

REPUBLIC OF KENYA



INTERNATIONAL COURIER OPERATOR LICENCE

GRANTED BY

COMMUNICATIONS AUTHORITY OF KENYA



REPUBLIC OF KENYA

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 provide international inbound and outbound postal and courier services to and from Kenya (**hereinafter referred to as the “Licensed Services”**) in the Republic of Kenya in accordance with the Terms and Conditions set out in this Licence. This licence also includes the provision of the National Postal and Courier services within the boundaries of Kenya.

1. This Licence is granted for a period of ten (10) years (the “**Licence Term**”) from the effective date unless it is revoked earlier in accordance with the Licence Conditions herein
2. This Licence is subject to the provisions of the Act, attendant Regulations, Guidelines and other regulatory directives as may be issued from time to time, as well all other relevant laws.
3. The Licensee is authorized to provide the services specified in this Licence. Nothing in this Licence shall be construed as authorizing the Licensee to provide any service for which a separate licence, authorization or approval is required under the Act or any other written law.
4. The licensee shall ensure its Courier Agents and franchisee operate in compliance with legal and regulatory requirements.
5. The License shall charge tariffs in accordance with the Act, applicable Regulations and directives issued by the Authority from time to time.
6. The Licensee shall not provide services reserved for the Public Postal Operator under the Act.
7. The Licensed Services shall be provided by means of appropriate facilities duly approved by the Authority.
8. All facilities, equipment and devices used in provision of the Licensed Services shall in all respects be of approved industrial standards and conforms to the Authority’s requirements as may be issued from time to time.
9. This licence and the licensee are 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:
 - 9.1.a determination of whether or not the contravention was deliberate or as a result of the Licensee’s recklessness;
 - 9.2.the duration of the contravention;
 - 9.3.the cooperation or lack thereof of the Licensee in the investigation of any matter relating to the contravention;

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- 9.4. any demonstrable steps, or lack thereof, taken by the Licensee to remedy the contravention;
- 9.5. any financial gain resulting from the contravention, including any unjustifiable cost incurred by consumers as a result of the contravention;
- 9.6. whether or not the Licensee has repeatedly contravened a particular or other Licence conditions; and
- 9.7. duration of operation without a compliance certificate for not having met all the compliance requirements
10. Words imparting the singular shall include the plural and vice versa; words denoting persons shall include bodies corporate and unincorporated associations of persons and vice versa.
11. In this License the following terms shall have the following meanings:
- 11.1. **“Act”** means the Kenya Information and Communications Act, Cap 411A, any successor legislation and any subsequent amendments made thereto;
- 11.2. **“Compliance Report”** means a report to be prepared periodically by the Licensee detailing its performance in respect of every licence condition;
- 11.3. **“Compliance Certificate”** means a certificate to be issued by the Authority to a licensee following the licensee’s compliance with all regulatory requirements including periodic submission to the Authority of duly completed compliance report and the subsequent receipt and satisfactory review of the same by the Authority;
- 11.4. **“Consumer”** means any entity or natural person who uses or requests a publicly available communications service or product.
- 11.5. **“Courier Agent”** means a person contracted or engaged by a licensee to provide Courier services
- 11.6. **“Courier Services”** means any specialized service for the collection, conveyance and delivery of postal articles;
- 11.7. **“Customer Service Outlet”** means a physical location to be established by the Licensee to, among other things, provide customer service to walk-in customers and manage customer queries
- 11.8. **“Effective Date”** means the date when the Licence was first issued to the licensee, or in the case of a Licence replacement, the date when the original Licence was issued;
- 11.9. **“Emergency Access”** means connectivity between the Emergency Organisation and any public access point within the Licensed System;

