

THE LICENCE TERMS

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 supply, installation and maintenance of communications infrastructure for third parties hereinafter referred to as the “ **Licensed Services**” in the Republic of Kenya in accordance with the Terms and Conditions set out in this license:

1. This Licence is granted for a period of Fifteen (15) years (the “**Licence Term**”) from the Effective Date as specified in the Licence, unless it is revoked earlier in accordance with the Licence Conditions herein.
2. The Licensee shall provide the Licensed Services in accordance with standards on installation and maintenance of internal/external communication infrastructure as may be specified by the Authority from time to time and attendant Regulations.
3. The Licensee shall only install electronic communications equipment, which have been type approved, by the Authority pursuant to the Kenya Information and Communications Act and the Regulations as may be issued from time to time.
4. With reference to licence term 3 above, the Licensee shall procure electronic communications equipment exclusively from Communication Equipment Distributors (CED) licensed by the Authority.
5. Any word, phrase or expression used in this Licence shall, unless the context requires otherwise, have the same meaning as it has in the Act.
6. Words denoting the singular shall include the plural and vice versa; words denoting persons shall include bodies corporate and unincorporated associations of persons and vice versa; words denoting gender shall refer to all genders.
7. This Licence and the Licensee are subject to the provisions of the Act including, but not limited to, licence modifications and enforcements.
8. In this Licence the following terms shall have the following meanings:
 - 8.1. “Act” means the Kenya Communications Act Cap. 411A, any successor legislation and any subsequent amendments made thereto;
 - 8.2. “Electronic Communications Equipment” means any appliance, apparatus or accessory used or intended to be used to provide or access communication services;
 - 8.3. “Completion of Works Certificate” means a certification document issued by the Licensee detailing the successful completion and the tests performed on an installation;
 - 8.4. “Compliance Report” means a report prepared periodically by the Licensee detailing its compliance in respect of every licence condition;
 - 8.5. “Compliance Certificate” means a certificate issued by the Authority to a licensee upon compliance with license terms and conditions;

- 8.6. “Effective Date” means the date when the Licence was first issued, or in the case of a Licence replacement, the date when the original Licence was issued;
- 8.7. “Maintenance Services” means procedures undertaken to ensure the continued performance of communication systems or devices in accordance with the specifications, standards and requirements;
- 8.8. “Regulations” means the subsidiary legislation pursuant to Kenya Information and Communications Act Cap. 411A;
- 8.9. “Technical Personnel” means a person licensed by the Authority to undertake the installation, testing, commissioning and maintenance of electronic communications equipment as either a “Telecommunications Engineering Personnel” or “Telecommunications Systems Professionals”.



THE LICENCE CONDITIONS

1. CONDITION 1: PROVISION OF LICENSED SERVICES

- 1.1. The Licensee shall provide the Licensed Services to any person on reasonable request.
- 1.2. The obligation under clause 1.1 shall not apply where, in the Authority's opinion, it would be unreasonable to require the Licensee to comply in the circumstances, including but not limited to:
 - 1.2.1. where the provision of the service would expose any person engaged in its provision to undue risk to health or safety; and
 - 1.2.2. where it is not reasonably practicable to provide the requested service, including where the required electronic communications systems have not been sufficiently deployed in the relevant area.
- 1.3. The Licensee shall provide to its customers the standard terms and conditions of service.
- 1.4. The standard terms and conditions shall include Service Level Agreements and a provision for an effective complaint resolution mechanism to be provided to the affected person on request.

