



**BROADCAST LICENSE TO PROVIDE SIGNAL DISTRIBUTION SERVICES**

**GRANTED BY**

**THE COMMUNICATIONS AUTHORITY OF KENYA**

**TO**

**XXX**

**FOR**

**PROVISION OF BROADCAST SIGNAL DISTRIBUTION SERVICES**

**IN THE REPUBLIC OF KENYA**

***LICENCE NO. BL/CA/BSD/20xx/01***

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## THE LICENCE TERMS

The Communications Authority of Kenya (the "Authority"), in accordance with the Kenya Information and Communications Act, Cap 411A(the "Act"), hereby authorises **XXXXX** (the "Licensee") to construct, install and operate broadcasting signal distribution systems as described herein (the "Licensed Systems") for the purpose of providing broadcasting signal distribution services as described herein the ("Licensed Services") in accordance with the Conditions set out in this Licence.

1. The Licensed Systems shall comprise of:
  - 1.1.1. Broadcast signal distribution and broadcasting transmitter systems,
  - 1.1.2. Digital multiplex platforms and head-ends,
  - 1.1.3. Electronic programme Guides, and
  - 1.1.4. Conditional Access System
  - 1.1.5. Any other such systems as may be explicitly authorised by the Authority.
2. All equipment or devices comprising the Licensed System shall in all respects be of an approved industrial standard, type approved or type accepted by the Authority and conforming to the Authority's regulations, ITU standards and such other internationally recognized standards for such equipment or devices as may be issued from time to time.
3. The licensed services are the provision through the Licensed System of:
  - 3.1.1. Standard definition TV, High Definition TV channels
  - 3.1.2. Free-to-Air TV channels
  - 3.1.3. Subscription TV Channels
  - 3.1.4. Radio Services
  - 3.1.5. Local/county insertion
  - 3.1.6. Regional advertising substitution
  - 3.1.7. Interactive services such as Electronic Program Guide, Teletext
  - 3.1.8. Video- on-demand (VOD)
  - 3.1.9. Provision of conditional access facilities
  - 3.1.10. Data Services
  - 3.1.11. Alerts systems (traffic,weather, emergency)
  - 3.1.12. Any other such services as may be explicitly authorised by the Authority
4. The Licensee is authorised to connect the Licensed Systems only to other systems licensed by the Authority;
5. The Licensee shall submit to the Authority for notification, details pertaining to the network configuration and any proposed upgrades thereafter, before embarking on system installation/upgrading;
6. This Licence is issued on ----- (the Effective Date) under licence number BL/CA/BS/20XX/01.

7. This Licence is granted for an initial period of Fifteen (15) years (the "Licence Period") from the Effective Date unless it is revoked earlier in accordance with the Licence conditions therein.
8. Notwithstanding paragraph 7 of this Licence, the Authority may at any time revoke this Licence by giving six (6) months' notice in writing in any of the following circumstances:
  - 8.1. if the Licensee agrees in writing with the Authority that this Licence should be revoked;
  - 8.2. if the Licensee does not provide evidence of commencement of the provision of the Licensed 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 submit such evidence by completing the Compliance Report in accordance with Appendix 5 of this Licence in order to satisfy the Authority that the Licensee has complied with this requirement.
  - 8.3. if any amount payable under Conditions 22 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;
  - 8.4. if the Licensee has breached a Condition in this Licence and 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 Kenya Information and Communications 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;
  - 8.5. if the Licensee is dissolved or enters into liquidation, bankruptcy or equivalent proceedings or makes a general assignment for the benefit of creditors; and
  - 8.6. if the Licensee fails to notify the Authority of any of the events specified in Condition 18 or 19 and the Authority has given written notice to the Licensee that the Authority intends to revoke the Licence on the grounds set out in Condition 18 or 19 respectively.
  - 8.7. If the licensee's continued operation of the licensed broadcasting service is considered to be a threat to national security and/or cohesion.
  - 8.8. If the licensee or its directors are engaged in criminal activities and blatantly violates other laws of the Republic of Kenya.
  - 8.9. If the licensee is deregistered by the registering entity
9. After the end of the notice period, 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;

