



INTERNATIONAL SUBMARINE CABLE SYSTEMS

LICENCE

GRANTED BY THE

COMMUNICATIONS AUTHORITY OF KENYA

TO

XXXXX LIMITED

FOR

THE LANDING AND OPERATION

OF

INTERNATIONAL SUBMARINE CABLE SYSTEMS

IN THE REPUBLIC OF KENYA

LICENCE NO. TL/ULF/ SCLR /XXXXX

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THE LICENCE TERMS

“The Communications Authority of Kenya (the "**Authority**"), in accordance with the Kenya Information & Communications Act, 1998 (hereinafter referred to as the "**Act**"), hereby authorizes **xxxx Limited** (the "**Licensee**") to construct, install and operate International Submarine Cable systems as described herein (the "**Licensed Systems**") and to provide International Electronic communications Gateway Services as described herein the ("**Licensed Services**") in accordance with the Terms and Conditions set out in this Licence.

1. This Licence is issued on _____ (the **xxxxx Date**) and replaces xxx licence issued on xxxxxx (Effective Date) under license xxxxxxxx. This Licence shall in no way release the Licensee from any liabilities, responsibilities or obligations arising out of any agreements and/or contracts entered into under the previous licence/s.
2. This Licence is granted for a period of xx years (the "**Licence Term**") from the effective Date unless it is revoked earlier in accordance with the Licence Conditions herein.
3. The Licensed Systems are: International Submarine Cable Landing Systems and Terminal Equipment within the Kenyan Territory for the conveyance of telecommunications traffic between Kenya and the rest of the world
4. The Licensee shall be required to obtain separate authorizations from the Authority, as necessary for utilization of resources, such as radio-frequency spectrum and numbering in case such resources are required subject to the assignment terms, conditions and procedures as may be defined by the Authority from time to time.
5. The licensee shall where applicable only utilize the resources (spectrum and numbering) that have been authorized by the Authority, where applicable.
6. The Licensee is authorised to connect the Licensed Systems to:
 - 6.1. other telecommunication systems operated under a licence granted by the Authority in accordance with the Act;
 - 6.2. any other telecommunication systems duly authorized by a National Regulatory Authority (NRA) of the country/territory where international link(s) are to be established/terminated, upon notifying the Authority and/or obtaining authorization as appropriate.
 - 6.3. collocate his systems with systems of other operators licensed by the Commission under the Act.

- 6.4. any telecommunication apparatus, which is, approved for connection by the Authority in accordance with its Type Approval and Certification requirements.
7. All equipment and devices comprising the Licensed Systems shall in all respects be of an approved standard, type approved by the Authority and conforming to the regulations as may be issued from time to time.
6. The Licensed Services are:
 - 6.1. conveyance of international telecommunication traffic (originating, terminating or transiting) by means of the Licensed Systems which shall be interconnected with systems of duly licensed entities in Kenya.
 - 6.2. Provision of any other telecommunications service which the Licensee is under obligation to provide under this Licence provided that a separate licence is not required.
8. This Licence and the Licensee are subject to the provisions of the Act including, but not limited to, licence modifications, enforcements and Sanctions. The Authority may impose penalties, for the contravention of any license terms, conditions or directive issued by the Authority, based on a consideration of several factors, which include, but are not limited to the following:
 - 8.1. a determination of whether or not the contravention was deliberate or as a result of the Licensee's recklessness;
 - 8.2. the duration of the contravention;
 - 8.3. the cooperation or lack thereof of the Licensee in the investigation of any matter relating to the contravention;
 - 8.4. Any demonstrable steps, or lack thereof, taken by the Licensee to remedy the contravention;
 - 8.5. Any financial gain resulting from the contravention, including any unjustifiable cost incurred by consumers as a result of the contravention;
 - 8.6. Whether or not the Licensee is a repeat offender of the particular or other Licence conditions.
 - 8.7. Duration of operation without a compliance certificate for not having met all the compliance requirements
9. This Licence and the Licensee are subject to the provisions of the Act including, but not limited to, licence modifications and enforcements.
10. 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.