2. CONDITION 2: PROVISION OF CUSTOMER CARE SERVICES

- 2.1. The Licensee shall establish and maintain efficient information services to assist any person to whom it provides Licensed Services to answer questions regarding products, services and any other reasonable questions relating to the Licensed Services.
- 2.2. The obligation in 2.1 shall not apply if it is not, in the Authority's view, reasonable to require the Licensee to provide the service requested.
- 2.3. Pursuant to 2.1 above, the licensee shall provide facilities for the provision of customer care services which shall include but not limited to:
 - 2.3.1. Dedicated customer care telephone lines;
 - 2.3.2. Customer care offices/points; and
 - 2.3.3. Facilities for persons with disabilities within 6 months from the effective date of the licence.
- 2.4. The Licensee shall submit a customer care, complaints handling procedures to the Authority at least thirty (30) days prior to launch of a service or as prescribed in the Act or Regulations.
- 2.5. The licensee shall provide facilities for customer cares services that meet the standards specified by the Authority from time to time.

3. CONDITION 3: REQUIREMENTS FOR INSTALLATION AND MAINTENANCE

- 3.1. The Licensee shall ensure that all Works strictly conform to the specifications and requirements prescribed by the Authority.
- 3.2. The Licensee shall ensure that all Works are undertaken by holders of appropriate Technical Personnel licenses issued by the Authority.
- 3.3. The Licensee shall ensure that Completion of Works Certificates are issued to all its customers upon completion of installation works.
- 3.4. The Completion of Works Certificate shall be in a format prescribed by the Authority and shall at a minimum include the following:
 - 3.4.1. The name and contact details of the client;
 - 3.4.2. Physical location of the works including geographical coordinates;
 - 3.4.3. Full names and Licence Number of the Technical Personnel supervising the installation works;
 - 3.4.4. Description of the Works undertaken including Type, Make, Model and Capacity of equipment installed;
 - 3.4.5. Start and completion date of the installation works;
 - 3.4.6. Statement of satisfaction with installation works by the customer;
 - 3.4.7. A statement to the effect that the Authority reserves the right to inspect the works undertaken by the licensee at the customers' premises during normal working hours;
 - 3.4.8. The results of the tests undertaken on an installation; and
 - 3.4.9. The Completion of Works certificate issued by the licensee shall be signed by the duly licensed Technical Personnel responsible for the installation works.
- 3.5. The Licensee shall ensure that copies of Completion of Works Certificate issued to customers are submitted to the Authority on quarterly basis.
- 3.6. The Licensee shall provide or ensure the provision of Maintenance Services, on the reasonable request of any person to whom it provides the Licensed Services, in respect of any communication system or authorized equipment/device supplied to the said person by the Licensee and which is under that person's control.
- 3.7. The obligation in 3.6 shall not apply if it is not, in the Authority's view reasonable for the Licensee to maintain the equipment/device including but not limited to where the equipment/device is beyond economic repair or the components are no longer available.

4. CONDITION 4: INSPECTION OF WORKS

- 4.1. To enable the Authority exercise its functions under the Act, the Licensee shall permit, and where necessary accompany the Authority or a person authorised by the Authority, to inspect Works completed by the Licensee.
- 4.2. To enable the Authority exercise its functions under the Act, the Licensee shall facilitate, and where necessary accompany the Authority or a person authorised by the Authority, to inspect Works completed by the Licensee.
- 4.3. Where an inspection undertaken by the Authority determines that the Works done by the Licensee do not comply with applicable specifications or requirements, the Authority shall:
 - 4.3.1. Notify the Licensee to rectify such works to bring them to the prescribed specifications or requirements; and
 - 4.3.2. Impose Sanctions on the licensee in the event of failure to rectify the works in accordance with the Notice issued by the Authority.

5. CONDITION 5: ACCESS TO SITES AND RECORDS

- 5.1. To enable the Authority exercise its functions under the Act, the Licensee shall permit the Authority (or a person authorised by the Authority) to inspect its premises, facilities, Platforms, files, records and other data (including what is considered confidential data).
- 5.2. 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.
- 5.3. 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.
- 5.4. 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 customer information for purposes of enabling the Authority determine whether the Licensee is compliant with the requirements under the Act, Regulations and Licence conditions. Such information shall be generated/retrieved from their systems/facilities in the presence of Authority's inspectors at the time of the inspection.