10. The Licensee may apply to the Authority for renewal of this Licence at least three (3) years prior to date of licence expiry upon payment of licence renewal fee. The Authority shall carry out a formal review to determine whether or not the licence should be renewed, in which case the review shall be concluded one year prior to the expiry date. The Authority may renew this Licence for an additional ten (10) years following the formal review at least six months prior to licence expiry date. The licence shall terminate upon expiry of the licence period if it is not renewed.
11. Any word, phrase or expression used in this Licence shall, unless the context requires otherwise, have the same meaning as it has in the Act.
12. 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.
13. 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.
14. This Licence and the Licensee are subject to the provisions of the Act including, but not limited to, licence modifications and enforcements.
15. In this Licence the following terms shall have the following meanings:
  - 15.1. “**Act**” means the Kenya Information and Communications Act, Cap 411A any successor legislation and any subsequent amendments made thereto.
  - 15.2. “**Broadcasting**” means unidirectional conveyance of sounds or television programmes, whether encrypted or not by radio or other means of telecommunications, for reception by the public;
  - 15.3. “**Broadcaster**” means any legal or natural person who composes or packages or distributes television or radio programme services for reception by the public or sections of the public or subscribers to such a service, irrespective of technology used;
  - 15.4. “**Broadcast Signal Distributor (BSD)**” means an entity licensed by the Authority to construct systems, distribute and transmit on behalf of licensed broadcast digital television/multimedia signals for reception by end-users
  - 15.5. “**Compliance Report**” means a report to be prepared annually by the Licensee, as prescribed by the Authority, detailing its performance in respect to a licence area it is obliged under this licence to report to the Authority on.
  - 15.6. “**Compliance Certificate**” means a certificate to be issued by the Authority to the licensee following the receipt of a Compliance Report in respect of its compliance of each area it is obliged under this licence to report to the Authority on.
  - 15.7. “**Digital broadcasting Service Provider**” means a licensed broadcaster or an entity providing broadcast content to be broadcast on the licensed Broadcast Signal distributor’s platform

- 15.8. “**Customer**” means an entity provided with services by the Licensee
- 15.9. **Digital Terrestrial Television (DTT)**” means a land based transmission of digital television/multimedia signals for direct reception by the general public.
- 15.10. “**Digital sound broadcasting Service (DSB)**” means a land based transmission of digital audio signals for direct reception by the general public.
- 15.11. “**Electronic Programme Guide (EPG)**” means a programme schedule broadcast alongside the digital television or radio signals and provides a means by which users navigate around the supplied services
- 15.12. “**Emergency Organisation**” means in respect of any locality the relevant public police, fire, ambulance and coastguard services for that locality;
- 15.13. “**Government**” means the Government of the Republic of Kenya;
- 15.14. “**Multiplexing**” means the process of combining audio/video programme material and other data in a digital form for transmission via a frequency channel.
- 15.15. “**Regulations**” means the Kenya Information and Communications Regulations, and its subsequent amendments;
- 15.16. “**Service Level Agreement**” means an agreement between the customer and the Licensee defining the nature of the services to be provided and establishing a set of parameters to be used in measuring the agreed service level;
- 15.17. “**Universal Service**” means any service which may be prescribed to the Licensee by the Authority as a Universal Services from time to time to meet the Country’s communications Universal Services Obligations;

## **LICENSING CONDITIONS**

### **1. CONDITION 1: GENERAL CONDITIONS**

- 1.1. The provision of data services and internet on a multiplex shall be secondary to the provision of programming services for both television and radio
- 1.2. The licensee shall not use more than 15 per cent of the capacity of each multiplex at any one time for non-broadcast related data or value added services. The Authority reserves the right to alter this percentage from time to time.
- 1.3. The licensee shall be required to comply with ‘Must carry’ directive as may be specified by the Authority from time to time.

- 1.4. The Licensee shall ensure that the distribution network is inter-operable with all FTA channels such that any FTA channels on that platform shall be receivable by any duly type approved digital broadcasting receiver complying with minimum specifications.
- 1.5. In the event the licensee is interested in supply of digital broadcasting receivers, it shall be a requirement for the licensee to ensure that these receivers are duly type approved or type accepted by the Authority and be configured to receive all free to air channels from other DTT/DSB platforms. Under no circumstances shall the licensee be allowed to configure its FTA channels as free to view.

## **2. CONDITION 2: ROLL-OUT OF THE LICENSED SYSTEMS**

- 2.1. The Licensee shall fulfil the system roll-out requirements set out in **Appendix 1** of this Licence (the “System Roll-out Requirements”) or as otherwise required from time to time by the Authority. The licensee shall also ensure that sites rolled out during the first licence term and the coverage continue to be maintained during the entire period for the licence renewal.
- 2.2. The Licensee shall ensure that it maintains information in a form prescribed by the Authority for the purposes of satisfying the Authority that the Licensee is meeting the System Roll-out Requirements.
- 2.3. The Licensee shall submit from time to time to the Authority updated roll-out plans on the provision of its services and that, such updated roll-out shall be subject to inspection and approval by the Authority.
- 2.4. The Licensee shall be liable to pay such penalties, if any, as set out in **Appendix 4** for failure to meet the System Roll-out Requirements.