11. In this Licence the following terms shall have the following meanings:

- 11.1. “**Act**” means the Kenya Information and Communications Act 1998, any successor legislation and any subsequent amendments made thereto;
- 11.2. “**Application Services**” means electronic communications services which are normally provided for remuneration and consists wholly or mainly in the conveyance of signals on electronic communications networks including telecommunications and transmission services over electronic communications networks.
- 11.3. “**Application Service Provider (ASP)**” means a licensee authorised by the Authority to provide Application Services;
- 11.4. “**Compliance Report**” means a report to be prepared periodically by the Licensee detailing its performance in respect of every licence condition;
- 11.5. “**Compliance Certificate**” means a certificate to be issued by the Authority to a licensee following the licensee’s compliance with all regulatory requirements including periodic submission to the Authority of duly completed compliance report and the subsequent receipt and satisfactory review of the same by the Authority;
- 11.6. “**Content Services**” means information of any kind normally provided at a fee and is delivered over electronic communications networks and services. They include financial information services and other information services.
- 11.7. “**Content Service Provider (CSP)**” means a person authorised by the Authority to provide content services;
- 11.8. “**Consumer**” means any entity or natural person who uses or requests a publicly available electronic communications service or product
- 11.9. “**Customer Service Outlet**” means a physical location to be established by the Licensee to, among other things, provide customer service to walk-in customers and manage customer queries
- 11.10. “**Effective Date**” means the date when the Licence was issued;
- 11.11. “**Emergency Access**” means connectivity between the Emergency Organisation and any public access point within the Licensed System.
- 11.12. “**Emergency Services**” means services installed and provided for use by public to access a Public Emergency Service Providers;

- 11.13. **"End-User"** means a User not providing Public Communications Networks or publicly available electronic communications services;
- 11.14. **"Government"** means the Government of the Republic of Kenya;
- 11.15. **"Issuance Date"** means the date when the licensee was issued with this license.
- 11.16. **"License Term"** means the period stated in the license during which the license remains in force unless otherwise revoked.
- 11.17. **"National Emergency Numbers"** these are numbers designated by the Authority for provision of Public Emergency Services including, but not limited to Police, Fire, Ambulance and Child helpline.
- 11.18. **"National Regulatory Authority (NRA)"** means the body or bodies charged by another country with the regulatory responsibilities as regards electronic communications within that country;
- 11.19. **"Network Facilities Provider (NFP)"** means a licensee authorised by the Authority to build and commercially operate Telecommunication/electronic communications Systems;
- 11.20. **"Network Management Centre"** means a physical point within a network where various management, monitoring, storage and control functions are implemented;
- 11.21. **"Public Communications Network"** means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services;
- 11.22. **"Public Emergency Service Providers"** means organisations designated by the Government for the provision of emergency services including but not limited to the police, fire brigade, ambulance, and coastguard;
- 11.23. **"Regulations"** means the Regulations made pursuant to Kenya Information and Communications Act, 1998 as may be amended;
- 11.24. **"Renewal Date"** means the date when the license is re-issued on completion of a license term of 15 years or such other term as may be contained in the subsequent license..
- 11.25. **"Template Co-location/Infrastructure Sharing Offer"** means a standard template of the agreement between the Licensee and Requesting Licensees;

- 11.26.** “**Reference Service Level Agreement (SLA)**” means a standard template of the SLA between the Licensee and Requesting Licensees of a given Licence Category;
- 11.27.** “**Requesting Licensee**” means a person licensed by the Authority who has expressed a desire to interconnect with another intends to be a Subscriber;
- 11.28.** “**Service Level Agreement**” means an agreement entered between the Licensee and a Subscriber defining the nature of the services to be provided and establishing a set of parameters to be used in measuring the agreed service level;
- 11.29.** "**Subscriber**" means any natural person or legal entity who or which is party to a contract with the provider of publicly available electronic communications services for the supply of such services;
- 11.30.** “**Tier**” is used to distinguish the scope of the various NFP licences. The Authority shall, from time to time, define the various Tiers;
- 11.31.** “**Telecommunication System**” means a system used for transmission, reception and switching of signals, such as electrical or optical, by wire, fibre, or electromagnetic means.
- 11.32. “**Universal Service**” means the minimum set of services, as may be defined by the Authority from time to time, and which are of a specified quality and which is available to all Users at an affordable price.
- 11.33.** "**User**" means a legal entity or natural person using or requesting a publicly available electronic communications service;

