



THE LICENCE TERMS

The Communications Authority of Kenya (the "Authority"), in accordance with the Kenya Information and Communications Act, Cap 411A(the "Act"), hereby authorises (the "Licensee") to establish and provide subscription management services as described herein the ("Licensed Services") in accordance with the Conditions set out in this Licence.

1. This Licence is issued on (the **Issuance/Renewal Date**).
2. This Licence is issued for the "**Licence Term**" effective from the "**Licence/Renewal Date**" unless it is revoked earlier in accordance with the Licence Conditions herein.
3. The Licensee is authorized to provide subscription management services that include where applicable, access control, subscriber management, distribution of smart cards and type approved customer premises equipment, technical/installation /maintenance support, service quality monitoring, billing and subscription fee collection, customer care, complaints handling and any other related customer support service that has been duly approved by the Authority.
4. The licensee shall provide subscription management services on behalf of subscription broadcasting service providers who have been duly authorized by the Authority, provided these service providers have duly signed the Reference service level agreement with the licensee.
5. The Licensee is authorized to provide the Licensed Services provided that:
 - 5.1. The Licensee has the related statutory authorizations from Governmental Authorities and such authorizations have been filed with the Authority;
 - 5.2. The determination of whether or not a separate licence is required to provide the particular service has been done by the Authority.

6. All equipment and devices used to provide the licensed services shall in all respects be of approved industrial standards, type approved by the Authority where applicable and conforming to the Authority's regulations as may be issued from time to time.
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 term, condition or directive 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 or not 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 as a result of the contravention;
 - 7.6. Whether or not the Licensee is a repeat offender of a particular condition.
 - 7.7. Duration of operation without a compliance certificate for not having met all the compliance requirements
 - 7.8. a determination of whether or not the contravention was deliberate or as a result of the Licensee's recklessness;
 - 7.9. the duration of the contravention;
 - 7.10. the cooperation or lack thereof of the Licensee in the investigation of any matter relating to the contravention;
 - 7.11. Any demonstrable steps, or lack thereof, taken by the Licensee to remedy the contravention;
 - 7.12. Any financial gain resulting from the contravention, including any unjustifiable cost incurred by consumers as a result of the contravention;
 - 7.13. Whether or not the Licensee is a repeat offender of a particular condition.
 - 7.14. Duration of operation without a compliance certificate for not having met all the compliance requirement

8. Words importing the singular shall include the plural where the context so admits and vice versa; words denoting persons shall include bodies corporate and unincorporated associations of persons and vice versa.
9. In this Licence the following terms shall have the following meanings:
- 9.1. **“Act”** means the Kenya Information and Communications Act of 1998, CAP 411A, any successor legislation and any subsequent amendments made thereto;
 - 9.2. **‘Regulations’** means all the Regulations under the Kenya Information and Communications Act.
 - 9.3. **‘Authority’** means the Communications Authority of Kenya;
 - 9.4. **‘Licence’** means an instrument of authorization issued by the Authority to a Licensee stipulating the terms and conditions under which the licensed service (s) shall be offered by the holder.
 - 9.5. **‘Licensee’** means legal person or entity issued with a licence by the Authority to provide the licensed service(s) under specified Terms and Conditions;
 - 9.6. **‘Terms and Conditions of Licence’** encompass general and special terms and conditions for Subscription Management Services.
 - 9.7. **‘Rules’** means all Codes, guidelines and directives issued by the Authority .
 - 9.8. **‘Licence period’** means the period between the date of issuance of the Licence and the expiration date of the Licence.
 - 9.9. **Programme** means a body of live or recorded material consisting of images, sounds or both embodied in signals and emitted for the purpose of ultimate broadcasting;
 - 9.10. **‘Programme segment’** means Programme which in audio-visual sense presents one whole unit, with its beginning and end, clearly separated from other segments;
 - 9.11. **‘Programme schedule’** means the hours of broadcasting of a programme of an individual licensee;
 - 9.12. **‘Address’** means the licensees official physical and postal address;
 - 9.13. **‘Conditional Access’** means the protection of broadcasting programme transmissions so that only authorized subscribers with suitable decoding apparatus

can have access to the content. This is achieved by a combination of scrambling and encryption.