## **3. CONDITION 3: REQUIREMENT TO PROVIDE LICENSED SYSTEMS**

- 3.1. The Licensee shall provide, by means of the Licensed Systems, the Licensed Services to any licensed broadcaster who reasonably requests the provision of such services.
- 3.2. The Licensee shall ensure that the Systems it installs meets the Authority’s standards and requirements and that the licensed or authorised Digital Broadcasting service provider accommodated on the platform are conversant with such requirements
- 3.3. The Licensee’s System shall be capable of among other things; support FTA TV platform and DSB platform, conditional access platform and supporting interactive data services licensed by the Authority. The Authority may, in consultation with the Licensee, review these capabilities from time to time;
- 3.4. The Licensee shall in the manner prescribed by the Authority, ensure that it maintains information to the satisfaction of the Authority on the broadcasting services connected through

its network and details of the digital broadcasting services provider . The Authority may, in consultation with the Licensee, revise the information to be provided from time to time;

- 3.5. The licensee shall deploy digital broadcast multiplexing and terrestrial transmission systems that fully comply or exceed the following minimum standards
  - 3.5.1. Digital Video Broadcasting-Terrestrial second generation (DVB-T2) digital transmission system corresponding to ETSI EN 302 755 or future enhancements of the same
  - 3.5.2. MPEG-4 AVC (H.264) video compression format, Advanced Audio Coding format
  - 3.5.3. Digital Sound Broadcasting (DAB+ and/or DRM) or future enhancements of the same
  - 3.5.4. Any such families of future digital broadcasting standards that the Authority may authorise from time to time.
- 3.6. The Licensee shall ~~in future~~ deploy broadcasting transmission infrastructure and systems, subject to authorisation by the Authority, to accommodate other digital sound broadcasting signals from licensed digital sound broadcasting service providers.
- 3.7. The licensee shall as far as technically possible make use of the existing carrier infrastructure for transportation and distribution of its signals and where necessary, deploy its own carrier distribution network using optical fibre, satellite and other appropriate technologies.
- 3.8. The Licensee shall rollout a combination of national, regional and/or local digital multiplex networks as appropriate in accordance with demand requirements.

#### **4. CONDITION 4: UNIVERSAL SERVICES OBLIGATION**

- 4.1. 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.
- 4.2. The Licensee shall provide or participate in the provision of Universal Services, as may be specified by the Authority from time to time.
- 4.3. The Licensee shall contribute such an amount to the Universal Service Fund (USF) 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.

#### **5. CONDITION 5: PROVISION OF ELECTRONIC PROGRAMME GUIDE SERVICES**

- 5.1. The Licensee shall establish and maintain efficient EPG system to assist any person to whom it provides Licensed Services including persons with disabilities to navigate through the broadcasting services carried on its system.



- 5.2. Unless specifically excluded by the licence, the Licensee shall ensure that the system is implemented in such a manner that it is capable of relaying all components within a programme service intended for general reception. This would include the EPG, TeleText and additional sound channels associated with the vision material.
- 5.3. The obligations in 5.1 and 5.2 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, including, but not limited to circumstances:
- 5.3.1. beyond the Licensee's control;
  - 5.3.2. where the provision of the service would expose any person engaged in its provision to undue risk to health or safety, and
  - 5.3.3. where it is not reasonably practicable (including where the Licensee is not in a position to provide service in a particular area by reason of the fact that its systems are not sufficiently built out).
- 5.4. The licensee shall require all broadcast service providers accommodated on its platform to provide their individual programme lineup including audience classification rating fully aligned to Kenyan standard from time to time, and ensure EPG is activated and upto date at all times.

## **6. CONDITION 6: INTERRUPTIONS TO THE LICENSED SERVICES**

- 6.1. Subject to 7.3 and 7.4 below, the Licensee shall not intentionally interrupt the operation of the Licensed Systems (or any part thereof), or the Licensed Services, in the normal course of business, nor shall it in the normal course of business suspend the provision of any type of Licensed Service without having first sought approval from the Authority in writing and subsequently providing reasonable advance notice to persons affected by such interruption or suspension. Where a licensee notifies the Authority, suspension of services shall only be implemented after obtaining explicit authorisation in writing from the Authority and such authorisation shall not in any way absolve the licensee from obligations to be fulfilled as a licensee.
- 6.2. In the event of an 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.
- 6.3. The provision in 6.1 shall not apply if, the interruption or suspension is to a person to whom the Licensee provides the Licensed Service and whose system or apparatus (or use of thereof) is endangering the intergrity of the Licensed Systems.
- 6.4. The provision in 6.1 shall not apply if the interruption of service is as provided for under the relevant commercial agreements between the Licensee and the Customer.