THE LICENCE CONDITIONS

1. CONDITION 1: COMPLIANCE WITH OTHER GOVERNMENT AUTHORITIES

1.1. Before putting this licence into operation, the Licensee shall first seek for and obtain authorisation from the:

1.1.1. relevant Government Marine Authority. The Licensee shall build and construct the cable network in accordance with the Authorities directives including but not limited to the location of the cable system within the territorial waters of Kenya and the shore. The Licensee, at his expense, shall comply with the said authority's directive to moved or shifted the cable if the Authority considers such course necessary in the public interest, for reasons of national defence, for the maintenance or improvement of harbours and for navigational purposes;

1.1.2. relevant Government Environmental Authority. The Licensee shall build the cable network in accordance with the said authority's directive including but not limited to submitting periodic environmental assessment or environmental impact reports for approval by the Authority.

1.2. The Licensees shall at all times comply with any requirements by the Commission or relevant Government Authority regarding the location and concealment of the cable facilities, buildings, and apparatus especially for the purpose of protecting and safeguarding the cables from injury or destruction by enemies of the Country;

2. CONDITION 2: ESTABLISHMENT OF THE LICENSED SYSTEMS

2.1. The Licensee shall submit for the Authority's records, network schematic diagrams with actual topographical and physical coordinates of its planned network before embarking on its construction.

2.2. The Licensee shall ensure that it maintains information to the satisfaction of the Authority on the telecommunications signals through the International Gateway and the list of all connected network and service providers, such information shall be as shown in Annex 1. The Authority may revise the information to be provided from time to time.

2.3. In addition to 2.1 above, the Licensee shall comply with physical planning, environmental, maritime, security, public health and civil aviation and other requirements as set out by relevant Government authorities. The Licensee shall,

upon receipt of approvals from all the said Government authorities, file the same with the Authority.

3. CONDITION 3: UNIVERSAL ACCESS AND SERVICE OBLIGATIONS

- 3.1. The Licensee shall be required to participate in the provision of Universal Services as may be specified by the Authority from time to time.
- 3.2. The licensee shall contribute to the universal service fund as may be prescribed by the Authority from time to time.

4. CONDITION 4: INTERCONNECTION AND PROVISION OF SERVICES TO THIRD PARTIES

- 4.1. Interconnection procedures shall be in accordance with the Regulations
- 4.2. The Licensee shall provide a Requesting Licensee access to the Licensed System and provide Licensed Services so as to enable the establishment and provision of licensed services by the said Requesting Licensee.
- 4.3. The Licensee shall enter into Service Level Agreement (SLA) with the Requesting Licensee to ensure the connectivity provided is of the agreed quality. The Licensee shall be required to publish a Reference SLA and file a copy with the Commission.
- 4.4. The Licensee shall provide the services in 4.2 above on a fair, transparent and non-discriminatory basis.
- 4.5. The obligation in 4.2 shall not apply in the event that it is not, in the Authority's view, reasonable to require the Licensee to comply with such an obligation in the particular circumstances, including, but not limited to circumstances:
 - 4.5.1. beyond the Licensee's control;
 - 4.5.2. where the provision of connectivity would expose any person engaged in its provision to undue risk to health or safety, and
 - 4.5.3. where it is not reasonably practicable (including where the Licensee systems are not sufficiently built out).

5. CONDITION 5: CO-LOCATION AND INFRASTRUCTURE SHARING

- 5.1. The operation of the Terminal Station shall be on an Open Access basis subject to applicable local laws and regulations.
- 5.2. The Licensee shall furnish and maintain, in working order for the duration of the Licence, the necessary facilities as may be reasonably required within the terminal station, for extending capacity assigned to a third party.
- 5.3. Such facilities referred to in 5.2 shall be suitable for extending capacity and shall be maintained on terms and conditions which shall be no less favorable than those granted to other parties.
- 5.4. The licensee's shall ensure that the users are entitled to choose, at their sole discretion, the Backhaul provider for their capacity.
- 5.5. The licensee shall ensure the provision of co-location in respect of space, connection facilities and any other necessary services at the Terminal Station. Such facilities shall be provided with best reasonable efforts, in a timely manner, without discrimination.
- 5.6. The Licensee shall when establishing the Licensed Systems take into account the need for equipment co-location and/or infrastructure sharing with other licensees and shall comply with relevant regulations or guidelines that may be published from time to time.
- 5.7. The Licensee shall allow other licensees to co-locate, share infrastructure and other facilities on terms that are reasonable, just and non-discriminatory.
- 5.8. The Licensee shall ensure that any infrastructure sharing and/or co-location arrangement is provided under an appropriate written agreement, which shall among other things guarantee reasonable access and security. For this purpose, the Licensee shall publish and readily make available and accessible on its website a Template for Co-location/Infrastructure Sharing Offer in accordance with the format approved by the Authority and file any agreement entered into within thirty days of execution..
- 5.9. The obligation in 5.6 and 5.7 shall not apply in the event that it is not, in the Authority's view, reasonable to require the Licensee to comply with such an obligation in the particular circumstances, including, but not limited to circumstances:

- 5.9.1. Where the requesting person's network has not been approved in accordance with Condition 5.6 above.
 - 5.9.2. beyond the Licensee's control,
 - 5.9.3. where the provision of the service would expose any person engaged in its provision to undue risk to health or safety, and
 - 5.9.4. where it is not reasonably practicable (including where the Licensee is not in a position to provide the requested connectivity in a particular area by reason of the fact that its systems are not sufficiently built out).
- 5.10. The licensee shall not enter into an exclusive agreement with any other licensee for access to the licensed systems/services.
 - 5.11. Where the licensee is the first entrant to a building, the licensee shall where possible, ensure that there is adequate provision in the building's communication infrastructure to facilitate sharing with other licensees.

6. CONDITION 6: QUALITY OF SERVICE (QOS) REQUIREMENTS

- 6.1. The Licensee shall meet the quality of service requirements as set out in Annex 2 below or/and as may be prescribed by the Authority from time to time.
- 6.2. The Authority reserves the right, upon reasonable notice to the licensee, to review the Quality of Service (QOS) requirements periodically.
- 6.3. The Licensee shall enter into a Service Level Agreement (SLA) with a Requesting Licensee to ensure the connectivity provided is of an agreed quality. The Licensee shall file a Reference SLA with the Authority and publish on its website

7. CONDITION 7: NUMBERING REQUIREMENTS

- 7.1. The Licensee shall upon application and approval, only utilise the numbering resource(s) assigned to it by the Authority.
- 7.2. The Licensee shall operate the Licensed Systems in accordance with the national Numbering Plan(s) unless and until the Authority, upon reasonable notice, prescribes a new numbering plan(s) amending or replacing the Initial Numbering Plan(s). Any new numbering plan shall contain transitional provisions.
- 7.3. The licensee shall not facilitate connectivity or delivery of traffic to numbers that do not exist in the national numbering plan.

- 7.4. The Licensee shall fulfil any rules and requirements, which the Authority may prescribe from time to time in relation to numbering.

8. CONDITION 8: INTERRUPTIONS TO THE LICENSED SYSTEMS AND SERVICES

- 8.1. The Licensee shall not intentionally interrupt the operations of the Licensed Systems and Services or any part thereof, or the services provided to any Requesting Licensee, in the normal course of business, nor shall it in the normal course of business suspend the provision of any type of connectivity without having first sought and obtained approval from the Authority in writing and subsequently providing reasonable advance notice to persons likely to be affected by such interruption or suspension.
- 8.2. In the event of an unintentional/unforeseen interruption of the Licensed Systems or 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.
- 8.3. The provision in 8.1 and 82 shall not prejudice the rights of the Authority or any person affected by such interruptions.
- 8.4. The provision in 8.1 shall not apply if, the interruption or suspension is to a licensee whose system or apparatus or use thereof is endangering the integrity of the Licensed Systems.
- 8.5. The provision in 8.1 shall not apply if the interruption of service is as provided for under the relevant interconnection and/or Service Agreements between the Licensee and the Customer provided that the agreement had been filed with the Authority and receipt thereof duly acknowledged by the Authority.
- 8.6. Interruption in 8.5 above shall not be effected on any day preceding a non-working day or public holiday for non-payment of applicable charges.

9. CONDITION 9: PROVISION OF EMERGENCY SERVICES

- 9.1. The Licensee shall make the Licensed Systems available and accessible for the provision of Emergency Services free of charge.
- 9.2. The obligation in 9.1 shall not apply in the event that it is not, in the Authority's view, reasonable to require the Licensee to provide the connectivity requested by

means of the Licensed Systems in the particular circumstances where provision is beyond the Licensee's control.