- 9.14. **'Law enforcement agency'** means agencies of the government whose role includes investigation of crime and/or enforcement of law.
- 9.15. **'Service Level Agreement'** means an agreement entered between the Licensee and a Subscriber defining the nature of the services to be provided and establishing a set of parameters to be used in measuring the agreed service level;
- 9.16. **'Reference Service Level Agreement (SLA)'** means a standard template of the SLA between the Licensee and other licensees requesting for subscription management service.
- 9.17. **"Subscriber"** means a person who in relation to subscription TV and/or radio has entered into an agreement with a provider of radio or TV services;
- 9.18. **"Government"** means the Government of the Republic of Kenya;
- 9.19. **"License Term"** means the period stated in the license during which the license remains in force unless otherwise revoked.
- 9.20. **'Compliance Report'** means a report to be prepared periodically by the Licensee detailing its performance in respect of every licence condition;
- 9.21. **"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 returns and the subsequent receipt and satisfactory review of the same by the Authority;
- 9.22. **'Tribunal'** means Communications and Multimedia Appeals Tribunal established under section 102 of the Act.

LICENSE CONDITIONS

1. CONDITION 1: GENERAL TERMS AND CONDITIONS OF LICENCE

- 1.1. Every entity providing subscription management services in Kenya must have this Licence from the Authority before commencement of service offering;
- 1.2. The Authority may amend, and adjust the terms of this Licence in accordance with the provisions of the Acts and Regulations.
- 1.3. Nothing in this Licence reverses the obligation of the licensee to fulfill all other statutory, legal or contractual obligations necessary for provision of subscription management services.
- 1.4. Acceptance of this licence constitutes an obligation on the part of the Licensee to comply with all its Terms and Conditions.
- 1.5. This Licence replaces any previous authorization issued to the holder by the Authority, its predecessors or the Ministry in charge of Information and/or broadcasting before the Amendment of the Act in 2013.
- 1.6. The licensee shall not offer subscription management services to third parties unless such parties are duly licensed or authorized by the Authority
- 1.7. The Licensee shall ensure that its agreement with the channel suppliers or broadcasters includes a requirement that their supplied content is desirable to the public and in particular that the content does not:-
 - 1.7.1. contain anything which is in breach of the law, or omit anything which the law requires. Furthermore, services and promotional material must not facilitate or encourage anything, which is in any way unlawful.
 - 1.7.2. contain material indicating violence, sadism or cruelty, or be of a repulsive or horrible nature.
 - 1.7.3. involve the use of foul language.
 - 1.7.4. be of a kind that are likely to be used to promote or facilitate immoral acts including prostitution.
 - 1.7.5. be of a kind that is likely to mislead through inaccuracy, ambiguity, exaggeration, omission or otherwise and it should be clear to the consumers when time-sensitive information was last updated;

- 1.7.6. result in any unreasonable invasion of privacy;
- 1.7.7. induce an unacceptable sense of fear or anxiety;
- 1.9.1 encourage or incite any person to engage in dangerous practices or to use harmful substances;
- 1.7.8. induce or promote tribal and/or racial disharmony;
- 1.7.9. cause grave or widespread offence;
- 1.7.10. debase, degrade or demean.
- 1.7.11. seek to take unfair advantage of any characteristic or circumstance which may make Consumers vulnerable.

2. CONDITION 2: NAME AND SERVICE IDENTITY

- 2.1. The Licensee's subscription management service shall be offered under the name (Service identity)
- 2.2. The Licensee shall not change its business name and service identification without prior written authorization from the Authority, which authorization shall not be withheld unreasonably.
- 2.3. The licensee shall pay the prescribed fee for change of name and service identification.
- 2.4. The Licensee shall clearly identify itself by displaying its service identification logo throughout its licence period.
- 2.5. The Licensee shall ensure that it clearly and consistently identifies the products it offers to subscribers including but not limited to customer premise equipment, decoders, receiving antennas and the content suppliers.

3. CONDITION 3: HOURS OF SERVICE

- 3.1. The licensee shall provide the licensed service 24 hours a day with access to a call center for 12 hours a day during the Licence period. The call center shall entail a human interaction/interface to handle customer queries and complaints
- 3.2. The licensee shall not stop offering services unless due to factors beyond its control or with the written permission of the Authority

4. CONDITION 4: TECHNICAL OPERATIONAL PROCEDURES

- 4.1. The Licensee shall, in the provision of the licensed service, comply with applicable international technical standards.
- 4.2. The Licensee shall operate its systems and facilities with due regard to the health and safety of employees and the general public, and in accordance with any applicable laws of Kenya.
- 4.3. The Licensee will implement all necessary work on maintenance and adjustments of its customer premise equipment, in order to ensure that they are in accordance with the specifications of the Authority or any other applicable international standards.
- 4.4. The Licensee shall implement billing complaints resolution directive issued by the Authority at no cost to the Authority.
- 4.5. The licensee supplied customer premise equipment and apparatus must be installed and maintained by competent persons at all times.
- 4.6. The Licensee must ensure that the customer premise equipment it supplies are duly type approved by the Authority where applicable, and complies with international accepted technical standards prior to commissioning and use.
- 4.7. The Licensee shall not offer additional services other than those licensed or authorized by the Authority.
- 4.8. The Licensee shall meet all quality of service requirements in providing subscription management services as stipulated in the service level agreement (SLA) and/or as shall be specified by the Authority from time to time

