



COMMERCIAL DIGITAL SOUND BROADCASTING LICENCE

GRANTED BY

THE COMMUNICATIONS AUTHORITY OF KENYA

TO

XXXX

XXX RADIO

LICENCE: BL/CA/COMSB/YEAR/XX

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THE LICENCE TERMS

The Communications Authority of Kenya (hereinafter referred to as the “**Authority**”), in accordance with the Kenya Information and Communications Act, CAP 411A (hereinafter referred to as the “**Act**”), and the Regulations made thereunder hereby authorises **XXXX of P.O Box XXX** (hereinafter referred to as the “**Licensee**”) to establish and provide commercial sound broadcasting services (hereinafter referred to as the “**Licensed Services**”) in the coverage area indicated in Appendix 1 of the Republic of Kenya in accordance with the Terms and Conditions set out in this Licence.

1. This Licence is issued on _____ (the **Issuance Date**)
2. This Licence is granted for a period of ten (10) years (the “**Licence Period**”) from the Issuance Date unless it is revoked earlier in accordance with the Licence Conditions herein.
3. The Licensee is authorised to provide commercial sound broadcasting services, which shall be transmitted through licensed networks as approved by the Authority.
4. The Licensee is authorised to provide the Licensed Services provided that:
 - 4.1. The Licensee has obtained other applicable authorisations from Government Agencies and such authorisations has been filed with the Authority;
 - 4.2. The determination of whether or not a separate licence is required to provide the particular service has been done by the Authority.
5. All equipment and devices used to provide the licensed services shall in all respects be of approved industry standard, type approved/accepted by the Authority and conforming to the Regulations as may be issued from time to time.
6. This Licence is subject to the provisions of the Act and the Regulations including, but not limited to, licence modifications and enforcements.
7. Words importing the singular shall include the plural and vice versa; words denoting persons shall include bodies corporate and unincorporated associations of persons and vice versa.
8. The Appendices to this License shall form part of this license. A contravention of the provisions of the Annexes shall be tantamount to contravention of the licence terms and conditions;
9. In this Licence the following terms shall have the following meanings:
 - 9.1. “**Act**” means the Kenya Information and Communications Act, CAP411 A, any successor legislation and any subsequent amendments made thereto;
 - 9.2. **Authority** means the Communications Authority of Kenya;

- 9.3. **Licence** means rights and obligations of broadcasters in Kenya whose content is defined and assigned by the Authority;
- 9.4. **Licensee** means legal person which is registered, in accordance with law, for provision of services in the area of broadcasting and which has accepted the Terms and Conditions of this Licence;
- 9.5. **Terms and Conditions of Licence:** Terms and Conditions of Licence encompass general and special terms and conditions for terrestrial programme broadcast. General terms and conditions are equal for all stations, while the special terms and conditions include the type of programmes that each individual station is broadcasting, as well as technical operations of each individual Licensee;
- 9.6. **Rules:** For the purpose of interpreting the Terms and Conditions of Licence, the Rules connote all Codes, Rules, guidelines, decisions and other acts that the Authority issues within its mandate and which are binding for radio and/or TV stations;
- 9.7. **Licence validity period** means the period between the date of issuance of the Licence and the expiration date of Licence.
- 9.8. **Regulations** means the Kenya Communications (Broadcasting) Regulations 2009 or its successor and/or other Regulations developed under the Act as the case may be
- 9.9. **Station:** Employees and equipment used for the purpose of programme broadcast;
- 9.10. **Programme** is audio-visual presentation of a certain character which is legally produced and broadcast or distributed by radio or TV station under its sign, by terrestrial, cable or satellite means, and which is, as such, protected by copyrights and other related rights;
- 9.11. **Programme segment:** Programme which in audio-visual sense presents one whole unit clearly separated from other segments and content with its beginning and end;
- 9.12. **Local programme:** Programme of station which is comprised of segments of programme of local production, co-production and bought/acquired programmes
- 9.13. **Programme of local production:** Programme segments which the Licensee has in full produced by itself, with the aid of all of its material and human resources or which are produced by an independent production house by the request and for the payment of the Licensee;
- 9.14. **Co-produced programme:** Programme in whose production the Licensee participated with its material and human resources;