10. CONDITION 10: PUBLIC EMERGENCIES

- 10.1. In case of a major disaster such as earthquakes, floods and similar events or any other situation of emergency or a crisis of local, regional or national scope which require special attention on the part of the Licensee, the Licensee shall provide the necessary connectivity 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.
- 10.2. 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 connectivity in accordance with the instructions of the Authority or the competent entity indicated thereby.
- 10.3. Within nine (9) months from 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.
- 10.4. The Licensee may be entitled to reimbursement by the Government of its direct costs for the provision of the services mentioned in 10.1 and 10.2 if the Authority is convinced such costs are reasonable after evidence of such incurred costs is provided thereof.
- 10.5. The obligation in 10.1 shall not apply in the event that it is not, in the Authority's view, reasonable to require the Licensee to provide the public emergency services by means of the Licensed Systems in the particular circumstances where provision is beyond the Licensee's control.

11. CONDITION 11: PUBLIC SAFETY

- 11.1. The Licensee shall in respect of all apparatus, equipment and installations possessed, operated, maintained or used under the license, take all proper and adequate safety measures to safeguard life against any danger, including electromagnetic emissions emanating from the apparatus, equipment or installation so used;
- 11.2. The Licensee will ensure that any of its telecommunication installation does not become a health, environmental or a safety hazard and should comply with statutes, rules, codes of practice, guidelines or regulations, on public safety.

- 11.3. The licensee shall ensure that its Licensed Systems comply with the relevant environmental laws.

12. CONDITION 12: ACCESS TO SITES AND RECORDS

- 12.1. 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 the said to effectively perform their duties.
- 12.2. 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, any person authorised by the Authority or any law enforcement agency.
- 12.3. The licensee shall provide, upon request by the Authority, any information it requires during an inspection including access to any subscriber billing information and call data records. Such information shall be generated from the systems in the presence of Authority's inspectors at the time of the inspection.
- 12.4. The Licensee shall permit the Authority (or a person authorised by 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.

13. CONDITION 13: BILLING ACCURACY

- 13.1. The licensee shall ensure that its billing system is accurate.
- 13.2. The Licensee shall, establish a procedure to ensure the accuracy of its billing system, which must be submitted to the Authority for approval. Such an approval shall not be unreasonably delayed or withheld and in any event, the Authority shall give its approval or disapproval within three (3) months from date of receipt of the said submission.
- 13.3. The Authority shall reserve the right to examine the billing system before and after it is operational in order for the Authority to be satisfied that the billing process has the characteristics required as set out above. The Authority (or an independent auditor appointed by the Authority) may require the Licensee to:
 - 13.3.1. furnish the Authority with any information it reasonably requires;

- 13.3.2. on reasonable notice, allow the Authority (or any person authorised by the Authority) access to any relevant premises of the Licensee, and
- 13.3.3. on reasonable notice, allow the Authority (or any person authorised by the Authority) to examine or test the whole or any part of the billing process.
- 13.4. Where the Authority gives the terms of its approval or disapproval, pursuant to Condition 13.2, the Licensee shall take all reasonable steps to comply with such terms issued by the Authority within the shortest time possible but in any event not more than thirty (30) days from the date the terms are issued
- 13.5. The Authority reserves the right to test and examine the billing system before and after it is operational in order for the Authority to be satisfied that the billing system is accurate.
- 13.6. The Authority may appoint an independent agent to examine and/or test the licensee's billing system on its behalf.
- 13.7. The Licensee shall not render any bill in respect of any Licensed Systems unless every amount stated in the bill is derived in accordance with the procedure approved by the Authority in 13.1 or/and 13.2 above.
- 13.8. The Licensee shall keep such records as may be necessary or may be determined by the Authority to be necessary for the purpose of satisfying the Authority that the billing process has the characteristics required above and shall retain any records at least three (3) years from the date on which they came into being.
- 13.9. The licensee shall, where required by the Authority, produce a billing record for any subscriber that at the very minimum contain, calling number, called number, date, time, duration of call, amount charged and any other detail as the Authority may deem necessary to enable it discharge its duties in regard to this license.
- 13.10. Any changes to the Licensee's billing system shall be notified to the Authority and shall be subject to the requirements under this Condition.