## **7. CONDITION 7: PUBLIC EMERGENCIES**

- 7.1. In case of a situation of emergency or local, regional or national crisis such as earthquakes, floods and similar events which require special attention on the part of the Licensee, the Licensee shall provide the necessary 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.
- 7.2. Within nine (9) 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.
- 7.3. 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.
- 7.4. The Licensee may be entitled to reimbursement by the Government of its direct costs for the provision of the services mentioned in 7.1 and 7.2 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. CONDITION 8: PUBLIC SAFETY**

- 8.1. The Licensee shall in respect of all apparatus, equipment and installations possessed, operated, maintained or used under the licence, take all proper and adequate safety measures to safeguard life against any danger, including radiation emanating from the apparatus, equipment or installation so used
- 8.2. The Licensee will ensure that the broadcasting signal distribution installation used to provide the Licensed Services should not become a health, environmental or a safety hazard and is not in contravention of any statute, rule or regulation and public policy.

## **9. CONDITION 9: REQUIREMENT TO PROVIDE INFORMATION**

- 9.1. The Licensee is required to maintain 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 request.
- 9.2. The Authority shall have the right to request the Licensee to submit periodic reports, statistics and other data as well as request additional information with a view to supervise and enforce effectively the terms of this Licence.
- 9.3. In particular, by the 15th July of every year, the Licensee shall submit a Compliance Report detailing the performance of the previous operational year ended 30th June and as the Authority shall prescribe.
- 9.4. The Authority shall review the Compliance Report and;

9.4.1. If the Licensee is in compliance with the Licence, issue the Licensee with a Compliance Certificate in respect to each area of compliance for the year under review;

9.4.2. If the Licensee is not in compliance with the Licence, require the Licensee to remedy the area of non-compliance or levy appropriate penalties in that respect in accordance with the provisions of this Licence and the Act.

9.5. In making a request for information, the Authority will ensure that no undue burden is imposed on the Licensee in procuring and furnishing such information, unless the Authority considers such information as essential to enable it to exercise its functions under the Act.

9.6. The Authority shall have the right to publish information which it receives under this Condition unless, following representations by the Licensee, the Authority is satisfied that the information is of such confidential nature that disclosure would have a material adverse effect on the Licensee's business.

## **10. CONDITION 10: INSPECTION, ACCESS TO SITES AND RECORDS**

10.1. The Licensee shall permit the Authority to inspect the Licensee's systems, premises, facilities, files, records and other data to enable it to exercise its functions under the Act

10.2. Pursuant to the Act and any other legislation in force, the Licensee shall upon request provide unlimited access to all equipment sites and operational areas to duly authorised staff of the Authority, any person authorised by the Authority or law enforcement agency in order for them to effectively perform their duties.

10.3. 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 two (2) years for purposes of availing such information to the Authority or any law enforcement agency.

10.4. 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.

10.5. The Authority may in its discretion make this Licence publicly available in any manner it thinks fit, in whole or in part.

10.6. 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.

## **11. CONDITION 11: CHARGES, TERMS AND CONDITIONS**

- 11.1. The Licensed Services shall be provided on standard terms and conditions (which must include provision for an effective dispute resolution mechanism). A copy of the current version of which shall be provided to any person who reasonably requests.
- 11.2. The Licensee shall file, with the Authority, the standard terms and conditions upon which it proposes to offer the Licensed Services.
- 11.3. The Licensee shall, upon determination of its Tariff by the Authority, publish a Reference Offer within the period specified by the Authority in order to ensure access, transparency and non-discrimination on the terrestrial signal distribution platform.

## **12. CONDITION 12: QUALITY OF SERVICE REQUIREMENTS**

- 12.1. The Licensee, while providing the Licensed Service, shall maintain at the minimum the Quality of Service (QoS) parameters set out at Appendix 2 (Quality of Services Requirements).
- 12.2. The Licensee shall ensure that it maintains records relating to the quality of service requirements, which shall be readily available to the Authority for the purposes of satisfying the Authority that the Licensee is meeting the Quality of Service Requirements.
- 12.3. The licensee shall ensure that it provides the Services under Quality of Service terms and conditions mutually agreed with its customers (its membership/parties to the consortium) through Service Level Agreements (SLA) which shall be kept in force by such compensations to its customers as shall be mutually agreed through the SLA.
- 12.4. The Licensee shall file with the Authority a copy of the SLA it signs with each of its customers within 14 days from the date of signing.
- 12.5. The Authority reserves the right to modify the existing QoS requirements at any time, provided the same is done in consultation with the licensee.
- 12.6. The Licensee shall be liable to pay such penalties, if any, as set out in Appendix 4 for failure to meet the minimum set quality of services standards.

