

ANNEX I

REFERENCE ACCESS OFFER FOR BROADCAST SIGNAL DISTRIBUTORS

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Communications Authority of Kenya

This Agreement is entered into by:

[DESIGNATED LICENSEE] (“Signal Distributor”)

and

[THIRD PARTY] (“Broadcaster”)

Communications Authority of Kenya

- A. On 16th December 2013 the Communications Authority of Kenya (“the Authority”(then called the Communications Commission of Kenya) issued Determination No. 1 of 2013 on Cost-Based Terrestrial Digital Broadcasting Signal Distribution Tariff (“the Determination”). The Determination was binding on all terrestrial digital broadcasting signal distributors licensed in Kenya. The Determination was amended on 18th December 2013.
- B. The Authority has now determined that it should prescribe the form of Reference Offer to be made available by digital broadcasting signal distributors who are designated licensees, namely Pan-Africa Network Group (K) Co. Ltd (“PANG”)⁹ and SIGNET Signal Distributors Ltd (“SIGNET”)¹⁰ (“Designated Licensees”).
- C. The Broadcaster and the Signal Distributor have agreed that the Signal Distributor will provide the services described below on the terms set out in this Agreement, to ensure access, transparency and non-discrimination.

1. Interpretation

In this Agreement, the following terms and words shall have the meaning given to them as set out below unless the context requires a different meaning, and all words not defined shall have the meaning given to them in the Act or the Kenya Information and Communications (Broadcasting) Regulations, 2009:

- a. “Act” means the Kenya Information and Communications Act, 1998 as amended by the Kenya Information and Communications (Amendment) Act, 2013;
- b. “Additional Site” shall have the meaning given to it in clause 3.5;
License No. [to be completed]
License No. CCK/BSD/FL/002 and License No. BL/CCK/BSD/2013/01.
- c. “Agreement” means this Reference Access Offer once finally agreed between the parties and approved by the Authority;
- d. “Authorized Representative” means the person nominated to represent each party in negotiations of and changes to this Agreement and in the administration and implementation of it;
- e. “Authority” means the Communications Authority of Kenya, established under section 3 of the Act;

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- f. “Broadcasting Services” shall have the meaning given to it in the Act;
- g. “Broadcast Signal Distribution” shall have the meaning given to it in the Act;
- h. “Charges” means those wholesale Tariffs of the Signal Distributor that are regulated as set out in Annexure C;
- i. “Company” means any entities incorporated in accordance with the relevant laws in Kenya;
- j. “Commencement Date” means the date on which the acceptance tests are determined by the parties to be successful in terms of Annexure A;
- k. “Confidential information” means the information relating to the business affairs and technical operations of each party which each of them may obtain concerning the other while negotiating this agreement or submitting or considering a request for access;
- l. “Content” means the audiovisual content of any kind, which the Broadcaster has requested the Signal Distributor to transmit over the System to consumers under this Agreement;
- m. “DTT” means digital terrestrial television;
- n. “Day” means a calendar day in Kenya;
- o. “Effective Date” means the date from which the Signal Distributor shall begin providing the Services which shall be no later than one (1) month from date of signature of this Agreement, or the later date on which the Authority shall have approved this Agreement;
- p. “Equipment” includes any appliance, apparatus or accessory used or intended to be used for communications services;
- q. “Fault” is defined in the Service Level Agreement attached to this Agreement as Annexure A, or a failure to meet the service levels imposed by the Authority on the Signal Distributor;