14. CONDITION 14: PRIVACY AND CONFIDENTIALITY

- 14.1. The Licensee shall ensure the privacy and confidentiality of proprietary information and business secrets obtained in the course of its business from any person to whom it provides the Licensed Systems by establishing and implementing reasonable procedures for maintaining confidentiality of such information.

- 14.2. The Licensee shall maintain and submit to the Authority, not more than 180 days from the effective date, sufficient information on its confidentiality procedures to satisfy the Authority, that the requirements of 14.1 are being met.
- 14.3. The Licensee shall not use or allow to be used any apparatus comprised in the Licensed Systems (except for the purpose of law enforcement, national interest or where it is in accordance with any statute in force in Kenya) which is capable of recording, silently monitoring, or intruding into its Subscriber's communications traffic unless the Licensee complies with 14.4 and 14.5 below.
- 14.4. Except for the purposes of law enforcement, the Licensee shall make every reasonable effort to inform the parties whose traffic is to be recorded, silently monitored or intruded into before commencing the recording, silent monitoring or intrusion, that the traffic is to be or may be recorded, silently monitored or intruded into.
- 14.5. The Licensee shall maintain a record of the means by which the parties have been informed that their traffic is to be or may be recorded, silently monitored or intruded into and the purpose of such recording. The Licensee shall furnish the Authority with such information on request.
- 14.6. Where a Licensee enters into any contractual arrangement with any other Licensee, person or business for purposes of providing new services under a separate licence, the Licensee shall seek each subscriber's express consent to provide the new service provided that:
 - 14.6.1. The manner in which such consent is obtained makes adequate provision for a customer to fully understand that his/her confidential information shall be made accessible to a third party.
 - 14.6.2. The process used by the third party enables the Licensee to determine, using its own systems, that the subscriber has provided explicit consent to the third party provider of a service.

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 Systems. 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 market in Kenya, and in particular, anti-competitive mergers and acquisitions in the communications sector.
 - 15.1.4. Levying charges to its competitors or interconnecting parties which unfairly limits competitors' or interconnecting parties' competitiveness.
- 15.2. In the event it appears to the Authority that the Licensee is in breach of 14.1, the Authority shall 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.
- 15.3. The Authority shall allow the Licensee thirty (30) days from the date of the notice to make representations to the Authority, before the Authority takes further action.

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 in respect to the provision of the Licensed Systems.
- 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 the provision of any communications services to another communication business it carries out so as to

place at a significant competitive disadvantage persons competing with that business.

- 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 connectivity 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 (including where the Licensee is not in a position to provide connectivity in a particular area by reason of the fact that its systems are not sufficiently built out).
- 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: PROHIBITION OF CROSS-SUBSIDIZATION

- 17.1. The Licensee shall not subsidise or cross-subsidise, or permit itself to be subsidised or cross-subsidised or give or receive undue preference to or from, as the case may be, any of its associated businesses or persons as concerns the provision of the Licensed Systems and/or any other licences granted to the Licensee by the Authority.
- 17.2. 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.
- 17.3. 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.
- 17.4. Where the Authority deems it necessary and appropriate to supervise compliance with the provisions of this Licence, it may order the Licensee to provide the Licensed Systems 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. Subject to 18.3 below, the Licensee shall notify the Authority of:
 - 18.1.1. any change in the proportion of the shares held directly in a Licensee by any person, and
 - 18.1.2. the acquisition of any shares and such shares not being shares already listed in any stock exchange held directly in a Licensee by a person not already holding shares, and the proportion of such shares held by that person immediately before acquisition.
- 18.2. The Licensee shall notify the Authority prior to any entity acquiring ownership or control of all or a majority of the stock of the Licensee such that the Licensee shall stand as a subsidiary in relation to that entity.
- 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 the Licensee (where it does not exceed 30 per cent prior to that change or acquisition), and
 - 18.3.3. exceeds 50 per cent of the total number of shares in the Licensee (where it does not exceed 50 per cent prior to that change or acquisition).
- 18.4. In any case referred to in 18.1 or 18.2, notification shall be given by a date, which is thirty (30) days prior to the taking effect of such change or acquisition, as the case may be.
- 18.5. In instances referred to in 18.2 and 18.3, the Authority upon receipt of the notification shall inform the licensee of its decision (approval/disapproval) within thirty (30) days of receipt of notification. The Authority may within sixty (60) days of notifying the Licensee of its disapproval, having taken into account representations made by interested parties, and giving reasons for its decision,

prohibit the change in shareholding where it believes it is in the public interest to do so.