## **13. CONDITION 13: RADIO-COMMUNICATIONS & TECHNICAL OPERATION PROCEDURES**

- 13.1. The licensee shall seek for the relevant frequency spectrum authorisations and use the frequencies in accordance with the conditions set out in the Radio Frequency Licence for the purpose of providing the Licensed Systems and services (see Annex 3D). The Licensee shall keep the frequency licences in force through annual renewal and payment of relevant frequency fees.
- 13.2. The Licensee shall, in the provision of the licensed service, comply with international technical standards.

- 13.3. The Licensee shall operate the licensed 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.
- 13.4. Antenna structures shall conform to the generally accepted international standards of safe construction and maintenance, including appropriate aircraft warning lights.
- 13.5. The Licensee will implement all necessary work on maintenance and adjustments of its radiocommunication equipment, in order to ensure that the broadcasts of the Licensee are in accordance with the specifications of the Authority and the technical Rules of the International Telecommunications Union (ITU).
- 13.6. 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 radiocommunication transmission systems , as well as in accordance with all enforced Rules in Kenya.
- 13.7. The Licensee shall;
  - 13.7.1. operate the licensed broadcasting systems with such apparatus/equipment and in such a manner as not to cause harmful interference to any other licensed broadcasting, radiocommunication or telecommunication service;
  - 13.7.2. Co-operate in every way possible with the Authority, by complying with the directions issued by the Authority, with a view to preventing such interference. If the equipment of the Licensee is causing interference with any other licensed service, the Authority will have the right to switch off such transmitting service.
  - 13.7.3. Implement the interference resolution directive issued by the Authority at no cost to the Authority.
- 13.8. 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.
- 13.9. The equipment and apparatus of the Licensee must be operated and maintained by competent persons at all times.
- 13.10. The Licensee shall 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.
- 13.11. The Licensee shall not offer its services in other areas other than the licensed geographical target area(s).

- 13.12. The Licensee shall ensure that associated services outsourced are procured only from duly licensed entities.
- 13.13. The Licensee shall establish the Licensed Systems taking into account the need for equipment co-location and/or infrastructure sharing with other licensees, and where feasible, allow other licensees to collocate, share infrastructure and other facilities on terms that are reasonable, just and non-discriminatory.
- 13.14. The Licensee shall ensure that non-ionising radio emissions from each radio installation operated under its licence are within the limits specified by the guidelines published by the International Authority for Non-Ionising Radiation Protection (ICNIRP) and any radiation emission standards adopted and published from time to time.

#### **14. CONDITION 14: PRIVACY AND CONFIDENTIALITY**

- 14.1. The Licensee shall use all reasonable endeavours to ensure the privacy and confidentiality of personal and 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.
- 14.2. The Licensee shall maintain sufficient information on its confidentiality procedures to satisfy the Authority, at its reasonable request, that the requirements of 14.1 are being met.
- 14.3. The licensee shall observe the relevant provisions of the Data Protection Act (Act no.24 of 2019) of the laws of Kenya in as far as processing of personal data is concerned.

#### **15. CONDITION 15: FAIR TRADING**

- 15.1. 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:
  - 15.1.1. 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;
  - 15.1.2. entering into any contract or engaging in any concerted practice with any other party, which unfairly prevents, restricts or distorts competition in Kenya; or
  - 15.1.3. effecting anti-competitive changes in the communications market in Kenya, and in particular, anti-competitive mergers and acquisitions in the communications sector.

- 15.2. The Authority may, on its own motion or upon receipt of a complaint that the Licensee is in breach of 15.1, give written notice to the Licensee:
  - 15.2.1. stating that the Authority is investigating a possible contravention,
  - 15.2.2. setting out detailed reasons why it appears to the Authority that there is a breach by the Licensee of this Condition, and
  - 15.2.3. 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

## **16. CONDITION 16: PROHIBITION ON UNDUE DISCRIMINATION**

- 16.1. Subject to 16.3 without prejudice to the obligations imposed on the Licensee under this Licence, 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 as respects the provision of the Licensed Services.
- 16.2. Subject to 16.3 the Licensee may be deemed to have shown such undue discrimination if it unfairly favours to a material extent a business carried on by it in relation to the provision of the Licensed Services so as to place at a significant competitive disadvantage persons competing with that business.
- 16.3. The Licensee shall not be deemed to have shown undue discrimination to the extent that:
  - 16.3.1. it is due to matters beyond the Licensee's control;
  - 16.3.2. the provision of service would expose any person engaged in its provision to undue risk of health or safety; or
  - 16.3.3. it is not in the Authority's view reasonably practicable or technically feasible or do otherwise (including where the Licensee is not in a position to provide service in a particular area by reason of the fact that its systems cannot accommodate the particular service).
- 16.4. Any question relating to whether any act done or course of conduct amounts to undue preference or undue discrimination shall be determined by the Authority.