5. CONDITION 5: INTERRUPTIONS TO THE LICENSED SERVICES

- 5.1. 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.
- 5.2. In the event of an accidental interruption of the Licensed Services or part thereof, which are significant in nature (lasting more than three hours), the Licensee shall inform the public and notify the Authority in writing within 12 hours outlining the cause of such interruption and the steps being undertaken to rectify such interruption.
- 5.3. The Licensee shall inform its Consumers the period the 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.

5.4. The provision in 6.1 shall not apply if the interruption of service is a result of Consumer's non-payment or other business related or contractual reasons.

6. CONDITION 6: PRIVACY AND CONFIDENTIALITY

- 6.1 The Licensee shall use all reasonable endeavors to ensure the privacy and confidentiality of proprietary information and business secrets obtained in the course of its business from any person to whom it provides the Licensed Services by establishing and implementing reasonable procedures for maintaining confidentiality of such information.
- 6.2 The Licensee shall maintain and file with the Authority, within 180 days from the issuance date of this licence, its detailed confidentiality procedures.
- 6.3 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 or where it is in accordance with any statute in force in Kenya) which is capable of silently monitoring, recording or intruding into its Subscriber's viewing history unless with Subscriber's consent or unless the Licensee complies with 7.4 and 7.5 below.
- 6.4 Except for the purposes of law enforcement, the Licensee shall make every reasonable effort to inform the parties whose viewing habit is to be recorded, silently monitored or intruded into before commencing the recording, silent monitoring or intrusion.
- 6.5 The Licensee shall maintain and submit to the Authority, within 180 days after licence issuance, evidence of the communication to the subscriber that their viewing history is to be or may be recorded, silently monitored or intruded into and the purpose thereof. The Licensee shall furnish the Authority with such information on request.
- 6.6 Where the Licensee enters into 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:
- 6.1.1. 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.
 - 6.1.2. 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.

7. CONDITION 7: CUSTOMER SERVICE

Provision of service and Communications with Subscribers:

- 7.1. The licensee shall file for approval a reference service level agreement with the Authority before executing any service level agreement with a subscriber.
- 7.2. The licensee shall sign a service level agreement between itself and every Subscriber defining the nature of the services to be provided and establishing a set of parameters to be used in measuring the agreed service level
- 7.3. The Licensee shall comply with all customer service Regulations and guidelines issued by the Authority from time to time
- 7.4. The Licensee shall have a location reasonably convenient within the licensed service area of the licensed Content service provider that will be accessible to subscribers to make bill payments, pick-up and exchange of Subscriber equipment.
- 7.5. The Licensee shall maintain a telephone to receive all calls and inquiries from Subscribers regarding subscribed services. The Licensee's representatives shall be trained and qualified to answer questions related to subscribed services and shall be available to receive reports of Service Interruptions and Significant Outages twenty-four (24) hours a day, seven (7) days a week.
- 7.6. All installations at the subscriber premises shall be in accordance with applicable rules relating to grounding, connection of equipment, and the provision of required consumer information and literature to adequately inform the Subscriber about using the Licensee-supplied equipment and the subscribed services.
- 7.7. All licensee's employees, including repair and sales personnel, entering private property shall be required to carry an employee identification card, bearing their photo and name, issued by the licensee.
- 7.8. The service vehicles of the Licensee and its contractors shall:-
 - 7.8.1. be clearly identified as such to the public,
 - 7.8.2. have the Licensee's logo plainly visible and
 - 7.8.3. have the contractor's name plus markings indicating they are under contract to the Licensee.
- 7.9. The Licensee shall give written notice of its billing practices to potential Subscribers before a subscription agreement is reached.