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- 11.10. **“Emergency Services”** means services installed and provided for use by public to access a Public Emergency Service Providers;
- 11.11. **“Expiry Date”** means the date on which the Licence Term lapses.
- 11.12. **“Financial Year”** means the period between 1st July and 30th June the following succeeding year;
- 11.13. **“Government”** means the Government of the Republic of Kenya;
- 11.14. **“License Term”** means the period stated in the license during which the license remains in force unless otherwise revoked.
- 11.15. **“Licensed Courier”** means an entity licensed by the Authority to provide courier services
- 11.16. **“Licensee”** means any person licensed under the provisions of the Act to provide postal/Courier services;
- 11.17. **“Network”** means all parts of those physical facilities involved in the activities of conveying, receiving, collecting, sending, dispatching and delivering by sea, by land or by air or through any person with whom the Licensee has a contract with or its Courier Agent or servants;
- 11.18. **“Platform”** means an interface to connect a Licensee to consumers for the provision of on-demand delivery services.
- 11.19. **“Regulations”** means the Regulations made pursuant to Kenya Information and Communications Act, CAP 411A as may be amended.
- 11.20. **“Renewal Date”** means the date when the license is re-issued on completion of the initial licence term or such other terms as may be contained in the subsequent licence.
- 11.21. **“Requesting Licensee”** means an entity licensed by the Authority which has expressed a desire to interconnect
- 11.22. **“Tariff”** means any charge, price, levy and underlying terms and conditions imposed by a licensee for the services provided;
- 11.23. **“Universal Service”** means the minimum set of services, as may be defined by the Authority from time to time, and which are of a specified quality, and which is available to all Users at an affordable price;
- 11.24. **“Undeliverable postal article”** any mail piece or parcel, or letter that cannot be successfully delivered to the addressee by the destination licensed operator, nor returned to the sender;

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- 11.25. **“Undelivered postal article”** means items which for some reasons have not been claimed by addressee;
- 11.26. **“Universal Service Obligations”** means the obligations put on licensed operators to make services available to all people and all areas including unserved and underserved areas.



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LICENCE CONDITIONS

CONDITION 1: OBLIGATION TO COMPLY WITH LAWS AND REGULATIONS

- 1.1. The Licensee is responsible for ensuring compliance with all laws and regulations related to provision of services under this license.
- 1.2. The Licensee shall specifically ensure compliance with applicable customs, and other import and export regulations with regard to the receipt and dispatch of postal courier articles into and out of Kenya.
- 1.3. The Licensee shall maintain records of imported and exported postal articles and make such records available to the Authority or any competent government agency upon request.

CONDITION 2: PROVISION OF LICENSED SERVICES

- 2.1. The Licensee shall provide to any person who requests for such services at any place within the Republic of Kenya without discrimination as follows:
 - 2.1.1. acceptance, conveyance and delivery of Postal Articles;
 - 2.1.2. acceptance, conveyance and delivery of Postal Articles originating from other countries and coming into the Republic of Kenya and vice versa;
 - 2.1.3. carrying out all the incidental services of receiving, collecting, dispatching and delivering all Postal Articles; and
 - 2.1.4. carrying out all the incidental services of receiving, collecting, dispatching and delivering all Postal Articles originating from other countries coming into the Republic of Kenya and vice versa.
- 2.2. The licensee shall establish and maintain mechanisms to:
 - 2.2.1. register customers;
 - 2.2.2. capture and verify the details of the sender and recipient of a postal article;
 - 2.2.3. allow for senders to declare the contents of a postal article;
 - 2.2.4. verify the contents of a postal article;
 - 2.2.5. allow consumers to verify the identity of its staff as well as staff from its Courier Agents or Requesting Licensees
 - 2.2.6. track and monitor in real time the acceptance, conveyance and delivery of postal articles;
 - 2.2.7. allow consumers to file and keep track of complaints.
- 2.3. The licensee shall prominently display at all its outlets a copy of a valid compliance certificate.

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CONDITION 3: QUALITY OF SERVICE REQUIREMENTS

- 3.1. The Licensee shall ensure its services meet Quality of Service (QoS) requirements as may be set by the Authority from time to time. This includes services provided to a Requesting Licensee under a Service Level Agreement (SLA).
- 3.2. The Authority reserves the right, upon reasonable notice to the licensee, to review the quality-of-service requirements from time to time.
- 3.3. Notwithstanding any other Condition in this licence, the SLA shall include provisions on handling of undeliverable postal articles and compensation for lost and damaged items.

CONDITION 4: TARIFFS

- 4.1. Prior to offering a Licensed Service or adjusting the charges, terms and conditions of an existing service, including promotions and special offers, the Licensee shall file the following with the Authority for approval:
 - 4.1.1. The description and scope of the service,
 - 4.1.2. Terms and conditions of the service, and
 - 4.1.3. Charges, including insured items
- 4.2. The charges, terms and conditions of the service shall be displayed to consumers at the point of service.

