate subsidiary or subsidiaries.

#### **15.CONDITION 15: NOTIFICATION OF CHANGE IN SHAREHOLDING**

- 15.1. Subject to 15.3 below, the Licensee shall notify the Authority of:
- 15.2. any change in the proportion of the shares held directly in a Licensee by any person, and
- 15.3. the acquisition of any shares and such shares not being shares already listed in any stock exchange held directly in a Licensee by a person not already holding shares, and the proportion of such shares held by that person immediately before acquisition.
- 15.4. The Licensee shall notify the Authority prior to any entity acquiring ownership or control of all or a majority of the stock of the Licensee such that the Licensee shall stand as a subsidiary in relation to that entity.
- 15.5. The Licensee shall be obliged to notify the Authority of any acquisition of shares or change in shareholding of the Licensee by any person and such shares not being shares already listed in any stock exchange only if, by reason of that acquisition or change, the total number of shares in the Licensee held by that person together with any shares held by any nominee or trustee for that person immediately after the change or acquisition:
  - 15.5.1. exceeds 15 per cent of the total number of shares in the Licensee (where it does not exceed 15 per cent prior to that change or acquisition);
  - 15.5.2. exceeds 30 per cent of the total number of shares in the Licensee (where it does not exceed 30 per cent prior to that change or acquisition), and
  - 15.5.3. exceeds 50 per cent of the total number of shares in the Licensee (where it does not exceed 50 per cent prior to that change or acquisition).
- 15.6. In any case referred to in 15.1 or 15.2, notification shall be given by a date, which is thirty (30) days prior to the taking effect of such change or acquisition.
- 15.7. In instances referred to in 15.2 and 15.3, the Authority upon receipt of the notification shall inform the licensee of its decision (approval/disapproval) within thirty (30) days of receipt of notification. The Authority may within sixty (60) days of notifying the Licensee

of its disapproval, having considered representations made by interested parties, and giving reasons for its decision, prohibit the change in shareholding where it believes it is in the public interest to do so.

#### **16.CONDITION 16: PRE-NOTIFICATION OF JOINT VENTURES**

- 16.1. The Licensee shall notify the Authority not later than sixty (60) days before the taking effect of any of the agreements or arrangements to which this Condition applies giving particulars of the agreements and/or arrangements. The agreements or arrangements are an agreement with any person for the establishment or control of anybody corporate for the purpose of:
- 16.1.1. the running of a telecommunications system which requires a licence under the Act;
  - 16.1.2. providing telecommunications services in Kenya which requires a licence under the Act;
  - 16.1.3. carrying of content over telecommunications systems which requires a licence under the Act;
  - 16.1.4. the production of telecommunications apparatus for supply in Kenya where that production would lead to a monopoly situation which would not otherwise exist in relation to the supply of telecommunications apparatus of any description in Kenya;
  - 16.1.5. an agreement for the establishment of a partnership for any of those purposes and in those circumstances, and
  - 16.1.6. any other agreement or arrangement in the nature of the joint venture for the purpose of running a business which requires a licence under the Act or for the purpose of providing telecommunications services in Kenya.
- 16.2. 16.1 above applies in relation to an agreement or arrangement for the establishment or control of anybody corporate or partnership where the Licensee has or is to have not less than twenty (20%) per cent of the voting power in any organ controlling that body.

#### **17. CONDITION 17: ACCOUNTING REQUIREMENTS**

- 17.1. Within nine (9) months from the Issuance Date, the Licensee shall submit to the Authority the accounting principles relating to the running of the Licensed Systems and which allows the recording of investments, expenses and revenues in accordance with generally accepted accounting standards recognised in Kenya.

- 17.2. Within sixty (60) days of the end of each fiscal year of the Licensee, the Licensee shall deliver to the Authority its balance sheet as at the end of such fiscal year and the related statements of operations, equity and cash flows, in each case accompanied by a report thereon of independent auditors stating that such financial statements fairly present the financial position of the Licensee at the dates indicated and were prepared in accordance with accounting principles submitted to the Authority in accordance with 17.1 above.
- 17.3. The Authority may request the Licensee to submit other accounting information it may require to effectively supervise and enforce the terms of this Licence and in particular if the accounting principles established by the Licensee fail to achieve the objectives set forth in that Condition.
- 17.4. The licensee shall clearly show the accounts related to this license in its financial reporting.

