

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 (including importation and purchase from local communications Equipment manufacturers) and sell electronic communications Equipment and provide after-sales support through the supply of spares to vendors that purchase from them, 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 only import and distribute electronic communications equipment which have been type approved by the Authority pursuant to the Kenya Information and Communications Act Cap 411A and attendant Regulations as may be issued from time to time.
3. 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:
 - 3.1. A determination of whether or not the contravention was deliberate or as a result of the Licensee’s recklessness;
 - 3.2. The duration of the contravention;
 - 3.3. The cooperation or lack thereof of the Licensee in the investigation of any matter relating to the contravention;
 - 3.4. Any demonstrable steps, or lack thereof, taken by the Licensee to remedy the contravention;
 - 3.5. Any financial gain resulting from the contravention, including any unjustifiable cost incurred by consumers as a result of the contravention;
 - 3.6. Whether or not the Licensee is a repeat offender of a particular or other Licence conditions.
 - 3.7. Duration of operation without a compliance certificate for not having met all the compliance requirements

4. 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.
5. 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.
6. In this Licence the following terms shall have the following meanings:
 - 6.1. "Act" means the Kenya Communications Act Cap. 411A, any successor legislation and any subsequent amendments made thereto;
 - 6.2. "Compliance Report" means a report prepared periodically by the Licensee detailing their compliance in respect of every licence condition;
 - 6.3. "Compliance Certificate" means a certificate issued by the Authority to a licensee upon compliance with license terms and conditions;
 - 6.4. "Consumer" means any entity or natural person who uses or requests a publicly available communications service or product;
 - 6.5. "Communications Equipment Vendors (CEVs)" is a class Licence that allows for the supply and maintenance of end-user devices such mobile phones, set top boxes, remote devices, tracking devices among others. CEVs are however, required to source type-approved equipment from licensed Communications Equipment Distributors and therefore not authorized to import equipment under this Licence;
 - 6.6. "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;
 - 6.7. "Electronic Communications Equipment" means Telecommunication equipment, Radio communications equipment, Broadcasting equipment whether network or terminal;
 - 6.8. "Maintenance Services" means procedures undertaken to ensure the continued performance of telecommunications systems or apparatus in accordance with the specifications and standards;
 - 6.9. "Refurbished" means communications equipment or devices that have been previously owned or used, restored to a fully functional condition through inspection, testing, repair, or replacement of components, and certified as meeting applicable technical and safety standards, but which may not be in their original condition or packaging;

- 6.10. "Regulations" means any Regulation enacted under the Kenya Information and Communications Act Cap. 411A; and
- 6.11. "End User" means a natural person or legal entity that purchases, acquires, or uses Electronic Communications Equipment for its own use and not for resale, redistribution, or provision of communication services under the Act.
- 6.12. "End User Equipment" means any electronic communications equipment , intended for use by an End User to access, receive, transmit, process, or utilize electronic communications services or networks.
7. 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.



THE LICENCE CONDITIONS

1. CONDITION 1: PROVISION OF LICENSED SERVICES

The Licensee shall provide the Licensed Services to any person/entity on reasonable request.

This obligation shall not apply in the event that it is not, in the Authority's view, reasonable to require the Licensee to comply with such an obligation in the particular circumstances, including, but not limited to where the provision of the service would expose any person/entity engaged in its provision to undue risk to health or safety.

2. CONDITION 2: UNIVERSAL ACCESS AND SERVICE OBLIGATIONS

- 2.1. The Licensee shall 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: PUBLIC SAFETY

- 3.1. The Licensee shall in respect of all apparatus, equipment and facilities possessed, operated, maintained or used under the license, take all proper and adequate safety measures to safeguard life against any danger, including electromagnetic emissions emanating from the apparatus, equipment or installation so used.
- 3.2. The Licensee will ensure that any of its facilities do not become health, environmental or safety hazards and are not in contravention of any statute, rule, code of practice, guideline or regulation, on public safety.
- 3.3. The Licensee shall comply with any restrictions imposed by the Authority, at its sole discretion or in consultation with relevant Government agencies, on the importation or distribution of equipment that may cause harmful interference or pose a risk to communications networks, security, human health, or the environment. The Licensee shall immediately cease importation or distribution of such equipment upon notification by the Authority.