CONDITION 5: BILLING ACCURACY

- 5.1. The Licensee shall establish a procedure to ensure the accuracy of its billing system
- 5.2. The Authority reserves the right to examine and test the billing system before and after it is operational in order for the Authority to be satisfied that the billing system is accurate.
- 5.3. The Authority may appoint an independent agent to examine and/or test the licensee's billing system on its behalf.
- 5.4. The Licensee shall not render any bill in respect of any Licensed Service unless every amount stated in the bill is derived in accordance with the procedure in 5.1 above.
- 5.5. The Licensee shall keep such records as may be necessary or may be determined by the Authority to be necessary for the purpose of satisfying the Authority that the billing process has the characteristics required above and shall retain any records at least five (5) years from the date on which they came into being.
- 5.6. The licensee shall, where required by the Authority, produce a billing record for any Customer including details that the Authority may deem necessary to enable it discharge its duties in regard to this license.

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CONDITION 6: PRIVACY AND CONFIDENTIALITY

- 6.1. 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.
- 6.2. The licensee shall ensure that its employees, assignees and Courier Agents comply with the Data Protection Act (DPA), 2019, and as may be amended from time to time, with respect to personal data collected, processed, stored and/or shared.
- 6.3. The Licensee shall implement appropriate technical and organizational measures to safeguard personal data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure, access or processing
- 6.4. The Licensee shall maintain and submit to the Authority, not more than 180 days from the Effective Date, sufficient information on its confidentiality procedures, and data accountability mechanism established to guarantee personal data protection in line with DPA, to satisfy the Authority, that the requirements of 6.1 are being met.
- 6.5. The Licensee shall establish procedures for identifying, responding to and recovering from cybersecurity incidents affecting its operations. Accordingly, the Licensee shall notify the Authority of any significant cybersecurity incident affecting the provision of Licensed Services.
- 6.6. The Licensee shall furnish the Authority with such information on request.

CONDITION 7: POSTAL SECURITY AND SAFETY

- 7.1. The licensee shall establish and implement procedures to provide for the safety of persons and security of premises, vehicles and equipment involved in the collection, conveyance or delivery of mail. The requirement on safety of persons shall also apply to any third party in the vicinity of mail, but not directly involved in the collection, conveyance or delivery of mail.
- 7.2. The procedures shall incorporate risk assessment and at a minimum provide for:
- 7.3. controlled access to the mail centre and handling areas by its Courier Agents with mail handling responsibilities; and
- 7.4. the measures to be taken to prevent, detect and address the loss, theft, damage or interference with postal articles.
- 7.5. The Licensee shall ensure that the facilities used in provision of services do not become a health, environmental or a safety hazard and are not in contravention of any law on public safety.

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- 7.6. The Licensee shall prepare a report of the security and safety measures in place as prescribed in guidelines or regulations and submit to the Authority within six (6) months from the effective date.
- 7.7. The Licensee shall ensure that all its outlets have a service point with adequate ventilation and lighting.

CONDITION 8: PROHIBITED ARTICLES

- 8.1. The licensee shall, before accepting any item for postage, require the sender to declare its contents.
- 8.2. The licensee shall put in place a mechanism for verifying the contents of postal articles during acceptance to determine their eligibility for conveyance
- 8.3. The licensee shall put in place a mechanism for Courier Agents and Requesting Licensees to verify the contents of postal articles during acceptance to determine their eligibility for conveyance.
- 8.4. The Licensee shall cooperate with customs, security, aviation and law enforcement agencies in preventing the movement of prohibited or dangerous goods.
- 8.5. The Licensee shall not handle any prohibited items except in accordance with provisions in the schedule of prohibited articles as prescribed in guidelines or regulations.
- 8.6. The Licensee shall prominently display at all its outlets, a schedule of prohibited articles.

CONDITION 9: INTEGRITY OF MAIL

- 9.1. The Licensee shall ensure the integrity of all postal courier items in its care as prescribed in guidelines or regulations.
- 9.2. The Licensee shall not open any postal courier item in its care from receipt to delivery except:
- 9.2.1. where delivery or return of the postal courier item cannot be undertaken without it being opened
 - 9.2.2. where there is suspicion that the postal courier item contains prohibited goods
 - 9.2.3. where revenue officials order the opening of the postal courier item to check contents
- 9.3. When postal courier items are opened, it should be done so under controlled circumstances and in presence of at least two members of staff to ensure transparency and accountability
- 9.4. When postal courier items are opened, the Licensee should make a full report of the circumstances of opening including an account of the reasons why and the contents of the item

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- 9.5. The Licensee shall record in a confidential register the details of each postal article opened, the reason the article was opened and the date and time it was opened.