19. CONDITION 19: PRE-NOTIFICATION OF JOINT VENTURES

- 19.1. The Licensee shall notify the Authority not later than sixty (60) days before the taking effect of any of the agreements or arrangements to which this Condition applies giving particulars of the agreements and/or arrangements. The agreements or arrangements are an agreement with any person for the establishment or control of anybody corporate for the purpose of:
- 19.1.1. the running of a telecommunications system which requires a licence under the Act;
 - 19.1.2. providing telecommunications services in Kenya which requires a licence under the Act;
 - 19.1.3. carrying of content over telecommunications systems which requires a licence under the Act;
 - 19.1.4. the production of telecommunications apparatus for supply in Kenya where that production would lead, to a monopoly situation which would not otherwise exist in relation to the supply of telecommunications apparatus of any description in Kenya;
 - 19.1.5. an agreement for the establishment of a partnership for any of those purposes and in those circumstances, and
 - 19.1.6. 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 telecommunications services in Kenya.
- 19.2. 18.1 above applies 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.

20. CONDITION 20: ACCOUNTING REQUIREMENTS

- 20.1. Within nine (9) months from the Effective Date, the Licensee shall submit to the Authority the accounting principles relating to the running of the Licensed Systems and which allows the recording of investments, expenses and revenues in accordance with generally accepted accounting standards in Kenya.

- 20.2. Within sixty (60) days of the end of each fiscal year of the Licensee, the Licensee shall deliver to the Authority its balance sheet as at the end of such fiscal year and the related statements of operations, equity and cash flows, in each case accompanied by a report thereon of independent auditors stating that such financial statements fairly present the financial position of the Licensee at the dates indicated and were prepared in accordance with accounting principles submitted to the Authority in accordance with 18.1 above.
- 20.3. 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.
- 20.4. The licensee shall clearly show the accounts related to this license in its financial reporting.

21. CONDITION 21: REQUIREMENT TO PROVIDE INFORMATION

- 21.1. The Licensee shall maintain and provide such information as will enable the Authority to carry out its functions under the Act in such manner and at such times as the Authority may specify and shall ensure that all information submitted is accurate.
- 21.2. 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.
- 21.3. In particular, by the 15th July of every year or as may be specified by the Authority, the Licensee shall submit a Compliance Report detailing the performance of the previous operational year ended 30th June
- 21.4. The Authority shall review the Compliance Report and:
 - 21.4.1. If the Licensee is in compliance with the terms and conditions of this Licence, issue the Licensee with a Compliance Certificate in respect of compliance for the year under review, and
 - 21.4.2. If the Licensee is not in compliance with the terms and conditions of this Licence, require the Licensee to remedy the area of non-compliance in accordance with the provisions of this Licence and the Act.

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

21.4.4. 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.

22. CONDITION 22: DISPUTE SETTLEMENT

The dispute settlement mechanism set out in the Act and/or regulations shall apply to any dispute or disputes that arise out of the provisions of this Licence.

23. CONDITION 23: FORCE MAJEURE

23.1. Where the Licensee is impeded, hindered or otherwise prevented from carrying out any obligation contained herein, or as required by the Authority, by natural disasters such as fire, flood, earthquake, volcanic eruption, action of Government, state of war, acts of terrorism civil commotion or insurrection, riots, embargo or any other cause beyond the control of the Licensee, the Authority may (after due consideration of the Licensee's request) exempt the Licensee from performing such obligation for so long as and to the extent that the performance of the obligation is affected by such force majeure.

23.2. The Licensee seeking to rely on force majeure as an exemption shall demonstrate to the Authority that it took all reasonable steps to minimize the impact of the force majeure on the performance of its obligations and where any Licensed Systems were damaged by such force majeure, that it took reasonable steps to repair or rebuild such systems once the force majeure had ceased or been eliminated.

24. CONDITION 24: SUSPENSION

24.1. The Authority may suspend some/part of the operations of the licensee where the Licensee has breached a Condition in this Licence, and in the Authority's opinion the breach is of a material nature, and the Licensee has been notified of the breach of the license and has been given notice to comply within a specified period and failed to comply and even after being issued with a penalty has failed to pay the penalty and/or continues with the non-compliance.