**18.CONDITION 18: REQUIREMENT TO PROVIDE INFORMATION**

- 18.1. The Licensee shall maintain and provide such information as will enable the Authority to carry out its functions under the Act in such manner and at such times as the Authority may specify and shall ensure that all information submitted is accurate.
- 18.2. The Authority shall have the right to request the Licensee to submit periodic reports, statistics and other data as well as request additional information with a view to supervise and enforce effectively the terms of this Licence.
- 18.3. By the 15<sup>th</sup> of July of every year or as may be specified by the Authority, the Licensee shall submit a Compliance Report detailing the performance of the previous operational year ended 30<sup>th</sup> June.
- 18.4. The Authority shall review the Compliance Report and:
  - 18.4.1. If the Licensee is compliant with the terms and conditions of this license, issue the Licensee with a Compliance Certificate in respect of compliance for the year under review, and
  - 18.4.2. If the Licensee is not in compliance with the terms and conditions of this Licence, require the Licensee to remedy the area of non-compliance in accordance with the provisions of this Licence and the Act.
- 18.5. In making a request for information, the Authority will ensure that no undue burden is imposed on the Licensee in procuring and furnishing such information, unless the

Authority considers such information is essential to enable it to exercise its functions under the Act.

- 18.6. The Authority shall have the right to publish information which it receives under this Condition unless, following representations by the Licensee, the Authority is satisfied that the information is of such confidential nature that disclosure would have a material adverse effect on the Licensee's business.

#### **19.CONDITION 19: DISPUTE SETTLEMENT**

The dispute settlement mechanism set out in the Act and/or regulations shall apply to any dispute or disputes that arise out of the provisions of this Licence.

#### **20.CONDITION 20: FORCE MAJEURE**

- 20.1. Where the Licensee is impeded, hindered or otherwise prevented from carrying out any obligation contained herein, or as required by the Authority, by natural disasters such as fire, flood, earthquake, volcanic eruption, action of Government, state of war, acts of terrorism, civil commotion or insurrection, riots, embargo or any other cause beyond the control of the Licensee, the Authority may (after due consideration of the Licensee's request) exempt the Licensee from performing such obligation for so long as and to the extent that the performance of the obligation is affected by such force majeure.
- 20.2. The Licensee seeking to rely on force majeure as an exemption shall demonstrate to the Authority that it took all reasonable steps to minimize the impact of the force majeure on the performance of its obligations and where any Licensed Systems were damaged by such force majeure, that it took reasonable steps to repair or rebuild such systems once the force majeure had ceased or been eliminated.

#### **21.CONDITION 21: SUSPENSION**

- 21.1. The Authority may suspend some/part of the activities/services of the licensee where the Licensee has breached a Condition in this Licence, and in the Authority's opinion the breach is of a material nature, and the Licensee has been notified of the breach of the license and has been given notice to comply within a specified period and failed to comply and even after being issued with a penalty has failed to pay the penalty and/or continues with the non-compliance.
- 21.2. Where the Authority intends to suspend such activities/services under this Licence pursuant to 21.1, the Authority shall issue a sixty (60) days' notice of its intention to suspend such service, which shall identify the breach and give the Licensee an opportunity to rectify the breach and/or make representations within that period.

- 21.3. After the expiry of the notice in 21.2 above, where the Authority is satisfied with the rectification of the cited breach and/or the representations made by the Licensee, it shall lift the suspension notice.
- 21.4. After the expiry of the notice in 21.2 above, and where the Authority is not satisfied with the rectification of the cited breach and/or the representations made by the Licensee, the Authority will issue the Licensee a notice that after a period of thirty (30) days, the cited service shall be suspended.
- 21.5. The notice issued in 21.4 shall specify the duration of the suspension and the conditions for lifting of the suspension.
- 21.6. Where the Licensee rectifies the breach after suspension in 21.4 above, the suspension notice shall be lifted.
- 21.7. Where the licensee fails rectify the breach at the expiry of the suspension period, the Authority may revoke the License in accordance with condition 22.