7.10. The Licensee shall provide information to all Subscribers about each of the following items at the time of offering the subscription services, and at any time upon request from any Subscriber:

7.10.1. Products and subscription services offered;

7.10.2. Prices and options for subscribed services and condition of subscription to subscribed Services, including prices for subscription Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Licensee related to subscription management Service;

7.10.3. Installation and maintenance policies;

7.10.4. Channel positions of subscription Services offered on the subscription platforms;

7.10.5. Complaint procedures, including the name, address and telephone number of the Authority, but with a notice advising the Subscriber to initially contact the Licensee about all Complaints and questions;

7.10.6. Procedures for requesting Subscription Service credit;

7.10.7. The availability of a parental control device; and

7.10.8. Licensee practices and procedures for protecting against invasion of privacy.

7.11. Notices of changes of subscription services and/or Channel locations shall include a description of the new subscription Service and the specific channel location. In addition, should the channel location, or existence of other subscription Services be affected by the introduction of a new subscription Service, such information must be included in the notice.

Billing, Refunds and credits

7.12. Subscriber bills shall be itemized to describe Subscription Services purchased by Subscribers and related equipment charges, and shall include the information in clear, concise and understandable language and format. Bills shall clearly delineate all Subscription Service activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. In accordance with applicable law(s), the Licensee shall be allowed to itemize as separate line items, without limitation, License Fees, taxes and/or other governmentally imposed fees. The Licensee shall maintain records of the date and place of mailing of Subscriber bills.

- 7.13. Subscriber payment shall be due on the due date marked on the bill, which date shall be certain and in no case a statement that the bill is due upon receipt. The due date shall not be less than five (5) business days following the mailing date of the bill.
- 7.14. Any billing disputes registered by a Subscriber shall be resolved in accordance with applicable dispute handling procedures approved by the Authority and adopted by the licensee.
- 7.15. The Licensee shall notify the complainant of its decision and the reasons thereof, upon conclusion of its investigation into the Complaint, within thirty (30) business days from the date of receipt of the Complaint. Any Subscriber who is disgruntled with the decision of the Licensee shall promptly inquire about and take advantage of any Complaint resolution mechanism, formal or informal, available under this License before lodging the complaint with the Authority. The Subscriber or the Licensee may petition the Authority to resolve disputed matters within thirty (30) days of any final action.
- 7.16. The Licensee shall forward a copy of any Subscription Service related billing inserts or other mailing sent to Subscribers, to the Authority upon request.
- 7.17. The Licensee shall provide all Subscribers with the option of paying for Subscription Service by cash, cheque, electronic or an automatic payment option where the amount of the bill is automatically deducted from a checking account designated by the Subscriber. The Licensee may, at its discretion, permit payment by using a major credit card on a pre-authorized basis.
- 7.18. The Licensee shall provide the Authority and all affected Subscribers with at least thirty (30) days notice prior to implementing a change of any of its billing practices.
- 7.19. Refund cheques shall be issued within the next available billing cycle following the resolution of the event giving rise to the refund (e.g., equipment return and final bill payment).
- 7.20. Credits for Subscription Service shall be issued no later than the Subscriber's next available billing cycle, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

Rates, Fees and Charges:

- 7.21. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the licensee for the Subscription service shall be in accordance with the provisions of the Act and Regulations.

7.22. Nothing contained herein shall prohibit the licensee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice provided they comply with the Regulations.

7.23. The Licensee shall provide the Authority and all affected subscribers with at least thirty (30) days notice prior to implementing an increase in one of its rates or charges or a substantial change in the number or type of Programming services in the authorized area.

7.24. The licensee shall publish the prices, terms and conditions for distributing, to a member of the public, licensed subscription services and for installing or providing the means necessary to receive the licensed subscription services and shall publish any changes to such prices, terms and conditions.

7.25. The licensee shall provide copies of those prices, terms and conditions to the Authority forthwith and to members of the public on request, in each case free of charge.

7.26. All tariffs charged by the licensee and any changes thereof shall be filed with the Authority, Fourteen (14) days prior to implementation.

7.27. 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.

Service Interruptions and outages

7.28. The Licensee shall respond to a call from a subscriber regarding a service interruption or other service problems within twenty-four (24) hours, of receiving subscriber calls and shall begin actions to correct all other Subscription Service problems the next business day after notification by the Subscriber.

7.29. In the event that the licensee's Subscription service to any subscriber is completely interrupted for 24 hours or more consecutive hours, the licensee shall facilitate the grant of such a subscriber a pro-rata credit or rebate upon request, on daily basis, of that portion of the Subscription service charge during the next consecutive billing cycle or apply such credit to any outstanding balance currently due. Such credit shall be reflected on subscriber billing statements within the next available billing cycle following the outage.