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- r. “Interface” means the physical point at which Content must be presented by the Broadcaster to the Signal Distributor;
- s. “License/s” means that or those licenses granted to each of the Signal Distributor and the Broadcaster, respectively, by the Authority in terms of the Act;
- t. “Mbps” means megabits per second, the bit rate at which each Programme is to be transmitted across the System;
- u. “Price Cap” means the tariff determined by the Authority as a maximum charge that may be levied by the Signal Distributor on the Broadcaster for provision of the Services, having regard to the provisions of Part XI of the Act;
- v. “Programme” means any form of Content;
- w. “Reasonable” shall have the meaning given to it in clause 3.6;
- x. “Reference Access Offer” means this draft set of terms and conditions approved by the Authority for negotiation between a broadcaster and a Designated Licensee but which shall in all cases form the minimum required from the Designated Licensee and should in most cases, be identical as between the Designated Licensee and all broadcasters;
- y. “Regulations” means the Kenya Information and Communications (Broadcasting) Regulations, 2009;
- z. “Related Company” means an affiliate, subsidiary or holding company of any Company that shares the same shareholders and/or management and/or board of directors; or a Company whose business strategy and operations are determined by any affiliate, subsidiary or holding company regardless of their shareholding, management and board structure;
- aa. “Reserved Capacity” means the amount of capacity available from a Signal Distributor that must be reserved for free-to-air services under that Signal Distributor’s license;
- bb. “Roll Out Plan” means the plan of the location of existing and proposed Sites attached to this Agreement as Annexure B;

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- cc. “Service/s” means the digital broadcasting signal distribution services provided by the Signal Distributor to the Broadcaster under this Agreement;
- dd. “Service Credits” means the amounts payable by the Signal Distributor to the Broadcaster if the Service fails to meet the requirements of the Service Level Agreement, as set out in Annexure A;
- ee. “Service Level Agreement” means (i) the obligations and rights of the parties set out in Annexure A; or (ii) any obligation imposed on the Signal Distributor or the Broadcaster as the case may be, by the Authority in relation to service levels, availability, quality of service, coverage, transmission characteristics, advertising, time to fix, redundancy, or any other matter pertaining to the professional and quality provision of the Services including the obligations imposed on all licensees under the Kenya Information and Communications (Licensing and Quality of Service) Regulations, 2010;
- ff. “Site” means each of the location of the Interface and location of the other uplink and transmission Equipment needed for provision of the Services;
- gg. “Subscription Broadcasting Service” shall have the meaning set out in the Regulations;
- hh. “System” means the Licensed System of the Signal Distributor as described in the License granted to that party;
- ii. “Tariff” shall have the meaning set out in the Kenya Information and Communications (Tariffs) Regulations, 2010;
- jj. “Term” shall have the meaning given in clause 2;
- kk. “Written Notice” as this term is used in clauses 4.7 and 12.1, shall mean a notice in writing sent to the registered address of the other party or delivered as provided for in the Agreement, setting out the reason for the notice, the period of time given to the party who is in breach of the Agreement to remedy that breach, and giving notice of the consequences if the breach is not so remedied; and
- ll. any reference to a regulation, Act or other legal instrument in this Agreement shall, if and when such instrument is amended or repealed, constitute a reference to an equivalent provision in the amended regulation or Act, and to the extent that any instrument or part of it is repealed, the parties shall refer this Agreement to the CA for appropriate adjustment.

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2. Term of the Agreement

- 2.1 The Agreement shall begin on the Effective Date.
- 2.2 The Agreement shall endure for [period of time] or until terminated by either party in accordance with clause 12.
- 2.3 The parties may agree to extend the Term at any time, in writing.

3. The Services

- 3.1 The Signal Distributor shall provide Broadcast Signal Distribution to the Broadcaster as described in this Agreement, the Act, its Licenses, and the Regulations or any other regulations issued by the Authority and applicable to Broadcasting Services or Broadcast Signal Distribution, as the case may be.
- 3.2 The Signal Distributor shall:
 - 3.2.1 procure, install, operate and maintain its System in accordance with the requirements of its Licenses so as to be able to provide the Services to the standards required by the Service Level Agreement; and
 - 3.2.2 ensure that the Sites are installed and operational as set out in the Roll Out Plan, for the duration of the Term.
 - 3.2.3 The parties shall co-operate in good faith to give effect to this Agreement in the interests of consumers and in the national interest.
 - 3.2.4 The Broadcaster shall not be required to take up any services or to use any parts of the System or any Sites that it does not need or want and the price charged by the Signal Distributor for those Services, parts of the System or Sites chosen by the Broadcaster (including the Charges) shall be proportionately unbundled.
 - 3.2.5 A Signal Distributor shall treat each Broadcaster on a basis that is non-discriminatory in its provision of the Services and no less favourable than the treatment which the Signal Distributor provider affords to Related Companies or other Broadcasters.