- 24.2. Where the Authority intends to suspend any of the services under this Licence pursuant to 24.1, 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.
- 24.3. After the expiry of the notice in 24.2 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.
- 24.4. After the expiry of the notice in 24.2 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.
- 24.5. The notice issued in 24.4 shall specify the duration of the suspension and the conditions for lifting of the suspension.
- 24.6. Where the Licensee rectifies the breach after suspension in 24.4 above, the suspension notice shall be lifted.
- 24.7. Where the licensee fails rectify the breach at the expiry of the suspension period, the Authority may revoke the License in accordance with condition 25.5

25. CONDITION 25: LICENCE REVOCATION

- 25.1. Notwithstanding any other Condition in this License, the Authority may at any time revoke this Licence by giving six (6) months' notice in writing under any of the following circumstances:
- 25.2. if the licensee communicates to the Authority in writing on their intention to terminate the Licence;
- 25.3. if the Licensee does not provide evidence of commencement of the provision of the Licensed Systems three (3) months from the Effective Date. The Licensee shall submit such evidence by completing a Compliance Report in order to satisfy the Authority that the Licensee has complied with this requirement;
- 25.4. if any amount payable under Conditions 28 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;

- 25.5. 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 or under this license and thereafter has been given by the Authority a further sixty (60) days in which to make representations in relation to the matters set out in the earlier notice which the Authority has taken into account or matters which the Licensee believes are relevant and the Authority appears not to have taken into account;
- 25.6. if the Licensee is dissolved or enters into liquidation, bankruptcy or equivalent proceedings or makes a general assignment for the benefit of creditors, and
- 25.7. 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.

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.

26. CONDITION 26: TRANSITIONAL PROVISIONS

- 26.1. The Authority may issue an appropriate Licence at the request of the Licensee three (3) years prior to the expiry of the Licence Term provided that the Authority has carried out a formal review to determine whether or not the Licence should be renewed, which review shall be concluded two (2) years prior to the expiry of the Licence Term.
- 26.2. Any subsequent licence envisaged under 26.1 shall be issued at least one year prior to the expiry of the term of this licence and shall be subject to such terms and conditions and/or fees as the Authority shall determine.

27. CONDITION 27: LICENCE TRANSFER

- 27.1. 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.
- 27.2. The transfer of the license shall not include resources assigned by the Authority to the licensee whose license is subject of the transfer.

28. CONDITION 28: LICENCE FEES

The Licensee shall pay to the Authority:

- 28.1. An initial Licence fee amounting to Kenya Shillings fifteen million (KShs. 15,000,000) and an upfront operating fee of zero-point-four percent (0.4%) of the applicant's audited annual gross revenues accruing from the Licensed Systems during the previous financial year or Kenya Shillings four million (KShs. 4,000,000) only, whichever is higher, for the first year of operation.
- 28.2. On 1st July of each year, an annual operating fee equivalent to zero-point-four percent (0.4%) of the audited annual gross revenues accruing from the Licensed Systems during the previous financial year or Kenya Shillings four million (KShs. 4,000,000) only, whichever is higher, for subsequent years of operation.
- 28.3. Any other fee payable under this Licence including but not limited to frequency and numbering fees.
- 28.4. Any of the fees due to the Authority under 28.2 and 28.3 that remain unpaid for ninety (90) days after they become due shall attract a penalty at the rate of 2% per cent per month, which shall become a debt owed to the Authority.

Signed for and on behalf of Communications Authority of Kenya

Director General

Date

ANNEX 1: PROVISION OF INFORMATION

I. Satellite earth station(s)

The Licensee shall in accordance with the Terms and Conditions of the Licence file with the Authority the location/s, and parameters of its earth stations as may be required by the Authority from time to time.

II. Cable network information

The Licensee shall in accordance with the Terms and Conditions of the Licence file with the Authority details of its cable network within Kenya and any interconnection with the outside world.

III. Terrestrial radio network information

The Licensee shall in accordance with the Terms and Conditions of the Licence file with the Authority details of its terrestrial radio network within Kenya and any interconnection with the outside world.

IV. International Agreement

The Licensee shall in accordance with the Terms and Conditions of the Licence file with the Authority, on a quarterly basis, agreements entered to for the provision of international links and access to teleports. Such agreements shall include but not limited to amount of bandwidth and associated costs.