- 9.15. **Bought/acquired programme:** Programme for which the Licensee has acquired broadcasting rights;
- 9.16. **Re-broadcast programme:** Programme, including advertisement programme, which one station is broadcasting or has broadcast, and the other takes it in full for the purpose of broadcasting;
- 9.17. **Exchange of programme:** Programme segments which are exchanged by two or more providers of broadcast services;
- 9.18. **Programme schedule** means the hours of broadcasting of programme of an individual licensee;
- 9.19. **Official address:** Official address in the request for issuance of licence, or corrected in a written form in accordance with the Terms and Conditions of this Licence;
- 9.20. **Watershed period** means a period in television and radio broadcasting schedules within which content intended for adult audience is not to be aired.

1. CONDITION 1: GENERAL TERMS AND CONDITIONS OF LICENCE

The Licensee shall ensure the Licensed Services offered conforms to the following requirements:

- 1.1. Every entity providing commercial sound broadcasting in Kenya must have this Licence from the Authority before commencement of broadcasting;
- 1.2. The Authority may amend and adjust the terms of the 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 legal or contractual obligations necessary for provision of broadcasting services.
- 1.4. During the validity of this Licence, the licensee shall maintain at least minimum requirements that include but not limited to programmes, finances and technical operations for which it has received the Licence are maintained.
- 1.5. Acceptance of this licence constitutes an obligation on the part of the Licensee to comply with all its Terms and Conditions.
- 1.6. The validity of this licence is contingent on compliance with the terms of the licence.
- 1.7. The Licensee shall observe the requirements of the Appendices I, II and III annexed to this Licence.
- 1.8. This Licence replaces authorisations by the Authority or the broadcast permit(s) issued to Licensee by the Ministry then in charge of broadcasting before the enactment of the Act.

2. CONDITION 2: NAME AND STATION IDENTITY

- 2.1. The Licensee's station identification is **XXXX**
- 2.2. It shall be the responsibility of the Licensee to ensure that the proposed station identity name is legally registered by the relevant registration agency as appropriate.
- 2.3. The Licensee shall not change its station identification without prior written consent from the Authority, which consent shall not be withheld unreasonably.
- 2.4. The licensee shall pay a prescribed fee for change of name and station identification.

- 2.5. The Licensee must clearly identify itself by its station identification at least every 30 minutes during the broadcasting period.
- 2.6. The Licensee shall ensure that it clearly and consistently identifies the source of rebroadcast programme, if its station rebroadcasts programmes that are produced by other radio stations.

3. CONDITION 3: TRANSMISSION OF RADIO CHANNEL ON DIGITAL PLATFORM

- 3.1 The Licensee shall enter into a contractual agreement with a licensed Broadcast Signal Distributor of its choice and sign a Service Level Agreement (SLA) for transmission of its sound signal in areas authorized in this licence. The SLA shall stipulate the commitments and responsibilities of each party.
- 3.2 The Licensee shall fully adhere to the terms and conditions stipulated in the SLA.
- 3.3 The Licensee shall provide its sound signal to the licensed common carrier or digital sound Broadcast Signal Distributor in the format and quality specified by the said Broadcast Signal Distributor.
- 3.4 It shall be the responsibility of the Licensee to deliver its studio sound signal stream to the multiplexing centre of the signal distributor or specified site in the case of local insert.
- 3.5 The licensee shall provide the broadcast signal distributor with a 7-day electronic programme guide (EPG) complete with KFCB classification rating for each month in advance and provide updates as appropriate to ensure the most updated version of the EPG is available on the digital platform.
- 3.6 The Licensee shall pay the applicable accommodation and carriage fees to the signal distributor in accordance with the tariff duly approved by the Authority.
- 3.7 The licensee shall not interrupt or withdraw its sound signal stream from the licensed common carrier or digital sound broadcast signal distributor's platform without written authorization by the Authority.

4. CONDITION 4: HOURS OF SERVICE

- 4.1 The Licensee shall provide the broadcasting service authorized under this licence for a continuous period of **24** hours per day.
- 4.2 The licensee shall broadcast continuously during the licensed programming hours and may not stop broadcasting unless with the written permission of the Authority.

5. CONDITION 5: LANGUAGE

The licensee shall provide its programming in the following language(s)

5.1.

5.2.