CONDITION 10: DEALING WITH UNDELIVERABLE ITEMS

- 10.1. The Licensee shall put in place a procedure for the handling and disposal of undeliverable items, and such procedure shall include at a minimum:
- 10.1.1. The process for the identification of undeliverable items;
 - 10.1.2. The minimum number of attempts to contact the sender and addressee; and
 - 10.1.3. Retention period for the undeliverable items
- 10.2. Where the letter or postal article identified in 10.1.1 contains anything of value or a saleable article, it shall be kept safely and a record thereof opened and maintained by the licensee for a period of six months and if not claimed, the contents shall be disposed of in accordance with the Disposal of Uncollected Goods Act. Cap. 38.
- 10.3. Where a licensee elects to handle perishable items, subject to compliance with relevant laws, the licensee shall be required to provide to the sender its comprehensive policy on the manner in which such items shall be handled, which shall include at a minimum, provisions on the following:
- 10.3.1. state of perishable items at the time of acceptance;
 - 10.3.2. associated charges and tariffs;
 - 10.3.3. delivery and collection timelines; and
 - 10.3.4. notifications to the sender and addressee.
- 10.4. The policy referenced in 10.3 shall be submitted to the Authority, 30 days prior to its implementation.

CONDITION 11: PROVISION OF CUSTOMER CARE SERVICES

- 11.1. The Licensee shall, prior to commencing provision of services, establish and maintain a customer care system within which customers can make inquiries and complaints concerning its services in such format and containing such details as may be prescribed by the Authority.
- 11.2. The Licensee shall develop a complaint handling procedure in such a manner as may be prescribed by the Authority from time to time. The procedure shall be submitted to the Authority at least seven (7) days prior to commencement of operations.
- 11.3. Notwithstanding the provisions under 11.2, the Licensee shall be required to submit to the Authority, the complaints handling procedure annually.
- 11.4. The Licensee shall ensure its services and products are accessible to persons living with disabilities as prescribed in Guidelines or Regulations.
- 11.5. The licensee shall provide facilities for customer cares services that meet the standards specified by the Authority from time to time.

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CONDITION 12: DISPUTE SETTLEMENT

- 12.1. 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.

CONDITION 13: COMPENSATION

- 13.1. The Licensee shall maintain procedures for tracking, investigation and resolution of claims relating to loss, delay or damage of postal articles.
- 13.2. The Licensee shall submit to the Authority` its compensation policies in regard to its licensed services including but not limited to compensation policies on loss of damage to any insured or uninsured postal articles.
- 13.3. The Licensee shall avail current copies of its compensation policies to its customers, at all its outlets and website.
- 13.4. The Licensee shall compensate customers within 90 days upon notification of loss or damage in accordance with the compensation policy filed with the Authority.
- 13.5. Notwithstanding any other condition in this licence, the licensee shall put in place a mechanism for verifying the state of postal articles at the time of acceptance and delivery.
- 13.6. Compensation may not be made under the following circumstances:
- 13.6.1. If the article is prohibited under the law
 - 13.6.2. Any postal article not declared at the time of acceptance
 - 13.6.3. Where the service clearly states compensation is not applicable
 - 13.6.4. Where the addressee has signed for receipt of the postal article
 - 13.6.5. Where the sender or addressee has made a false statement about the contents of the postal article
 - 13.6.6. Where a postal article has been incorrectly addressed

CONDITION 14: NOTIFICATION OF CHANGE IN SHAREHOLDING

- 14.1. The Licensee shall subject to 14.3 notify the Authority of:
- 14.1.1. any change in the proportion of the shares held directly in a Licensee by any person, and
 - 14.1.2. 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.
- 14.2. 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.

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14.3. 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:

14.3.1. 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);

14.3.2. 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

14.3.3. 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).

14.4. In any instance referred to in 14.1 or 14.2, 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.

14.5. In instances referred to in 14.2 and 14.3, 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 taken into account 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.