Termination of Service

7.30. In accordance with applicable laws and regulations, nothing in this licence shall limit the right of the Licensee to deny Subscription service to a subscriber for non-payment for the services, refusal to pay any required deposit, theft of Subscription

service, damage to the Licensee's equipment, abusive and/or threatening behavior toward the Licensee's employees or representatives, or refusal to provide credit history information or refusal to allow the Licensee to validate the identity, credit history and credit worthiness via an external credit agency.

7.31. Every notice of termination of Subscription service shall include the following information:

7.31.1. The name and address of the subscriber whose account is in default;

7.31.2. The amount in default for all Subscription Services billed;

7.31.3. The date by which payment is required in order to avoid termination of Subscription Service; and

7.31.4. The Licensees telephone number where the Subscriber can receive additional information about their account and discuss the pending termination.

8. CONDITION 8: ACCESSIBILITY TO PERSONS WITH DISABILITIES (PWDs)

8.1. The Licensee shall ensure that specific steps have been taken as provided for in the Constitution to ensure the enjoyment and accessibility to the Licensed services by Persons with Disabilities (PWDs). In addition, the licensee shall fully comply with the requirements necessary to make the licensed broadcasting services it is facilitating accessible to PWDs within the set timelines as may be specified and duly published in Kenya Gazette by the Authority from time to time.

8.2. The Licensee shall ensure that its customer care services and premises cater for PWDs

8.3. The Licensee shall include in their product offering customer premise equipment and apparatus necessary for the licensed broadcasting services duly equipped with relevant accessibility features specifically designed for PWDS.

9. CONDITION 10: COMPLAINTS RECEIVED FROM SUBSCRIBERS

9.1. The Licensee shall develop and adopt procedures for handling complaints received from its subscribers or the public in respect of all programming which is included in the Licensee's subscription management service and shall ensure that such procedures are duly observed.

9.2. The licensee shall ensure the implementation of the approved procedure for handling complaints received from the public in respect of all programming which is included in the Licensee's broadcast schedule.

- 9.3. The Licensee's complaints handling procedure shall be in conformity with the provisions of the Regulations.
- 9.4. Such procedures shall, inter alia, include a requirement that subscribers and/or members of the public who complain to the Licensee about programmes included in the Licensee's schedule are informed that they have a right to refer the complaint to the Authority.
- 9.5. The Licensee shall send periodic notices to all its Subscribers informing them the manner in which aggrieved subscribers may file complaint and that any complaint not satisfactorily handled by the Licensee may be referred to the Authority. All notices identified above shall be either by:
- 9.1.1. a separate document attached to a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber; or
 - 9.1.2. a separate electronic notification comprising of inserts on the subscription service if permitted or short message service to subscribers.
- 9.6. The Licensee shall for a period of one year keep a written record of such complaints received and make such records available to the Authority in writing at such times the Authority may require.
- 9.7. The Licensee shall notify the Authority regarding the details of its authorized officers designated to handle complaints related to the subscription services offered.

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, in relation to any business activity relating to the Licensed systems and 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 which unfairly excludes or limits competition between the Licensee and any other party;
 - 10.1.2. entering into any contract or engaging in any concerted practice with any other party, which unfairly prevents, restricts or distorts competition in Kenya, or
 - 10.1.3. effecting anti-competitive changes in the broadcasting market in Kenya, and in particular, anti-competitive mergers and acquisitions in the sector.

10.2. In the event it appears to the Authority that the Licensee is in breach of 11.1, the Authority shall give written notice to the Licensee:

10.2.1. stating that the Authority is investigating a possible contravention;

10.2.2. setting out detailed reasons why it appears to the Authority that there is a breach by the Licensee of this Condition, and

10.2.3. setting out the steps the Authority believes the Licensee should take in order to remedy the alleged breach and giving the Licensee reasonable time in which to correct the alleged breach.

10.3. 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.

11. CONDITION 11: PROHIBITION OF CROSS-SUBSIDIZATION

11.1. The Licensee shall not subsidize or cross-subsidize, or permit itself to be subsidized or cross-subsidized or give or receive undue preference to or from, any of its associated businesses or persons as concerns the provision of the Licensed Systems/ Services and/or any other licences granted to the Licensee by the Authority.

11.2. 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.

11.3. In the event that the Authority determines that cross-subsidy has occurred the Authority shall give written notice to the licensee setting out the steps the Licensee should take in order 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 of their corrective actions to the Authority, before the Authority takes further action.

11.4. Where the Authority deems it requires to supervise and confirm compliance with the provisions of this Licence, it may order the Licensee to provide the Subscription Management Services through a separate division or divisions, a separate branch or branches or a separate subsidiary or subsidiaries.