6. CONDITION 6: DELAYED TRANSMISSION OF LIVE EVENTS

6.1 The licensee shall ensure that a minimum delay of seven (7) seconds is incorporated in its licensed system when airing live events or programmes to prevent unintended airing of undesirable content.

7. CONDITION 7: ADHERENCE TO THE PROGRAMME CODE AND COMPLAINTS HANDLING PROCEDURE

7.1 Programme Code

The Licensee shall ensure the Licensed Services offered are in conformity with the Programme Code prescribed by the Authority.

7.2 Resolution of Complaints from the Public

7.2.1 The Licensee shall, following the formal approval by the Authority, implement a procedure for handling complaints received from the public in respect of all programming which is included in the Licensee's broadcast schedule.

7.2.2 The Licensee's complaints handling procedure shall by all means be in conformity with the prescriptions provided in the Regulations or any amendments for the time being in force.

7.2.3 Such procedures shall, inter alia, include a requirement that 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 matter complained of to the Authority or the Tribunal.

7.2.4 The Licensee shall broadcast regularly, at least three times in every twenty-four-hour period, information regarding the manner in which aggrieved members of the public may file complaints in respect of any aspect of its broadcasting service.

7.2.5 The Licensee shall resolve consumer complaints within the timelines provided for in its approved complaints procedure.

7.2.6 The Licensee shall not dispose off broadcast transcripts or recordings related to a complaint so long as it has not been summarily resolved either by the broadcaster, the Authority, the Tribunal or the High Court;

7.2.7 The Licensee shall for a period of one year keep a written record of such complaints received from the general public and make such records available to the Authority in writing on quarterly and annual basis.

- 7.2.8 The Licensee shall notify the Authority regarding the details of its authorized officers designated to handle complaints related to the licensed services.

8. CONDITION 8: PUBLIC EMERGENCIES

- 8.1 The Licensee shall make the Licensed Systems available and accessible for the provision of Emergency Services free of charge.
- 8.2 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.
- 8.3 In case the emergency or crisis is related to aspects of national security, the Licensee shall co-ordinate with the competent entity indicated by the Authority and provide the necessary services or cease provision of the licensed services in accordance with the instructions of the Authority or the competent entity indicated thereby.
- 8.4 Within three (3) months following the Renewal, 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.
- 8.5 The Licensee may be entitled to reimbursement by the Government of its direct costs for the provision of the services mentioned in 8.2 and 8.3 above if at the onset of the emergency, the Government or the Authority committed explicitly in writing to compensate the licensee for services to be offered.
- 8.6 The obligation in 8.1 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 by means of the Licensed Systems in the particular circumstances where provision is beyond the Licensee's control.

9. CONDITION 9: TECHNICAL OPERATIONAL PROCEDURES

- 9.1. The Licensee shall, in the provision of the licensed service, comply with international technical standards.
- 9.2. The Licensee shall operate all broadcast 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.

- 9.3. The Licensee will abide by and work in accordance with all applicable Rules and Regulations of the Authority, in relation to technical operations for all radio and TV stations, as well as in accordance with all enforced Rules in Kenya.
- 9.4. The Authority shall have the right to conduct such tests as may be necessary on any of the Licensee's technical equipment used by or on behalf of the Licensee. This may include requiring the Licensee to switch off certain equipment and cease broadcasting for such reasonable period as the Authority may need to conduct the test in question.
- 9.5. The equipment and apparatus of the Licensee must be operated and maintained by competent persons at all times.
- 9.6. The Licensee must ensure that the equipment used for provisioning of the licensed broadcast service are duly type approved /accepted by the Authority and complies with the authorised technical parameters prior to commissioning and use.
- 9.7. The Licensee shall not offer its services in other areas other than the licensed geographical target area(s).
- 9.8. The Licensee shall ensure that associated services outsourced are procured only from duly licensed entities.
- 9.9. The Licensee shall notify the Authority the physical address of location of its broadcasting studios before commissioning the service.