## **17. CONDITION 17: ACCOUNTING REQUIREMENTS**

- 17.1. The Licensee shall submit to the Authority within nine (9) months after the Effective Date a proposal for accounting principles which relates solely to the running of the Licensed Systems and the provision of the Licensed Services and which allows the recording of investments, expenses and revenues in accordance with accounting principles generally accepted in Kenya.
- 17.2. The Authority shall approve or disapprove the proposed accounting principles within THREE (3) months after its submission and may, in case of disapproval, propose modifications or order

the Licensee to adopt a prescribed accounting principles within a reasonable time period but in no event later than ONE (1) year from the date of approval.

- 17.3. Within SIXTY (60) days of the end of each fiscal year of the Licensee, the Licensee shall deliver to the Authority the balance sheet of the Licensee as at the end of such fiscal year and the related statements of operations, equity and cash flows of the Licensee, 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 approved by the Authority in accordance with 16.2 above.
- 17.4. 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, if:
- 17.5. the Licensee fails to comply with its obligations under 16.1 above or if the accounting principles established by the Licensee fail to achieve the objectives set forth in that subsection; and
- 17.6. the Authority deems it necessary and appropriate to supervise compliance with the provisions of other Conditions of this licence it may order the Licensee to provide the Licensed Services through a separate division or divisions, a separate branch or branches or a separate subsidiary or subsidiaries.

## **18. CONDITION 18: NOTIFICATION OF CHANGE IN SHAREHOLDING**

- 18.1. 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.
- 18.2. Subject to 18.3 below, the Licensee shall notify the Authority of:
  - 18.2.1. any change in the proportion of the shares held directly in a Licensee by any person;
  - 18.2.2. 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.
- 18.3. 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:
  - 18.3.1. 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);
  - 18.3.2. exceeds 30 per cent of the total number of shares in that Licensee (where it does not exceed 30 per cent prior to that change or acquisition);
  - 18.3.3. exceeds 50 per cent of the total number of shares in that Licensee (where it does not exceed 50 per cent prior to that change or acquisition).



- 18.4. In any case referred to in 18.1 or 18.2 above, 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.
- 18.5. In the event that the Authority disapproves of the change in shareholding notified to it, it shall notify the Licensee within Thirty Days (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.
- 18.6. 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 shareholding.

## **19. CONDITION 19: PRE-NOTIFICATION OF JOINT VENTURES**

- 19.1. Unless the Authority otherwise agrees, the Licensee shall notify the Authority not later than THIRTY (30) days before the taking effect of the agreements or arrangements to which this Condition applies giving particulars of the agreements and/or arrangements. The agreements or arrangements are an agreement with any person for the establishment or control of any body corporate for the purpose of:
  - 19.1.1. the running of a broadcasting system which requires a licence under the Act;
  - 19.1.2. providing broadcasting services in Kenya which necessarily involve the running of such a system;
  - 19.1.3. 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;
  - 19.1.4. an agreement for the establishment of a partnership for any of those purposes and in those circumstances; and
  - 19.1.5. any other agreement or arrangement in the nature of the joint venture for the purpose of running a broadcasting system which requires a licence under the Act or for the purpose of providing broadcasting services in Kenya which necessarily involve the running of such a system.
- 19.2. Clause 19.1. above apply in relation to an agreement or arrangement for the establishment or control of any body corporate or partnership where the Licensee has or is to have not less than 20 per cent of the voting power in any organ controlling that body.

## **20. CONDITION 20: DISPUTE SETTLEMENT**

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.

## **21. CONDITION 21: FORCE MAJEURE**

- 21.1. Where in its opinion, the licensee is impeded, hindered or otherwise prevented from carrying out any obligation contained herein, or as required by the Authority, by an act of God, fire, flood, natural disaster, action of government, state of war, civil common or insurrection, riots, embargo, industrial disputes or any other cause beyond the control of the licensee, the Authority may exempt the Licensee from performing such obligation for so long as and to the extent that the performance of the obligation is affected by such force majeure.
- 21.2. The Licensee shall take all reasonable steps to minimize the impact of the force majeure on the performance of its obligations and where any licensed systems are damaged by such force majeure, shall take reasonable steps to repair or rebuild such systems once the force majeure has ceased or been eliminated.