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3.2.6 Unless a request for Services is not Reasonable, the Signal Distributor may not refuse a request for Services. A request that is “not Reasonable” is a request that is not economically or technically feasible and that cannot, without substantial changes to the System, Site, Equipment or the Services or any of them as the case may be which will have an adverse effect on consumers, be rendered economically or technically feasible. For the avoidance of doubt:

3.2.6.1 a request for Services to be provided at an Additional Site is deemed to be Reasonable if it is approved by the Authority under clause 5;

3.2.6.2 a request for Services shall be deemed to be Reasonable if the Services would require transmission of free-to-air programmes on the Reserved Capacity.

3.2.7 The Signal Distributor shall be obliged to make the System available at a Site designated by the Broadcaster, even if the Site is not in the Roll Out Plan, if:

3.2.7.1 the Authority determines that providing the Services at that Site would be in the public interest. In this case, the Price Cap shall not apply to Services made available at the Additional Site for the period determined by the Authority; or

3.2.7.2 if the Broadcaster requests the Signal Distributor to establish Services at a Site and/or to carry out additional work in relation to an existing Site and the Signal Distributor agrees to perform such work. The Signal Distributor’s charges shall be calculated by reference to its reasonable prevailing standard rates of charge.

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3.2.8 In addition to the provisions of any other Service Level Agreement, the Signal Distributor shall make the Services available:

3.2.8.1 twenty-four (24) hours a Day; every Day;

3.2.8.2 on an unencrypted basis where the Programmes are to be broadcast on a free-to-air basis;

3.2.8.3 suitably encrypted where the Programmes are to be broadcast as a Subscription Broadcasting Service; and

3.2.8.4 so that Programmes can be transmitted at a bit rate no less than 1.2Mbps for each Programme.

3.2.9 As far as possible, the Signal Distributor shall use the same channel number for the same Programme whenever that Programme is transmitted i.e. the electronic programme guide shall reflect the same channel number on a look-up and the actual transmission shall take place on the same channel number, provided that in the case of free-to-air Programmes, this clause 3.9 shall not apply for so long as determination of the channel number for free-to-air Programmes is not within the Signal Distributor's control. If the Signal Distributor wishes to change a channel number, it shall first give ten (10) days' written notice to the Broadcaster of its intention to do so, with reasons.

3.2.10 The Signal Distributor shall monitor the Services on an ongoing and continuous basis so as to ensure that it is meeting the Service Level Agreement and other requirements of this Agreement.

3.2.11 Any maintenance that must be carried out by the Signal Distributor to ensure the reliability and integrity of the System (other than emergency work), shall not be carried out until at least forty-eight (48) hours' notice has been given in writing to the Broadcaster.

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3.2.12 Unless explicitly agreed with the Broadcaster in writing beforehand, the Signal Distributor shall not modify, alter, adapt or otherwise tamper with the Content as it is presented at the Interface except as required for compression, encryption (where relevant), and distribution for purely technical reasons commensurate with its obligations in relation to the Services.