12. CONDITION 12: NOTIFICATION OF CHANGE IN SHAREHOLDING

- 12.1. The shareholding of a licensee shall at all times comply with the prevailing Government's Communications Sector Policy, as may be published from time to time. Any change of shareholding shall be in accordance with the Regulation.
- 12.2. The licensee shall, on quarterly basis, submit to the Authority a copy of its shareholding certificate detailing its current shareholding status and names of directors.

13. CONDITION 13: HUMAN RESOURCE DEVELOPMENT

- 13.1. The Licensee shall submit to the Authority its Human Resource Development Plan outlining strategic success plan on empowerment of the Kenyan staff.
- 13.2. The Licensee shall annually furnish the Authority with a report of implementation of Human Resource Planning.
- 13.3. Any proposal for employment of Non Kenyans, duly approved by Kenya's Directorate of Immigration and Registration of Persons, shall be filed with the Authority.
- 13.4. The Licensee shall facilitate participation of its staff in trainings within and outside Kenya.
- 13.5. The Licensee shall ensure that its officers, consultants and contractors adhere to the applicable Codes of practice relating to advertising and technical standards.

14. CONDITION 14: PRE-NOTIFICATION OF JOINT VENTURES

- 14.1. The Licensee shall notify the Authority not later than thirty (30) 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:
 - 14.1.1. the running of a broadcasting system in Kenya which requires a licence under the Act;
 - 14.1.2. providing broadcasting services in Kenya which requires a licence under the Act;
 - 14.1.3. carrying of content over broadcasting systems which requires a licence under the Act;

14.1.4. providing subscription management services which require a licence under the Act;

14.1.5. the production of broadcasting apparatus, conditional access systems and devices or customer premise equipment for supply in Kenya where that production would lead, in the Authority's view, to a monopoly situation which would not otherwise exist in relation to the supply of broadcasting apparatus of any description in Kenya;

14.1.6. carrying out of subscription management service and/or access control

14.1.7. an agreement for the establishment of a partnership for any of those purposes and in those circumstances, and

14.1.8. 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 broadcasting services in Kenya.

14.2. The above applies only 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.

15. CONDITION 15: ACCOUNTING REQUIREMENTS

15.1. The Licensee shall submit to the Authority the accounting principles relating to the running of the Licensed Systems, which allow the recording of investments, expenses and revenues in accordance with accounting standards recognized in Kenya.

15.2. Within sixty (60) days of the end of each fiscal year of the Licence, 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 20.1 above.

15.3. The Authority may request the Licensee to submit other accounting information it may require in order 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.

15.4. The licensee shall clearly show the accounts related to this license in its financial reporting.

16. CONDITION 16: UNIVERSAL SERVICE FUND

- 16.1. The Licensee shall contribute such an annual amount to the Universal Service Fund as may be specified by the Authority from time to time in accordance with the Universal Service Fund Regulations and/or Guidelines.
- 16.2. The Authority reserves the right to determine minimum amount of levy to be paid in the absence of financial statements.
- 16.3. The Licensee shall be responsible for remitting USF contributions for Landing Rights Holder who has outsourced its services in Kenya.

17. CONDITION 17: PUBLIC EMERGENCIES

- 17.1. 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 comply with the instructions of the Authority as may be directed.

18. CONDITION 19: 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 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 provided;
 - 18.1.1. the Licensee has, without undue delay, duly notified the Authority the nature of the event and the extent in which the licensee is prevented from complying with the terms and conditions of this licence;
 - 18.1.2. the Authority has duly received the notification, assessed the nature of event and is convinced that the occurrence is beyond the control of the Licensee.
- 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

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.

- 18.3. The exemption in 19.1 shall not apply where the Licensee has been hindered by accident or breakdown of any equipment caused by the wrongful act, neglect or default on the part of the Licensee, its servants or agents;
- 18.4. The exemption of force majeure shall not be held to permit suspension of licence fee payments.

19. CONDITION 19:PUBLIC RECORDS

- 19.1. The Licensee shall conform to guidelines or instructions from Authority or other applicable rules for making available to the public the terms and conditions of licence, ownership or such other operating documents as the Authority may deem to be in the public interest.
- 19.2. The Authority may in its discretion make this Licence publicly available in any manner it thinks fit, in whole or in part.

20. CONDITION 20: PROVISION OF INFORMATION TO THE AUTHORITY

- 20.1. The Licensee shall notify the Authority the physical address of the location of its Customer Care outlets before commissioning the service, and any changes thereof from time to time.
- 20.2. The licensee shall, in respect of the subscription management, maintain an accurate register of records related to the services provided
- 20.3. The Licensee shall provide information to the Authority in such manner and at such times as the Authority shall reasonably request, for purposes of ensuring compliance with this Licence.
- 20.4. 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.
- 20.5. In particular,
- 20.5.1. by the 15th July of every year or as directed by the Authority, the Licensee shall submit:
- 20.5.1.1. an annual Compliance Report detailing the performance of the previous operational year ended 30th June.