10. CONDITION 10: LICENCE FEES

- 10.1. The Licensee shall pay to the Authority such fees as may be prescribed by the Authority in accordance with its approved fee schedule for the time being in force. Such fees shall include:
 - 10.1.1. an initial Licence fee to be paid before a licence is issued; 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;
 - 10.1.2. other fees payable to the Authority for the following services whenever requested for: -
 - 10.1.2.1. Licence Renewal
 - 10.1.2.2. Licence Transfer
 - 10.1.2.3. Licence amendment including change of shareholding structure, entity's name or station identity among others

10.2. Any of the fees due to the Authority under 10.1.1 that remain unpaid for thirty (30) days after they become due shall attract an interest at prevailing official bank lending rate unless prior exemption had been obtained.

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

11. CONDITION 11:RENEWAL OF THE LICENCE

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

11.2. In considering renewal of this licence, the Authority shall consider the compliance record of the licensee during the licence term.

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

11.4. The licensee shall submit an application for renewal six months before the licence expiry date and pay the licence renewal fee prescribed in condition 10.3.1.

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

12. CONDITION 12: LICENCE TRANSFER

12.1. 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.

12.2. The Authority shall not consider any application for transfer of license by a licensee against whom it has instigated sanctions procedures or by a person/body connected to that licensee until such a time as the sanction procedures against the licensee is concluded;

12.3. Licensee shall not transfer or assign this licence, by sale of special agreement, partly or in whole, to other owners or organizations, except where the Authority has granted approval in writing. In case of termination of the Licensee as the organization or if declared bankrupt by relevant authorities the Licence shall cease to be valid.

12.4. The Licence may **NOT** be considered either as property or ownership that may be transferred financially or inherited.

- 12.5. Shareholding of a minimum of ten per cent (10%) shall constitute a partial transfer of ownership, and thus shall require beforehand written approval by the Authority.
- 12.6. The licensee together with the beneficiary shall be required to fully comply with the prescribed procedure for application of transfer of licence.

13. CONDITION 13: LICENCE SUSPENSION

- 13.1. The Authority may suspend some or all 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.
- 13.2. Where the Authority intends to suspend any of the services under this Licence pursuant to 13.1, 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. However, the 45 days advance notice shall not be apply where the licensee's breach is construed to be a threat to national security and vulnerable persons.
- 13.3. After the expiry of the notice in 13.2 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.
- 13.4. After the expiry of the notice in 13.2 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.
- 13.5. The notice issued in 13.4 shall specify the duration of the suspension and the conditions for lifting of the suspension.
- 13.6. Where the Licensee rectifies the breach after suspension in 13.4 above, the suspension notice shall be lifted.
- 13.7. Where the licensee fails rectify the breach at the expiry of the suspension period, the Authority may revoke the License in accordance with Condition 14

14. CONDITION 14: LICENCE REVOCATION

- 14.1. 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:
- 14.1.1. If the Licensee has provided false information or withheld information with the intention of causing the Authority to be misled, either in purporting to comply with any condition of the license or in connection with the application for the license;
 - 14.1.2. if the licensee communicates to the Authority in writing on their intention to terminate the Licence;
 - 14.1.3. if the Licensee does not provide evidence of commencement of the provision of the Licensed broadcasting services twelve (12) months from the Effective Date or any other date that the Authority has in writing directed commencement of licensed services. The Licensee shall satisfy the Authority that it has complied with this requirement after a successful inspection by the officers of the Authority;
 - 14.1.4. if any amount payable under Conditions 10.1.1 and 10.2 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;
 - 14.1.5. 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;
 - 14.1.6. if the Licensee is dissolved or enters into liquidation, bankruptcy or equivalent proceedings or makes a general assignment for the benefit of creditors;
 - 14.1.7. If the licensee's continued operation is construed to be a threat to national security and/or cohesion;
 - 14.1.8. If the licensee or its directors are engaged in criminal activities and blatantly violates other laws of the Republic of Kenya;
 - 14.1.9. If the licensee is deregistered by the registering entity.

14.2. 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.

15. CONDITION 15: COPYRIGHT OBLIGATIONS

15.1. Licensee shall be responsible for all obligations and liabilities to any third party associated with copyright or other rights that may arise from the broadcast of copyright programme.

15.2. The Licensee shall negotiate and agree on legal contracts with copyright licensing bodies or authorized legal vendors before broadcasting copyrighted material. In the event of a breach of this regulation, the Authority shall take necessary action to enforce it in accordance with the powers conferred to it by section 46Q of the Act.