CONDITION 15: PRE-NOTIFICATION OF JOINT VENTURES AND MEMORANDUM OF UNDERSTANDINGS AND PARTNERSHIPS

15.1. The Licensee shall submit to the Authority for approval, not later than thirty (30) days before the taking effect of any of agreement or arrangement to which this condition applies giving particulars of the agreement and/or arrangement. This condition applies to agreements or arrangements for:

15.1.1. provision of licensed services in Kenya;

15.1.2. a joint venture for the purpose of running a business which requires a license under the Act.

CONDITION 16: PROHIBITION OF CROSS-SUBSIDIZATION

16.1. 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.

16.2. 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.

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- 16.3. 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 Authority requires 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 to the Authority, before the Authority takes further action.
- 16.4. Where the Authority deems it necessary and appropriate to supervise compliance with the provisions of this Licence condition, 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.

CONDITION 17: FAIR TRADING

- 17.1. 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:
- 17.1.1. any abuse by the Licensee, either independently or with others, of a significant market power in Kenya;
 - 17.1.2. entering into any contract or engaging in any concerted practice with any other party, which unfairly prevents, restricts or distorts competition in Kenya, or
 - 17.1.3. effecting anti-competitive changes in the market in Kenya, and in particular, anti-competitive mergers and acquisitions in the communications sector.
 - 17.1.4. levying charges to its competitors or interconnecting parties which unfairly limit competitors' or interconnecting parties' competitiveness.
- 17.2. In the event it appears to the Authority that the Licensee is in breach of 17.1, the Authority shall give written notice to the Licensee:
- 17.2.1. stating that the Authority is investigating a possible contravention;
 - 17.2.2. setting out detailed reasons why it appears to the Authority that there is a breach by the Licensee of this Condition, and
 - 17.2.3. setting out the steps the Licensee should consider to remedy the alleged breach.
- 17.3. 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.

CONDITION 18: PROHIBITION ON UNDUE DISCRIMINATION

- 18.1. 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.

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- 18.2. The Licensee may be deemed to have shown such undue discrimination if it unfairly favours, to a material extent, the provision of any communications services to another communication business it carries out, so as to place at a significant competitive disadvantage persons competing with that business.
- 18.3. The Licensee shall not be deemed to have shown undue discrimination to the extent that:
- 18.3.1. it is due to matters beyond the Licensee's control;
 - 18.3.2. the provision of services would expose any person engaged in its provision to undue risk of health or safety, or
 - 18.3.3. it is not, in the Authority's view, reasonably practicable or technically feasible (including where the Licensee is not in a position to provide services in a particular area by reason of the fact that its systems are not sufficiently built out).
- 18.4. Any matter relating to whether any act done or course of conduct amounts to undue preference or undue discrimination shall be determined by the Authority.

CONDITION 19: INTERCONNECTION & PROTECTION OF THIRD-PARTY FACILITIES

- 19.1. Interconnection procedures shall be in accordance with the Regulations.
- 19.2. The Licensee shall permit a Requesting Licensee to connect to its network so as to enable the establishment and provision of licensed services by the said Requesting Licensee.
- 19.3. The Licensee shall provide the services in 19.2 above on a fair, transparent and non-discriminatory basis.
- 19.4. The Licensee shall install suitable equipment for compatibility with the systems of other licensees so as to enable the provision of the Licensed Services.
- 19.5. The Licensee shall ensure that its equipment, facilities, or operations do not interfere, damage or harm any third-party property, systems, installations, facilities, or operations.
- 19.6. In case such damage, harm or interference occurs, the Licensee shall immediately switch off its offending equipment, facilities or operations and inform the Authority and the affected operator as a matter of urgency.
- 19.7. Such information shall in no way prejudice the Authority's or third party rights or claims they may have against the Licensee for the interference, damage, harm or for financial loss that may have been occasioned.
- 19.8. The Licensee shall render the said equipment, facilities or operations harmless and/or compensate those third parties that may suffer damage, as a result of its equipment, facilities, systems or operations causing harm or interference.

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19.9. The obligation in 19.2 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 the following circumstances:

19.9.1. beyond the Licensee's control;

19.9.2. where the provision of connectivity would expose any person engaged in its provision to undue risk to health or safety, and

19.9.3. where it is not reasonably practicable.

CONDITION 20: REQUIREMENT TO PROVIDE INFORMATION

20.1. 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.