## **22. CONDITION 22: LICENCE FEES**

- 22.1. Prior to issuance of this Licence, the Licensee shall pay to the Authority an initial licence fee and a prorated annual operation licence fee.
- 22.2. On 1st July of each year, the Licensee shall pay to the Authority:
  - 22.2.1. 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; and
  - 22.2.2. annual frequency utilization fee for the frequency spectrum utilised and computed in accordance with the applicable frequency fee charging methodology.
- 22.3. The licensee shall pay other fees payable under this licence upon request including but not limited to licence renewal, licence transfer, licence amendment and change of business name/service identity.
- 22.4. Any fee payment delayed for more than thirty (30) days following the due date shall attract an interest at prevailing official bank lending rate unless prior exemption had been obtained.

## **23. CONDITION 23: COMPLIANCE WITH THE LAW AND REGULATORY REQUIREMENTS**

- 23.1. The Licensee shall comply with the provisions of the Acts and other laws of the Republic of Kenya
- 23.2. The Licensee shall comply with all conditions stipulated in this licence and other regulatory requirements provided under Regulations, Rules and Guidelines issued under the Acts.

## **24. CONDITION 24: PENALTIES**

- 24.1. The Licensee shall be subject to penalties as described in the Act.
- 24.2. Non-compliance with any licence condition constitutes a contravention;
- 24.3. Each contravention attracts a penalty of Kshs 500,000 payable to the Authority.

## **25. CONDITION 25: HUMAN RESOURCE DEVELOPMENT**

- 25.1. The Licensee shall submit to the Authority its Human Resource Development Plan outlining strategies towards empowerment of its local staff.
- 25.2. The Licensee shall on annual basis, furnish the Authority with a report of implementation of the Human Resource Development Plan.
- 25.3. The Licensee shall facilitate participation of its technical staff in training within or outside the Republic of Kenya.

## **26. CONDITION 26: DIGITAL SWITCHOVER**

- 26.1. 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;
  - 26.1.1. The Licensee adheres to the prescribed timeframe of migration to the new technology
  - 26.1.2. The Authority guarantees availability of sufficient capacity to accommodate the existing licensed service on the new platform
  - 26.1.3. The costs related to migration to the newer technology shall be borne by the licensee
- 26.2. The Licensee shall be required to surrender the frequency resource previously utilized by the licensed service to the Authority upon shutdown and migration to the new platform
- 26.3. The Authority shall ensure appropriate amendments are effected to the Licensee's licence to reflect the changes at no cost to the Licensee.

## **27. CONDITION 27: PROHIBITION OF CROSS-SUBSIDIZATION**

- 27.1. 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, 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.
- 27.2. 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.

- 27.3. 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.
- 27.4. Where the Authority deems it necessary and appropriate to supervise compliance with the provisions of this Licence, it may order the Licensee to provide the the broadcast signal distribution services through a separate subsidiary or subsidiaries.

## **28. CONDITION 28: LICENCE TRANSFER**

- 28.1. 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.
- 28.2. The licensee together with the beneficiary shall be required to fully comply with the prescribed procedure for application of transfer of licence.
- 28.3. The transfer of the license shall not include resources, if any, assigned by the Authority to the licensee whose license is subject of the transfer, unless explicitly authorized by the Authority in writing.

## **29. CONDITION 29: LICENCE SUSPENSION**

- 29.1. The Authority may suspend some or all of the operations of the licence 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.
- 29.2. Where the Authority intends to suspend any of the services under this Licence pursuant to 28.1, 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.
- 29.3. After the expiry of the notice in 29.2 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.
- 29.4. After the expiry of the notice in 29.2 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.

29.5. The notice issued in 29.4 shall specify the duration of the suspension and the conditions for lifting of the suspension.

29.6. Where the Licensee rectifies the breach after suspension in 29.4 above, the suspension notice shall be lifted.

29.7. Where the licensee fails rectify the breach at the expiry of the suspension period, the Authority may revoke the License in accordance with Condition 8.

### **30. CONDITION 30: LICENSEE'S TERMINATION RIGHT**

30.1. 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 termination, 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.

30.2. The licensee shall be responsible for settling any claims or compensation demanded by its clients prior to termination of the licensed service.

30.3. The terminating licensee, in liaison with its clients may, upon obtaining consent by the Authority, appoint other licensed broadcast signal distribution service providers to take over its clients under mutually agreed terms and conditions.

### **31. CONDITION 31: INDEMNITY**

31.1. 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:

31.1.1. 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

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

31.1.3. 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.