15.3. The Licensee is obliged to have valid contracts for broadcast of copyrighted material and it must, upon request, submit such contract to the Authority for reviewing.

15.4. The Authority shall treat such contracts as confidential.

16. CONDITION 16: PROVISION OF INFORMATION TO THE AUTHORITY

16.1. The Licensee shall provide information to the Authority in such manner and at such times as Authority shall reasonably request, for purposes of ensuring compliance with this Licence.

16.2. 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.

16.3. In particular, by the **15th July** of every year or as agreed by the Authority, the Licensee shall submit a Compliance Report detailing the performance of the previous operational year ended 30th June.

16.4. The Licensee shall in addition be required to:

16.4.1. Make and retain for one year, recordings of all broadcast programs, including advertising and trailers; or for a period as Authority may direct in individual cases with the exception of material recordings related to a prevailing complaint or court case; in which case the period may be extended in accordance with the approved complaint handling procedure;

- 16.4.2. Provide copies of such recordings to the Authority promptly upon request, in accordance with provided deadlines.
- 16.5. 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:
 - 16.5.1. Station's address, telephone, email and other contact information;
 - 16.5.2. Management structure or personnel listed in the licence application;
 - 16.5.3. Significant changes in operating hours, programme schedule or programme content;
 - 16.5.4. New or expired agreements for programme rebroadcast and/or exchange;
 - 16.5.5. Interruptions in broadcasting greater than one-half day's programme schedule; and
 - 16.5.6. Changes to any technical, engineering or studio specifications, as indicated in the Frequency Assignment.
- 16.6. The Licensee shall be required to submit compliance returns at such intervals as prescribed by the Authority. The Authority shall review the Compliance Returns and:
 - 16.6.1. 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
 - 16.6.2. 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.
- 16.7. 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 essential to enable it to exercise its functions under the Act.
- 16.8. 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.

17. CONDITION 17:PUBLIC RECORDS

- 17.1. 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.
- 17.2. The Authority may in its discretion make this Licence publicly available in any manner it thinks fit, in whole or in part.
- 17.3. The provision of content of the said licensee records to third parties shall be governed by the relevant provisions of the Data Protection Act (Act no.24 of 2019) of the Laws of Kenya.

18. CONDITION 18: INTERRUPTIONS TO THE LICENSED SERVICES

- 18.1. 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.
- 18.2. In the event of an unintentional/unforeseen interruption of the Licensed Services or part thereof, which exceeds three hours, 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.
- 18.3. The Licensee shall inform its Consumers the period a Licensed Services is to run and in any case notify the Consumers of the termination date of that Licensed Service at least when the period of offering that Licensed Service is quarter way to its termination date.
- 18.4. The provision in 18.1 shall not apply if the interruption of service is a result of Consumer's non-payment or other business related or contractual reasons.

19. CONDITION 19:ACCESS TO FACILITIES AND INSPECTION

- 19.1. The Authority reserves the right to access the Licensee's premises, facilities, files, records and other data to conduct inspections, and tests thereof, to verify continued compliance with terms and conditions of this licence and the Act.
- 19.2. The Licensee shall, upon request, provide unlimited access to all its sites and operational areas to duly authorised officers of the Authority, any person authorised by the Authority or law enforcement agency in order for the said to effectively perform their duties under the Act.

- 19.3. 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.
- 19.4. The licensee shall provide, upon request by the Authority (or its authorised agents), any information it requires during an inspection including access to any content information logs. Such information may be required to be generated from the Licensee's systems in the presence of Authority's inspectors at the time of the inspection

20. CONDITION 20: FAIR TRADING

- 20.1. Without prejudice to other obligations imposed on the Licensee under this Licence, the Licensee shall not engage in any activities, whether by act or omission, which have, or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in Kenya (or a part of it), in relation to any business activity relating to the Licensed Systems and services. Without limiting the generality of the foregoing, any such act or omission shall include:
- 20.1.1. 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;
 - 20.1.2. entering into any contract or engaging in any concerted practice with any other party, which unfairly prevents, restricts or distorts competition in Kenya, or
 - 20.1.3. effecting anti-competitive changes in the broadcasting market in Kenya, and in particular, anti-competitive mergers and acquisitions in the sector.
- 20.2. In the event it appears to the Authority that the Licensee is in breach of 20.1, the Authority shall give written notice to the Licensee:
- 20.3. stating that the Authority is investigating a possible contravention;
- 20.3.1. setting out detailed reasons why it appears to the Authority that there is a breach by the Licensee of this Condition, and
 - 20.3.2. setting out the steps the Authority believes 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.