4. CONDITION 4: PROVISION OF CUSTOMER CARE SERVICES

- 4.1. 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.
- 4.2. The obligation in 4.1 shall not apply in the event that it is not, in the Authority's view, reasonable to require the Licensee to provide the service requested.
- 4.3. Pursuant to 4.1 above, the licensee shall provide facilities for the provision of customer care services which shall include but not limited to:
 - 4.3.1. Dedicated customer care telephone lines;
 - 4.3.2. Customer care offices/points; and
 - 4.3.3. Facilities for persons with disabilities within 6 months from the effective date of the licence.
- 4.4. The Licensee shall submit a customer care, complaints handling procedures to the Authority at least thirty (30) days prior to launch of its services or as prescribed in the Act or Regulations.
- 4.5. The licensee shall provide facilities for customer cares services that meet the standards specified by the Authority from time to time.

5. CONDITION 5: IMPORTATION AND DISTRIBUTION OF ELECTRONIC COMMUNICATIONS EQUIPMENT

- 5.1. A licensee shall ensure that before importation and distribution of any electronic communications equipment, whether new or refurbished meets the standards and specifications specified by the Authority.
- 5.2. Where a Licensee is involved in the sale of Electronic Communications Equipment, the Licensee shall ensure that it has valid official documentation certifying that it is the manufacturer, an authorized distributor, or an accredited local distributor or reseller of the specific make or brand of the electronic equipment offered for sale.
- 5.3. Where the Licensee is engaged in the distribution of refurbished electronic communications equipment, the Licensee shall ensure that the products are properly labelled as 'certified refurbished' or 'manufacturer refurbished' to guide the consumers as to the quality of the product at the time of purchase;
- 5.4. A licensee shall ensure that all refurbished mobile devices sold have a genuine International Mobile Equipment Identity ("IMEI").

- 5.5. A licensee shall provide the customer with the possibility of returning the product within a minimum period of 14 days should the customer be dissatisfied with the product.

6. CONDITION 6: AFTER SALES SERVICES

- 6.1. The Licensee shall establish and maintain adequate after-sales support services for all electronic communications equipment imported and distributed under this licence. Such services shall, at a minimum, include:
 - 6.1.1. the provision of technical support service;
 - 6.1.2. maintenance and repair services;
 - 6.1.3. supply of spare parts and accessories; and
 - 6.1.4. access to firmware or software updates.
- 6.2. Notwithstanding the provisions in 6.1, the Licensee shall provide after-sales support services through its own outlets or in liaison with Communication Equipment Vendors.
- 6.3. The licensee shall ensure that all electronic communications equipment it sells in the Kenyan market shall have at a minimum, a warranty period of one (1) year.
- 6.4. The after-sales services shall be made available to customers for the duration of the warranty period and beyond, as may be reasonably required, to ensure continued compliance with national standards/specification and the effective functioning of the equipment.

7. CONDITION 7: ACCESS TO SITES AND RECORDS

- 7.1. 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) to enable it to exercise its functions under the Act.
- 7.2. 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.
- 7.3. The Licensee shall establish and maintain information records about its operations, in a format prescribed by the Authority from time to time, for a minimum period of five (5) years from the date such records came into being. Such records shall include, but not be limited to, official receipts for the sale of equipment/devices, which must bear the name of the Vendor/Licensee, the equipment/device model, serial numbers and

their associated quantities. The Licensee shall avail these records at such intervals as may be prescribed by the Authority from time to time. Additionally, the licensee shall be required to provide the information upon request by the Authority (or any person authorised by the Authority), or any law enforcement agency.

- 7.4. 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 billing/charging information for purposes of enabling the Authority determine whether or not the services and facilities being inspected comply with the requirements under the Act, Regulations and Licence Conditions. Such information shall be generated from the systems in the presence of Authority's inspectors at the time of the inspection.

8. CONDITION 8: PRIVACY AND CONFIDENTIALITY

- 8.1. The Licensee shall use all reasonable endeavours 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.
- 8.2. The Licensee shall maintain sufficient information on its confidentiality procedures to satisfy the Authority, at its reasonable request, that the requirements of 8.1 are being met.

9. CONDITION 9: FAIR TRADING

- 9.1. 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:
 - 9.1.1. any abuse by the Licensee, either independently or with others, of a dominant position in Kenya;
 - 9.1.2. entering into any contract or engaging in any concerted practice with any other party, which unfairly prevents, restricts or distorts competition in Kenya; and
 - 9.1.3. effecting anti-competitive changes in the market in Kenya, and in particular, anti-competitive mergers and acquisitions in the communications sector. Levying charges to its competitors which unfairly limit competitors' or competitiveness.
- 9.2. In the event it appears to the Authority that the Licensee is in breach of 9.1, the Authority shall give written notice to the Licensee:

- 9.2.1. stating that the Authority is investigating a possible contravention;
 - 9.2.2. setting out detailed reasons why it appears to the Authority that there is a breach by the Licensee of this Condition, and
 - 9.2.3. setting out the steps the Licensee should take in order to remedy the alleged breach.
- 9.3. 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.