- 20.5.1.2. Audited financial report for its last financial year; and
- 20.5.2. within the deadline that the Authority may prescribe from time to time, submit quarterly compliance returns in format prescribed by the Authority.

20.6. The Authority shall review the Compliance Report and:

20.6.1. If the Licensee is in compliance with the Licence, issue the Licensee with a Compliance Certificate in respect of compliance for the year under review, and

20.6.2. 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, failure of which the Authority shall impose penalties as specified in the Act and regulations.

20.7. Regardless of obligation of Licensee to get from the Authority in advance the permission for certain changes, as envisaged by the Terms and Conditions of this Licence, the Licensee is also obliged to notify the Authority in writing on all changes in relation to the following information, which have been submitted in the original licence application:

20.7.1. Licensee's address, telephone, email and other contact information;

20.7.2. Management structure or personnel listed in the licence application;

20.7.3. Significant changes in operating hours, channel schedule or channel content;

20.7.4. Interruptions in broadcasting greater than three hours of schedule; and

20.7.5. Changes to any technical or engineering nature that may result in change or modifications in the customer premise receiving apparatus

20.8. In making a request for information, the Authority shall not impose undue burden on the Licensee in procuring and furnishing such information, unless the Authority considers such information essential to enable it to exercise its functions under the Act.

20.9. 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.

21. CONDITION 21: ACCESS TO FACILITIES AND INSPECTION

- 21.1. The Licensee shall permit the Authority or its authorized agents to inspect its premises, facilities, platforms, files, records and other data to enable it to exercise its functions under the Act. Such access shall include licensee's data that is considered as confidential.
- 21.2. The Licensee shall upon request provide unlimited access to all its sites and operational areas to duly authorised staff of the Authority, any person authorised by the Authority or law enforcement agency in order for the said to effectively perform their duties
- 21.3. 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, its authorised agents or any law enforcement agency.
- 21.4. The licensee shall provide, upon request by the Authority (or its authorised agents), 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

22. CONDITION 22: LICENCE FEES

- 22.1. The Licensee shall pay to the Authority such fees as may be prescribed by the Authority in accordance with its approved fee schedule. Such fees shall include:-
- 22.1.1. An initial Licence fee to be paid before issuance of the licence for the specified licence duration;
- 22.1.2. on **1st July** of each year, an annual operating fee based on a specified percentage (%) of the audited annual gross revenues accruing from the Licensed Services during the previous financial year, subject to a minimum fee as the Authority may prescribe from time to time;
- 22.1.3. Annual frequency utilisation fee based on the amount of frequency resources utilized, if any, and computed in accordance with the approved methodology for charging broadcasting frequency fees by the Authority
- 22.1.4. Any other fee payable under this Licence including but not limited to Licence Renewal, License Transfer, licence amendment and change of business name/service identity.

22.2. Any of the fees due to the Authority under 23.1.1 to 23.1.3 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

22.3. The payment of any prescribed fee shall not be construed to be an automatic approval by the Authority for the service requested for.

23. CONDITION 23: RENEWAL OF THE LICENCE

23.1. The Authority may renew this Licence at the request of the Licensee following its expiry for another licence term provided that the Authority has carried out a formal review to determine whether or not the Licence should be renewed.

23.2. The licence shall terminate upon expiry of the licence period if it is not renewed.

23.3. The licensee shall submit an application for renewal six (6) months before the licence expiry date and pay the prescribed licence renewal application fee.

23.4. The Authority shall communicate the decision to the Licensee within three (3) months from the date of application.

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.

25. CONDITION 25: LICENCE SUSPENSION

25.1. The Authority may suspend some/part of the operations 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.

25.2. Where the Authority intends to suspend any of the services under this Licence pursuant to 26.1, the Authority shall issue a forty five (45) 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.