20.4. The Authority shall allow the Licensee thirty (30) days from the date of the notice to make representations to the Authority, before the Authority takes further action.

21. CONDITION 21: PROHIBITION OF CROSS-SUBSIDIZATION

21.1. 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, other broadcasting services, and/or any other licences granted to the Licensee by the Authority.

21.2. 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.

21.3. 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 believes 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.

21.4. Where the Authority deems it necessary and appropriate to supervise and confirm compliance with the provisions of this Licence, it may require the Licensee to provide the broadcasting services through a separate division or divisions, a separate branch or branches or a separate subsidiary or subsidiaries.

22. CONDITION 22: NOTIFICATION OF CHANGE IN SHAREHOLDING

22.1. 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.

22.2. The Shareholding as at the date of licence Issuance is as detailed in Appendix 3.

22.3. A licensee shall notify the Authority of any proposed change in ownership, control or proportion of shares held in it at least thirty (30) days prior to effecting such change. Provided that:

22.3.1. any change in shareholding exceeding 15 % of the issued share capital;
or

22.3.2. the acquisition by an existing shareholder of at least 5% additional shares; and

22.3.3. shall require prior written consent of the Authority, provided that the Authority shall notify the applicant of its acceptance or refusal with the reasons thereon, within thirty (30) days of receipt of the said notification.

22.4. Upon successful implementation of the said change of shareholding as approved by the Authority, the licensee shall file with the Authority the new shareholding certificate reflecting the changes in the shareholding.

23. CONDITION 23: PRE-NOTIFICATION OF JOINT VENTURES

23.1. 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 anybody corporate for the purpose of:

23.1.1. the running of a broadcasting system in Kenya which requires a licence under the Act;

23.1.2. providing broadcasting services in Kenya which requires a licence under the Act;

23.1.3. carrying of content over broadcasting systems which requires a licence under the Act;

23.1.4. the production of broadcasting apparatus 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;

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

23.1.6. any other agreement or arrangement in the nature of the joint venture for the purpose of running a business which requires a licence under the Act or for the purpose of providing broadcasting services in Kenya.

23.2. 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.

24. CONDITION 24:INDEMNITY

24.1. 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:

24.1.1. 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

24.1.2. 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.

24.1.3. 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.

25. CONDITION 25:FORCE MAJEURE

25.1. Licensee shall not be held responsible for any failure to comply with the terms and conditions of this licence that is directly or indirectly caused by circumstances beyond the control of the Licensee, including but not limited to accidental damaging of equipment (other than that caused by the wrongful act, neglect or default of the Licensee or its employees or agents) interruption of electric power, force majeure, war damage, civil disturbance, or interference by labour dispute provided;

25.1.1. the Licensee has, without undue delay, duly notified the Authority the nature of the event and the extend in which the broadcaster is prevented from complying with the terms and conditions of this licence;

25.1.2. 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.

25.2. The exemption of force majeure shall not be held to permit suspension of licence fees payments.

26. CONDITION 26:HUMAN RESOURCE DEVELOPMENT

26.1. The Licensee shall submit to the Authority its Human Resource Development Plan outlining strategic success plan on empowerment of Kenyan staff.

- 26.2. The Licensee shall annually furnish the Authority with a report of implementation of Human Resource Planning.
- 26.3. An application for employment of Non Kenyans submitted and approved by immigration authorities shall be filed with the Authority.
- 26.4. The Licensee shall facilitate participation of its staff in training within and outside Kenya.
- 26.5. The Licensee shall ensure that its officers, consultants and contractors, including script-writers adhere to the Codes of practice relating to programme, advertising and technical standards.