6. CONDITION 6: LICENCE FEES

The Licensee shall pay to the Authority:

- 6.1. 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 ten thousand (KShs. 10,000.00) only, whichever is higher, for subsequent years of operation.

- 6.2. Any other fee payable under this Licence.
- 6.3. Any of the fees due to the Authority under 6.1 and 6.2 that remain unpaid ninety (90) days after they become due shall attract an interest at the rate of 2% per cent per month, which shall become a debt owed to the Authority.

7. CONDITION 7: UNIVERSAL ACCESS AND SERVICE OBLIGATIONS

- 7.1. The Licensee shall participate in the provision of Universal Services as may be specified by the Authority from time to time.
- 7.2. The licensee shall ensure that its services and products are accessible to persons with disabilities as prescribed in guidelines or regulations.
- 7.3. The licensee shall contribute to the universal service fund as may be prescribed by the Authority from time to time

8. CONDITION 8: ACCOUNTING REQUIREMENTS

- 8.1. Within three (3) months from the Effective Date, the Licensee shall submit to the Authority the accounting principles relating to the running of the Licensed Services and which allows the recording of investments, expenses and revenues in accordance with generally accepted accounting standards in Kenya.
- 8.2. 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 8.1 above.
- 8.3. 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.
- 8.4. The licensee shall clearly show the accounts related to this license in its financial reporting.

9. CONDITION 9: REQUIREMENT TO PROVIDE INFORMATION

- 9.1. 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.
- 9.2. 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.
- 9.3. By the 15th 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 30th June.

9.4. The Authority shall review the Compliance Report and:

- 9.4.1. If the Licensee is compliant with the terms and conditions of this Licence, issue the Licensee with a Compliance Certificate in respect of compliance for the year under review; and
- 9.4.2. If the Licensee is not in compliance with the Licence, require the Licensee to remedy the area of non-compliance in accordance with the provisions of this Licence and the Act.

9.5. 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.

9.6. 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.

10. CONDITION 10: FAIR TRADING

10.1. 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 Services. Without limiting the generality of the foregoing, any such act or omission shall include:

- 10.1.1. any abuse by the Licensee, either independently or with others, of a dominant position in Kenya;
- 10.1.2. entering any contract or engaging in any concerted practice with any other party, which unfairly prevents, restricts or distorts competition in Kenya; or
- 10.1.3. effecting anti-competitive changes in the market in Kenya, and anti-competitive mergers and acquisitions in the communications sector.

10.2. In the event it appears to the Authority that the Licensee is in breach of 10.1, the Authority shall give written notice to the Licensee:

10.3. Stating that the Authority is investigating a possible contravention:

- 10.3.1. setting out detailed reasons why it appears to the Authority that there is a breach by the Licensee of this Condition; and
- 10.3.2. setting out the steps the Authority believes the Licensee should take in order to remedy the alleged breach.

10.4. 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.

11. CONDITION 11: PUBLIC SAFETY

- 11.1. The Licensee shall, in the provision of the licensed services, take proper and adequate safety measures to safeguard life against any danger, including electromagnetic emissions emanating from the [electronic communications](#) equipment or installation so used;
- 11.2. The Licensee shall ensure that any of its infrastructure works do not become a health, environmental or a safety hazard and are not in contravention of any statute, rule, code of practice, guideline or regulation, on public safety.
- 11.3. The licensee shall ensure that its Licensed Services comply with the relevant environmental and safety laws.

12. CONDITION 12. PRIVACY AND CONFIDENTIALITY

- 12.1. The Licensee shall use all reasonable endeavours to ensure the privacy and confidentiality of proprietary information and business secrets obtained during its business from any person to whom it provides the Licensed Services by establishing and implementing reasonable procedures for maintaining confidentiality of such information.
- 12.2. The Licensee shall maintain and submit to the Authority, 180 days from the Effective Date, sufficient information on its confidentiality procedures to satisfy the Authority, at its reasonable request, that the requirements of 9.1 are being met.
- 12.3. The Licensee shall not, unless with authorisation from the customer, install any equipment or device capable of recording, silently monitoring, or otherwise intruding into its customers' systems.