4. Charges

- 1.1 Any tariffs which are not regulated in terms of Annexure C shall:
- 4.1.1 be objective, independently verifiable and fair; and
 - 4.1.2 not be above the retail charges levied by the Signal Distributor or a Related Company for the provision of any retail service that makes similar use of those elements of the System that are required by both the retail services and the Services; and
 - 4.1.3 shall not cross-subsidize or be cross-subsidized by the profit or revenue of any Related Company; and
 - 4.1.4 be filed with the Authority as required by the Act and the Kenya Information and Communications (Tariffs) Regulation, 2010.
- 4.2 The Signal Distributor shall establish a process for billing and settlement that accords with generally acceptable accounting practice in Kenya, and any requirements in the Act or Licenses, and that is compliant with the Kenya Information and Communications (Consumer Protection) Regulations, 2010.
- 4.3 The Broadcaster shall pay the Charges to the Signal Distributor as frequently as may be agreed between them, and failing agreement, monthly in advance.
- 4.4 Any Service Credits shall be calculated quarterly by the Signal Distributor and a deduction shall be made from the Charges due by the Broadcaster in the next month following the end of each quarter.

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- 4.5 If the Broadcaster requests additional services from the Signal Distributor that do not fall within the Charges determined for the Services, the Signal Distributor shall apply the principles set out in clause 4.1 above to the price charged for those additional services.
- 4.6 If the Signal Distributor fails to provide Service at a Site and fails to restore Service at that Site within the period specified in the Written Notice, then the Broadcaster shall not be obliged to make payment of any Charges or other amounts in respect of that Site until Service is restored.
- 4.7 If any invoice remains unpaid for thirty (30) days of the date of that invoice despite seven (7) days' Written Notice from the Signal Distributor to make payment following the expiry of the thirty (30) days, and whether or not the invoice is in dispute, the Signal Distributor may add interest at [percentage] on the amount due under that invoice, compounded monthly from the date of expiry of the Written Notice.
- 4.8 If an invoice remains unpaid after sixty (60) days from the date of invoice, and no arrangement for payment has been made with the Signal Distributor, then the Signal Distributor may approach the Authority and request permission to cease to provide the Services and terminate this Agreement ("the request"). If the Authority has not responded within a period of 60 (sixty) days from the date of request by the Signal Distributor, the Authority shall be deemed to have approved the request.

5. Colocation and access

- 5.1 Physical or virtual access to the System, Site and any Equipment shall be negotiated between the parties subject to the following principles:
- 5.1.1. a request for access to any part of a Site, Equipment or the System shall be Reasonable and in writing; and
 - 5.1.2 unless otherwise approved by the Authority in writing, access to the System or any part of it shall be subject to a separate charge.
- 5.2 The Signal Distributor shall treat each broadcaster on a basis that is non-discriminatory and no less favourable than the treatment which the Signal Distributor provider affords to Related Companies or other broadcasters.

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- 5.3 A request shall be considered to be “Reasonable” in the circumstances set out in clause 3.6, it being noted that the Authority encourages the Signal Distributor to share its Sites, Equipment and parts of its System on request by a third party in the interests of reducing costs and increasing efficiency.
- 5.4 The Signal Distributor shall grant access to the Broadcaster to a Site in order to enable the Broadcaster to ensure compliance by the Signal Distributor with the Service Levels, during working hours, on reasonable notice.
- 5.5 The Broadcaster shall not attempt to gain access to or access a Site without the prior written permission of the Signal Distributor, and the Broadcaster indemnifies the Signal Distributor against any loss or damage occasioned by it whilst on a Site unless accompanied by an authorized representative of the Signal Distributor.
- 5.6 The Signal Distributor may not charge the Broadcaster for access to a Site for the purpose set out in clause 5.4 but it may invoice the Broadcaster for the reasonable costs incurred by its Authorized Representative in accompanying the Broadcaster to a Site including transport and, if necessary, accommodation charges, but not charges for time spent.

6. Separate accounts

- 6.1 The Signal Distributor is required to establish an accounting regime that meets with the approval of the Authority. In terms of this regime, the Signal Distributor is required to separate out revenues, costs, and capital into designated categories per service.
- 6.2 The Signal Distributor may therefore require the Broadcaster to provide invoices or payments in a particular manner to enable ease of capture for accounting purposes.
- 6.3 Invoices provided by the Signal Distributor to the Broadcaster should indicate with sufficient particularity the Service provided and the cost attributable to that Service, and any unregulated services shall also be described with their associated costs, separately from the Charges.