## **22.CONDITION 22: LICENCE REVOCATION**

- 22.1. Notwithstanding any other Condition in this License, the Authority may at any time revoke this Licence by giving six (6) months' notice in writing under any of the following circumstances:
  - 22.1.1. if the licensee communicates to the Authority in writing on their intention to terminate the Licence;
  - 22.1.2. if the Licensee does not provide evidence of commencement of the provision of the Licensed Systems Twelve (12) months from the Effective Date. The Licensee shall submit such evidence by completing a Compliance Report to satisfy the Authority that the Licensee has complied with this requirement;
- 22.2. if any amount payable under Conditions 26 is unpaid 90 days after the due date and forty-five (45) days after the Authority notifies the Licensee that the payment is overdue.
- 22.3. if the Licensee has breached a Condition in this Licence, and in the Authority's opinion the breach is of a material nature, and the Licensee has failed to comply with any notice issued by the Authority under the Act or under the Regulations or under this license and thereafter has been given by the Authority a further sixty (60) days in which to make representations in relation to the matters set out in the earlier notice which the

Authority has taken into account or matters which the Licensee believes are relevant and the Authority appears not to have taken into account;

- 22.4. if the Licensee is dissolved or enters liquidation, bankruptcy or equivalent proceedings or makes a general assignment for the benefit of creditors, and
- 22.5. if the Licensee fails to notify the Authority of any of the events specified in Condition 14 or 15 and the Authority has given written notice to the Licensee that the Authority intends to revoke the Licence on the grounds set out in Condition 14 or 15 respectively.

After the end of the six (6) months' notice, the Authority shall publish a notice in the Kenya Gazette stating that it intends to revoke this Licence and setting out the reasons on which this intention is based. Revocation shall take effect seven (7) days following publication of the notice in the Kenya Gazette.

### **23.CONDITION 23: TRANSITIONAL PROVISIONS**

- 23.1. The Authority may issue an appropriate Licence at the request of the Licensee three (3) years prior to the expiry of the Licence Term provided that the Authority has carried out a formal review to determine whether or not the Licence should be renewed, which review shall be concluded two (2) years prior to the expiry of the Licence Term.
- 23.2. Any subsequent Licence envisaged under 23.1 shall be issued at least one year prior to the expiry of the term of this Licence and shall be subject to such terms and conditions and/or fees as the Authority shall determine.

### **24.CONDITION 24: LICENCE TRANSFER**

- 24.1. The Licensee shall not assign, delegate, transfer or encumber in any manner the rights, interests or obligations under this Licence without the prior, express and written consent of the Authority, such consent not to be unreasonably withheld or delayed.
- 24.2. The transfer of the license shall not include resources assigned by the Authority to the licensee whose license is subject of the transfer.

### **25. CONDITION 25: SUBSCRIBER MANAGEMENT IN THE EVENT OF DISCONTINUATION OF OPERATIONS**

- 25.1. Within six (6) months from the Issuance Date, the Licensee shall submit for the Authority's approval, a subscriber transfers management plan that shall facilitate transfer of customers to another licensee to ensure continuity of services.

- 25.2. The Licensee shall immediately implement the approved subscriber transfer management plan upon revocation or non-renewal of this Licence.
- 25.3. The referenced plan in 25.1 above shall;
- 25.3.1. ensure smooth, uninterrupted and seamless transfer of customers under the same or better terms and conditions of services
- 25.3.2. ensure continuity of services during the transition period of two (2) years in the event of revocation or in the event of non-renewal which shall be limited to provision of the existing services only and to the existing customers only
- 25.4. If the Licensee is unable to reach an agreement with a third party on the transfer of subscribers, the Licensee shall refer the matter to the Authority for guidance.

**26.CONDITION 26: LICENCE FEES**

The Licensee shall pay to the Authority:

- 26.1. On 1st July of each year, an annual operating fee equivalent to zero-point-four percent (0.4%) of the audited annual gross revenues accruing from the Licensed Services during the previous financial year or Kenya shillings eighty thousand (KShs. 80,000) only, whichever is higher, for subsequent years of operation.
- 26.2. Any other fee payable under this Licence including but not limited to numbering fees.
- 26.3. Any of the fees due to the Authority under 26.1 and 26.2 that remain unpaid for ninety (90) days after they become due shall attract a penalty at the rate of 2% per cent per month, which shall become a debt owed to the Authority.