13. CONDITION 13: PROHIBITION ON UNDUE DISCRIMINATION

- 13.1. The Licensee shall not show undue preference to, or exercise undue discrimination (whether in respect of the rates or other terms and conditions applied or otherwise) against persons or persons of any class or description in respect to the provision of the Licensed Services.
- 13.2. The Licensee shall not be deemed to have shown undue discrimination to the extent that:
 - 13.2.1. it is due to matters beyond the Licensee's control;
 - 13.2.2. the provision of services would expose any person engaged in its provision to undue risk of health or safety; or
 - 13.2.3. 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 Services 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 Services 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:
 - 15.1.1. any change in the proportion of the shares held directly in a Licensee by any person; and
 - 15.1.2. 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.
- 15.2. 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.
- 15.3. 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:
 - 15.3.1. 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);
 - 15.3.2. 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
 - 15.3.3. 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).

- 15.4. 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.
- 15.5. 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 any body 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; and
 - 16.1.3. carrying of content over telecommunications systems which requires a licence under the Act.
- 16.2. An agreement for the establishment of a partnership for any of those purposes and in those circumstances, and 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 communications services in Kenya.
- 16.3. 16.1 above applies in relation to an agreement or arrangement for the establishment or control of any body 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: DISPUTE SETTLEMENT

- 17.1. 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.

18. CONDITION 18: FORCE MAJEURE

- 18.1. 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.
- 18.2. 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 Services were damaged by such force majeure, that it took

reasonable steps to repair or restore such services or facilities once the force majeure has ceased or been eliminated.

19. CONDITION 19: LICENCE TRANSFER

- 19.1. 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.
- 19.2. The transfer of the license shall not include resources assigned by the Authority to the licensee whose license is subject of the transfer.

20. CONDITION 20: SUSPENSION OF LICENSED SERVICES

- 20.1. 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.
- 20.2. Where the Authority intends to suspend such activities/services under this Licence pursuant to 20.1, the Authority shall issue a sixty (60) days' notice of its intention to suspend such activity/service, which shall identify the breach and give the Licensee an opportunity to rectify the breach and/or make representations within that period.
- 20.3. After the expiry of the notice in 20.2 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.
- 20.4. After the expiry of the notice in 20.2 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 activity/service shall be suspended.
- 20.5. The notice issued in 20.4 shall specify the duration of the suspension and the conditions for lifting of the suspension.
- 20.6. Where the Licensee rectifies the breach after suspension in 18.4 above, the suspension notice shall be lifted.
- 20.7. Where the licensee fails to rectify the breach at the expiry of the suspension period, in accordance with condition 20.5, the Authority may revoke the Licence.

21. CONDITION 21: LICENCE REVOCATION

- 21.1. Notwithstanding any other Condition in this License, the Authority may at any time revoke this Licence by giving six (6) months' notice under writing in any of the following circumstances:
 - 21.1.1. if the licensee communicates to the Authority in writing on their intention to terminate the Licence;

- 21.1.2. if the Licensee does not provide evidence of commencement of the provision of the Licensed Services 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;
- 21.1.3. if any amount payable under Conditions 6 is unpaid 90 days after the due date and forty-five (45) days after the Authority notifies the Licensee that the payment is overdue;
- 21.1.4. 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;
- 21.1.5. if the Licensee is dissolved or enters liquidation, bankruptcy or equivalent proceedings or makes a general assignment for the benefit of creditors; and
- 21.1.6. if the Licensee fails to notify the Authority of any of the events specified in Condition 15 or 16 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 12 or 13 respectively.
- 21.2. 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.