20.2. 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.

20.3. 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.

20.4. The Authority shall review the Compliance Report and:

20.4.1. 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, or

20.4.2. 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.

20.5. 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.

20.6. 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.

CONDITION 21: RIGHT OF ACCESS TO PREMISES AND RECORDS

21.1. The Licensee shall permit the Authority (or any person authorized by the Authority) unlimited access to all its premises and operational areas to inspect its premises, facilities, platforms, files, records and other data (including what is considered confidential) to enable it to exercise its functions under the Act.

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21.2. The Licensee shall establish and maintain information records in regard to its operations, for a minimum period of five (5) 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.

CONDITION 22: BREACH OF CONDITIONS

22.1. The Authority shall review the extent of the licensee's compliance with the licence conditions and:

22.1.1. where the Licensee is compliant, a Compliance Certificate in respect of compliance for the year under review will be issued;

22.1.2. where the Licensee is non-compliant and the Authority is satisfied that the licensee is breaching or has breached a condition in this licence, and such breach is remediable, the Authority shall serve a notice in writing to the licensee requiring it to remedy the breach within a specified period.

22.2. Notwithstanding the provisions under 22.1.2, the Authority may impose such penalty as it deems fit, but not before giving the licensee the right to an appeal.

22.3. Any penalty fees due under 22.2 shall be payable within thirty (30) days from the date of service of notification.

CONDITION 23: SUSPENSION OF SERVICE

23.1. The Authority may suspend some/part of the activities/services or 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.

23.2. Where the Authority intends to suspend such activities/services under this Licence pursuant to 31.1, the Authority shall issue a forty five (45) 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.

23.3. After the expiry of the notice in 23.2 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.

23.4. After the expiry of the notice in 23.2 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 activity/service shall be suspended.

23.5. The notice issued in 23.4 shall specify the duration of the suspension and the conditions for lifting of the suspension.

23.6. Where the Licensee rectifies the breach after suspension in 23.4 above, the suspension notice shall be lifted.

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- 23.7. Where the licensee fails rectify the breach at the expiry of the suspension period, the Authority may revoke the License in accordance with the provisions of this Licence.

CONDITION 24: LICENCE REVOCATION

- 24.1. Notwithstanding any other Condition in this License, the Authority may at any time revoke this License by giving six (6) months' notice in writing in any of the following circumstances:

- 24.1.1. If the licensee communicates to the Authority in writing on their intention to terminate the License;
- 24.1.2. If the licensee does not provide evidence of commencement of the provision of the licensed services nine (9) 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;
- 24.1.3. If any amount payable under condition 26.1 is unpaid forty-five (45) days after the Authority notifies the licensee that the payment is overdue, such notification is not to be given earlier than fourteen (14) days after the date on which the payment is due;
- 24.1.4. If the licensee has breached a condition in this licence, or any provision in the Act or Regulations, 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 licensee believes are relevant and the Authority appears not to have taken into account; and
- 24.1.5. If the Licensee is dissolved or enters into liquidation, bankruptcy or equivalent proceedings or makes a general assignment for the benefit of creditors.

- 24.2. 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 License 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.

CONDITION 25: CUSTOMER MANAGEMENT IN THE EVENT OF DISCONTINUATION OF OPERATIONS

- 25.1. Within six (6) months from the effective date, the Licensee shall submit to the Authority for approval, a customer / Customer transfer management plan that shall facilitate transfer of customers to another licensee to ensure continuity of services.
- 25.2. The licensee shall immediately affect the approved Customer transfer management plan upon the license revocation or non-renewal of this license.
- 25.3. The referenced plan in 25.1 above shall:

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

25.3.2. ensure continuity of services during the transition period as may be approved by the Authority having regard to the circumstances of the discontinuation and the need to protect consumers and ensure continuity of service.

25.4. In the event that the Licensee is unable to reach an agreement with a third party on the transfer of subscribers, the Licensee shall refer the matter to the Authority for guidance.

CONDITION 26: PUBLIC SAFETY

26.1. The Licensee shall take all proper and adequate safety measures to safeguard life, property and postal articles against any danger as prescribed in guidelines or regulations.

26.2. The Licensee will ensure that the facilities used in provision of services do not become a health, environmental or a safety hazard and are not in contravention of any statute, rule or regulation on public safety.