27. CONDITION 27: DIGITAL SWITCHOVER

- 27.1. Where technological developments and/or spectrum re-allocations arising from international agreements or treaty which Kenya is party to, necessitate migration to more advanced or newer technology, the Licensee shall be accorded reasonable opportunity to migrate the licensed service to the newer technology platform provided;
 - 27.1.1. The Licensee adheres to the prescribed timeframe of migration to the new technology
 - 27.1.2. The Authority guarantees availability of sufficient capacity to accommodate the existing licensed service on the new platform
 - 27.1.3. The costs related to migration to the newer technology shall be borne by the licensee
- 27.2. The Authority shall ensure appropriate amendments are effected to the Licensee's licence to reflect the changes at no cost to the Licensee.

28. CONDITION 28: PENALTIES FOR BREACH OF LICENCE CONDITIONS

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

29. CONDITION 29: DISPUTES

- 29.1. The dispute settlement mechanism set out in the Act shall apply to any dispute or disputes that arise out of the provisions of this licence.

- 29.2. In the event of any dispute arising regarding the interpretation of any provision of the licence, the Authority shall be entitled to make a ruling regarding the interpretation of that provision, provided that the Licensee shall be afforded an opportunity to make submissions to the Authority before any such ruling is made.
- 29.3. Any ruling which the Authority may make on the interpretation of any provision of the licence shall be final and binding on the Licensee.

30. CONDITION 30: ACCOUNTING REQUIREMENTS

- 30.1. The Licensee shall submit to the Authority the accounting principles which relating to the running of the Licensed Systems and which allows the recording of investments, expenses and revenues in accordance with accounting standards recognised in Kenya.
- 30.2. Within sixty (60) days of the end of each fiscal year of the License, 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 30.1 above.
- 30.3. 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. CONDITION 31: LICENSEE'S TERMINATION RIGHT

- 31.1. 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 its clients, 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 advertisers at least ninety (90) days' notice of its decision to cease providing free to air sound broadcasting services
- 31.2. The licensee shall be responsible for settling any claims or compensation demanded by its clients prior to termination of the licensed service.

31.3. The terminating licensee, in liaison with its clients may, upon obtaining consent by the Authority, appoint other licensed free to air sound broadcasting service providers to take over its un-aired advertisements and programmes under mutually agreed terms and conditions.

32. CONDITION 32: DIGITAL SWITCHOVER

32.1. Where technological developments and/or spectrum re-allocations arising from international agreements or treaty which Kenya is party to, necessitate migration to more advanced or a different digital technology, the Licensee shall be accorded reasonable opportunity to migrate the licensed service to the newer technology platform provided;

32.1.1. The Licensee adheres to the prescribed timeframe of migration to the new technology

32.1.2. The Authority guarantees availability of sufficient capacity to accommodate the existing licensed service on the new platform

32.1.3. The costs related to migration to the newer technology shall be borne by the licensee

32.2. The Authority shall ensure appropriate amendments are effected to the Licensee's licence to reflect the changes at no cost to the Licensee.

33. CONDITION 31: CONTRIBUTION TO THE UNIVERSAL SERVICE FUND (USF)

31.1 The Licensee shall contribute such an amount to the Universal Service Fund based on a percentage of the Annual Gross Turnover as shall be specified by the Authority from time to time in accordance with section 84J (3) of the Act and the USF Regulations.

31.2 The Authority shall invoice the licensee at the start of the financial year for the USF as the Authority shall prescribe from time to time.

31.3 The Licensee shall comply with the obligations related to the Universal Service Fund of the Authority as provided for under the Act and the Regulations

Signed for and on behalf of the Authority

Director General

Date

APPENDICES

Appendix 1: Coverage Area (s)

Countrywide in Kenya

Appendix 2: Programming

Appendix 2A: List of Programme Services

	Programme Segments	Total Weekly (%)
1	Community Programs	
2	Children Programs	
3	Music	
4	Sport	
5	Informative programs	
6	Marketing	
7	Educational Programs	
8	PWD Programs	
	Total	100%

Appendix 2B: Programme Structure

Programme Structure		Total Weekly (%)
1	Local Programme	
	a) Self-produced Production	
	b) Co-production	
	c) Bought or owned program	

2	Re-broadcast programme	
3	Exchanged program	
	Total	100%

Appendix 3: Licensee’s Ownership Structure

No.	Name of Station	Shareholders	Shareholding (%)
1.			

Note: Change of shareholding shall be made in accordance with **Condition 22** of this Licence on change of shareholding.