10. CONDITION 10: PROHIBITION ON UNDUE DISCRIMINATION

- 10.1. 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 Services without prejudice to the obligations imposed on the Licensee under this Licence, subject to 11.3.
- 10.2. The Licensee may be deemed to have shown such undue discrimination if it unfairly favours to a material extent the provision of any of its services to another business it carries out so as to place at a significant competitive disadvantage persons competing with that business, subject to 11.3.
- 10.3. The Licensee shall not be deemed to have shown undue discrimination to the extent that:
- 10.3.1. it is due to matters beyond the Licensee's control;
 - 10.3.2. the provision of service would expose any person engaged in its provision to undue risk of health or safety.
- 10.4. 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.

11. CONDITION 11: PROHIBITION OF CROSS-SUBSIDIZATION

- 11.1. 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.
- 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 give the Licensee 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.

11.4. 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.

12. CONDITION 12: NOTIFICATION OF CHANGE IN SHAREHOLDING

12.1. Subject to 12.3 below, the Licensee shall notify the Authority of:

12.1.1. any change in the proportion of the shares held directly in a Licensee by any person; and

12.1.2. 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.

12.2. 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.

12.3. 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:

12.3.1. 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);

12.3.2. 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

12.3.3. 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).

- 12.4. In any case referred to in 12.1 or 12.2, notification shall be given by a date, which is thirty (30) days prior to the taking effect of such change or acquisition, as the case may be.
- 12.5. In instances referred to in 12.2 and 12.3, 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.

13. CONDITION 13: PRE-NOTIFICATION OF JOINT VENTURES

- 13.1. 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:
- 13.1.1. providing Communications Services in Kenya which requires a licence under the Act;
 - 13.1.2. the production of communications devices or equipment 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;
 - 13.1.3. an agreement for the establishment of a partnership for any of those purposes and in those circumstances, and
 - 13.1.4. 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.
- 13.2. 14.1 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.

14. CONDITION 15: ACCOUNTING REQUIREMENTS

- 14.1. Within three (3) months from the Issuance 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.

- 14.2. 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 15.1 above.
- 14.3. 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.
- 14.4. The licensee shall clearly show the accounts related to this license in its financial reporting.

15. CONDITION 16: REQUIREMENT TO PROVIDE INFORMATION

- 15.1. 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.
- 15.2. 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.
- 15.3. In particular, by the 15th 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.
- 15.4. The Authority shall review the Compliance Report and:
- 15.4.1. If the Licensee is in compliance 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
 - 15.4.2. 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.
- 15.5. 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.
- 15.6. 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.

16. CONDITION 17: DISPUTE SETTLEMENT

16.1. 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.

17. CONDITION 18: FORCE MAJEURE

17.1. 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.

17.2. 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 affected by such force majeure, that it took reasonable steps to restore such services and facilities once the force majeure has ceased or been eliminated.

18. CONDITION 18: SUSPENSION

18.1. 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.

18.2. Where the Authority intends to suspend such activities/services under this Licence pursuant to 18.1, 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.

18.3. After the expiry of the notice in 18.2 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.

18.4. After the expiry of the notice in 18.2 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.

- 18.5. The notice issued in 18.4 shall specify the duration of the suspension and the conditions for lifting of the suspension.
- 18.6. Where the Licensee rectifies the breach after suspension in 18.4 above, the suspension notice shall be lifted.
- 18.7. Where the licensee fails to rectify the breach at the expiry of the suspension period, the Authority may revoke the License in accordance with condition 19.

19. CONDITION 19: LICENCE REVOCATION

- 19.1. 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:
 - 19.1.1. if the licensee communicates to the Authority in writing on their intention to terminate the Licence;
 - 19.1.2. 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 in order to satisfy the Authority that the Licensee has complied with this requirement;
 - 19.1.3. if any amount payable under Conditions 21 is unpaid 90 days after the due date and forty-five (45) days after the Authority notifies the Licensee that the payment is overdue;
 - 19.1.4. 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;
 - 19.1.5. if the Licensee is dissolved or enters liquidation, bankruptcy or equivalent proceedings or makes a general assignment for the benefit of creditors; and
 - 19.1.6. if the Licensee fails to notify the Authority of any of the events specified in Condition 12 or 13 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.

- 19.2. 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.

20. CONDITION 20: LICENCE TRANSFER

- 20.1. 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.

21. CONDITION 21: LICENCE FEES

The Licensee shall pay to the Authority:

- 21.1. 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 one hundred and twenty thousand (KShs.120,000) only, whichever is higher, for subsequent years of operation.
- 21.2. Any other fee payable under this Licence.
- 21.3. Any of the fees due to the Authority under 21.1 and 21.2 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.