**Signed for and on behalf of Communications Authority of Kenya**

\_\_\_\_\_  
**Director General**  
**Communications Authority of Kenya**

\_\_\_\_\_  
**Date**

## APPENDIX 1: SYSTEM ROLL-OUT REQUIREMENTS

1. The Licensee shall launch digital terrestrial broadcast signal distribution services not later than twelve (12) months from the date of licence issuance.
2. The licensee shall ensure that population [demographic] coverage shall not fall below 95% in the network coverage targets on or after the final roll out deadline stipulated below.
3. The Licensee shall ensure that the following network coverage targets for sites are met within the specified timelines.

### 3.1 Digital Terrestrial Television Broadcasting (DVB-T2)

SITE NAME	LONGITUDE	LATITUDE	ROLLOUT TIMELINE
1.			
2.			

### 3.2 Digital Terrestrial Sound Broadcasting (DAB/DRM)

SITE NAME	LONGITUDE	LATITUDE	ROLLOUT TIMELINE
1.			
2.			

3. The Licensee shall commence optimisation of transmission quality through deployment of gap fillers and transposer stations to reduce blind areas and improve user reception quality during the second year of network rollout.
4. The Licensee shall ensure that the licensed system is equipped with facilities necessary for supporting accessibility features for persons with disabilities as may be directed by the Authority from time to time.

## APPENDIX 2: QUALITY OF SERVICES (QoS) REQUIREMENTS

1.1 The Authority may, by direction in writing given to the Licensee, specify QoS targets and obligations with respect to service quality or modify existing QoS and obligations and the Licensee shall comply with any such directions.

1.2 The Licensee shall, before the activation of the network, put in place a programme to measure and monitor compliance with the performance targets set out in this Appendix. The

programme shall include the reporting procedures to the Authority and shall be in such form as agreed with the Authority or as may be specified by the Authority from time to time.

1.3 The Licensee shall, within 30 days of each relevant performance target notify the Authority that the Licensee has either (a) met the said performance target, or (b) that the Licensee has failed to meet the said performance target. Failure by the Licensee to so notify the Authority shall be deemed to indicate non-compliance with the relevant performance target.

1.4 Impairment Quality: There are three main forms of visible interference in a digital television signal. These are exhibited by artefacts; such as an absence of picture, freezing of frames and blocking (where the picture turns into course blocks).The signal should be free from all such interference, and be present for 99.99% of the time, as scheduled. All reasonable efforts should be made to ensure that any signal or signals under the control of the Licensee are sufficiently reliable to enable the successful demodulation and decoding of Programme Services by authorised subscribers.

1.5 Licensee must provide the Authority with a description of their procedures for ensuring maintenance of the QoS parameters and shall also make its own assessment of the technical quality of their service.

### 1.5.1 Digital Terrestrial Television Broadcasting (DVB-T2)

#### System related QoS parameters

No	Description of QoS parameter	KPI
1.	Transmission Quality(ETSI TR 101 290)	Lower than 0.5% first priority error
2.	MER for signal from DVB-T2 transmitter	>32 dB
3.	BER for signal from DVB-T2 transmitter	<10E8
4.	Overall system availability (broadcast + distribution network)	≥99.5%
5.	Recovery Period (Head end)	≤ 1 hour
6.	Recovery period (overall system), excluding Force majeure	≤ 2 hours
7.	NOC system monitoring	24/7
8.	Availability of DVB platform	99.7%
9.	Availability of distribution network	99.7%
10.	Audio/Video channel availability (broadcast network aspect)	99.0 %

#### Service related QoS

No	Description of QoS parameter	KPI
1.	Billing error rate (rate between error bills and all bills)	10E4
2.	Information notification (predictable changes /adjustment of services)	24 hours in advance
3.	Customer service	24/7
4.	Fault report to content service providers	Within 24 hours of occurrence
5.	Online resolution of system problems	80%
6.	Sound and Video Quality (except news inserts, historical material or archival footage, footage originated on non broadcast format or streaming )	Grade 4 and above as per ITU-R BT.500 Quality Grading scale



### 1.5.2 Digital Terrestrial Sound Broadcasting (DAB/DRM)

#### System related QoS parameters

No	Description of QoS parameter	KPI	
		DAB+	DRM
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

#### Service related QoS

No	Description of QoS parameter	KPI	
		DAB+	DRM
1.			
2.			
3.			
4.			
5.			
6.			

### APPENDIX 3: COMPLIANCE REPORTING

The Licensee shall submit a Compliance Report at intervals and in a format as prescribed by the Authority.

### APPENDIX 4: SHAREHOLDING STRUCTURE

The shareholding structure as at xxxx is as shown in the table below:

S/N	NAME OF LICENSEE	SHAREHOLDERS	PERCENTAGE (%)
1			