25.3. After the expiry of the notice in 26.2 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.

- 25.4. After the expiry of the notice in 26.2 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 fifteen (15) days, the cited service shall be suspended.
- 25.5. The notice issued in 26.4 shall specify the duration of the suspension and the conditions for lifting of the suspension.
- 25.6. Where the Licensee rectifies the breach after suspension in 26.4 above, the suspension notice shall be lifted.
- 25.7. Where the licensee fails rectify the breach at the expiry of the suspension period, the Authority may revoke the License in accordance with Condition 28

26. CONDITION 26: PENALTIES FOR BREACH OF LICENCE CONDITIONS

- 26.1. The Authority shall apply the relevant penalties and fines against the Licensee for breach of the terms and conditions of the licence in accordance with the provisions of the Act and the Regulations

27. CONDITION 27: LICENCE REVOCATION

- 27.1. Notwithstanding any other Condition in this License, the Authority may at any time revoke this Licence by giving six (6) months' notice in writing in any of the following circumstances:
- 27.1.1. if the licensee communicates to the Authority in writing on their intention to terminate the Licence;
 - 27.1.2. if the Licensee does not provide evidence of commencement of the provision of the Licensed Services/systems within period specified herein from the Issuance Date. The Licensee shall satisfy the Authority that it has complied with this requirement after a successful inspection by the officers of the Authority;
 - 27.1.3. if any amount payable under Condition 23 is unpaid forty-five (45) days after the Authority notifies the Licensee that the payment is overdue, such notification not to be given earlier than fourteen (14) days after the date on which the payment is due;
 - 27.1.4. 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 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 Authority believes are relevant and the Licensee appears not to have taken into account;

27.1.5. if the Licensee is dissolved or enters into liquidation, bankruptcy or equivalent proceedings or makes a general assignment for the benefit of creditors.

27.2. 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.

27.3. The revocation of the licence shall not in any way absolve the licensee from responsibility to settle debts and any other liabilities incurred as a result of previously providing the broadcasting service.

28. CONDITION 28: LICENSEE'S TERMINATION RIGHT

28.1. The Licensee shall have the right to terminate this License provided a notice to terminate under this Section shall be given to the Authority and the subscription Broadcast Content Service Provider(s), in writing, explaining the basis of such determination, with such termination to subsequently take effect no sooner than one hundred and twenty (120) days after such written notice was provided to the Authority. The Licensee shall also give its Subscribers at least ninety (90) days notice of its decision to cease providing subscription management service(s).

28.2. The licensee shall be responsible for settling any claims or compensation demanded by its subscribers prior to termination of the subscription management service.

29. CONDITION 29: SUBSCRIBER MANAGEMENT IN THE EVENT OF DISCONTINUATION OF SERVICES

29.1. Within three (3) months from the Renewal Date, the Licensee shall submit for the Authority's approval, a subscriber transfer management plan that shall facilitate transfer of subscribers to another licensee to ensure continuity of services in the event of license revocation or non renewal.

29.2. The licensee shall immediately effect the approved subscriber transfer management plan upon the license revocation or non renewal of this license, for Subscribers that have consented to the transfer.

29.3. The referenced plan in 30.1 above shall;

29.3.1. ensure smooth, uninterrupted and seamless transfer of customers under the same or better terms and conditions of services

29.3.2. 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

29.4. The Licensee must engage and develop a subscriber transfer and management procedure detailing, at the very least, number of subscribers to be transferred, date of transfer, proposed service/product mapping, subscriber information and notification procedure, subscriber information on how to complain and consent to transfer/ decline transfer.

29.5. In the event the licensee is no longer able to offer the licenced services by virtue of exiting the market other than licence revocation, the licensee shall prepare subscriber management plan three months prior to exit to facilitate subscriber transfer and/or compensation.

30. CONDITION 30: INDEMNITY

30.1. The Licensee shall indemnify and keep indemnified the Authority against any and all losses, claims, charges, expenses, actions and demands whatsoever which it may incur or be subject to, as the case may be, as a result or in relation to:

30.1.1. any breach or alleged breach of or failure or alleged failure to observe or perform any condition of this licence by or on behalf of the Licensee; or

30.1.2. any act or omission by or on behalf of the Licensee in the actual or purported operation or performance of the Service or conditions of this Licence; or

30.1.3. any loss of business incurred by the licensee as a result of the Authority carrying out enforcement action due to licensee's non-compliance with any or a combination of licence terms and conditions.

31. CONDITION 31: LANGUAGE

31.1. The licensee shall provide information regarding its services in (Languages listed)

32. CONDITION 32: DISPUTE RESOLUTION

32.1. Any dispute on the interpretation of any provision of the licence shall be resolved in accordance with the provisions of the Dispute Resolution Regulations.

APPENDIXES

APPENDIX 1: LICENSED AREA (S)

1. Countrywide in Kenya

APPENDIX 2: SHAREHOLDING STRUCTURE

The licensee shareholding structure as at the date of licence/renewal is as shown Appendix 2