26.3. The Licensee shall put in place sufficient security measures to safeguard customers' postal courier items from theft, damage or other loss.

26.4. The Licensee shall prepare a report of the security and safety measures in place as guided by the mail integrity code of practice in Annex 1 and submit to the Authority within six (6) months from the effective date.

26.5. The Licensee shall demonstrate application of the code of practice in its operations and report to the Authority on a quarterly basis any incidences /occurrences regarding security.

CONDITION 27: PUBLIC EMERGENCIES

27.1. In case of major disasters such as earthquakes, floods and similar events or acts of God 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 provide the necessary licensed services to the Government, giving priority to the support activities required to overcome the emergency. For this purpose, the Licensee shall co-ordinate with and follow the instructions of the Authority as the Authority may direct.

27.2. In case the emergency or crisis is related to aspects of national security, the Licensee shall co-ordinate with the relevant entity indicated by the Authority and provide the necessary services in accordance with the instructions of the Authority or the relevant entity indicated thereby.

27.3. Within three (3) months following the Effective Date, the Licensee shall submit to the Authority its plan for procedures and operations it shall follow in the event of any such emergency and shall update such plan upon request by the Authority.

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27.4. The Licensee may be entitled to reimbursement by the Government of its direct costs for the provision of the services mentioned in 32.1 and 32.2 if the Authority is convinced such costs are reasonable after evidence of such incurred costs is provided thereof.

CONDITION 28: ENVIRONMENTAL PROTECTION AND SUSTAINABILITY

28.1. Within six (6) months from the effective date, the licensee shall put in place a policy on environmental protection and sustainability. The policy shall at minimum provide for:

28.1.1. progressive adoption of energy efficient technologies;

28.1.2. measures to address greenhouse gas emissions;

28.1.3. awareness to its customers on environmental protection and sustainability in relation to its services and;

28.1.4. mechanisms to promote environmentally sustainable operations.

28.2. The Licensee shall submit periodic reports to the Authority on the initiatives undertaken towards environmental protection and ensuring environmental sustainability in such manner as the Authority may prescribe from time to time.

CONDITION 29: INTERRUPTIONS TO THE LICENSED SERVICES

29.1. Subject to 29.2 and 29.3 below, the Licensee shall not intentionally interrupt nor suspend the provision of any type of Licensed Service without prior and due formal notification to the Authority and Licensees affected by such interruption or suspension.

29.2. In the event of unintentional/unforeseen interruption of the Licensed Services or part thereof, which are significant in nature, the Licensee shall inform the public and notify the Authority in writing within 24 hours outlining the cause of such interruption and the steps being undertaken to rectify such interruption.

29.3. The provision in 29.1 shall not apply if the interruption of service is as a result of non-payment or other business related or contractual reasons.

CONDITION 30: FORCE MAJEURE

30.1. 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, civil common 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.

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30.2. 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 repair or restore such services once the force majeure had ceased or been eliminated.

CONDITION 31: ACCOUNTING REQUIREMENTS

31.1. Within nine (9) 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.

31.2. 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 23.1 above.

31.3. 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.

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

CONDITION 32: LICENCE FEES

32.1. The Licensee shall pay to the Authority:

32.1.1. an initial licence fee amounting to one hundred thousand Kenya Shillings (KShs. 100,000) only and an annual operating fee of one hundred thousand Kenya Shillings (KShs. 100,000) only, prorated from the Effective date of the licence.

32.1.2. 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, one hundred thousand Kenya Shillings only (KShs. 100,000.00) only whichever is higher.

32.1.3. any other fee payable under this License including but not limited to the Universal Service Levy.

32.1.4. any of the fees due to the Authority under 32.1 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.

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CONDITION 33: UNIVERSAL ACCESS AND SERVICE OBLIGATIONS

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

CONDITION 34: LICENCE RENEWAL

- 34.1. The Authority may renew this License at the request of the Licensee following the expiry of the License Period for an additional term of ten (10) years provided that the Authority has carried out a review to determine whether or not the License should be renewed, which review shall be concluded two years prior to the expiry of the License Period.

CONDITION 35: LICENCE TRANSFER

- 35.1. The Licensee shall not assign, delegate, transfer or encumber in any manner the rights, interests or obligations under this License without the prior, express and written consent of the Authority, such consent not to be unreasonably withheld or delayed.