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7. Confidential information

7.1 Each party undertakes to the other than it shall keep that party's Confidential Information confidential and use it only for the purposes of fulfilling its obligations under this Agreement.

7.2 Each party shall use the same degree of care as it would use in protecting its own Confidential Information and will not permit any copying, distribution or use other than in order to give effect to the obligations contained in this Agreement and only to those of its employees or agents or service providers who have committed to a confidentiality agreement of a similar nature.

7.3 The obligations undertaken by each party in relation to Confidential Information shall not apply to:

7.3.1. information of a party that comes into the public domain other than by default of the receiving party;

7.3.1. information that was already independently produced by the receiving party prior to receipt of it from the disclosing party;

7.3.2 information that is required to be disclosed by law or a court order or a regulatory order from the Authority; and

7.3.4. information that has been received by the receiving party in circumstances that would not constitute a breach of this Agreement.

1.4 The provisions of this clause 7 shall survive for three (3) years after expiry or termination of this Agreement.

8. Content, re-broadcasting/re-transmission by the Signal Distributor

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- 8.1 The Signal Distributor may not, without the express written permission of the Broadcaster, distribute or transmit any Content, which shall include re-broadcasts and repeats.
- 8.2 Nothing in this Agreement shall vest in or transfer to the Signal Distributor any of the intellectual property rights of the Broadcaster in its Content.
- 8.3 The Signal Distributor shall transmit Content so that it can be viewed as it is presented at the Interface by the Broadcaster. In other words, apart from necessary technical adjustments to enable transmission to take place, the Content must be capable of being viewed as it was created.
- 8.4 A request for transmission by a Broadcaster may not be refused by the Signal Distributor if the Programme is a free-to-air Programme, save where the request is not Reasonable.
- 8.5 The Signal Distributor shall not terminate the transmission of free-to-air Programmes whether or not they form part of a bouquet presented by subscription broadcaster, except as provided for in clause 4.

9. Force majeure

- 9.1 An event of force majeure means an event or circumstance that is extraordinary and beyond the control of the party claiming force majeure, which that party could not reasonably have foreseen prior to it taking place, and which is not substantially attributable to the party claiming force majeure but prevents that party from carrying out its obligations under this Agreement. It may include war, civil war, epidemic, terrorism, revolution or insurrection, strikes and lockouts, labour unrest, or exceptionally bad weather conditions.
- 9.2 The party experiencing force majeure shall notify the other party as soon as possible with a copy of the notice to be sent to the Authority at the same time.
- 9.3 The affected party shall use reasonable endeavours to continue to perform or to perform its obligations as soon as possible and shall also endeavour to mitigate the effect of the force majeure on the other party and on the Service or the System as the case may be.

- 9.4 The unaffected party may terminate this Agreement on notice if the event of force majeure prevents the other party's performance completely at all Sites for a period of fourteen (14) days or more, with no likelihood of service restoration.

10. Indemnity, liability and insurance

10.1 Indemnity

10.1.1 Subject always to compliance by the Signal Distributor with the provisions of clause 3.11, the Broadcaster shall be solely responsible for the Content in whatever form it is presented to the Signal Distributor at the Interface.

10.1.2 The Broadcaster agrees to indemnify the Signal Distributor and keep it indemnified against any liability, costs, loss or damage including any claims against the Broadcaster in respect of an alleged infringement of any intellectual property rights of any other person or Company including for defamation (all of which are referred to as "the Claims") by the Broadcaster, its agents or contractors arising from the Content.

10.1.3 The Signal Distributor shall make any such Claims known to the Broadcaster and vice versa as soon as reasonably possible and where the Claims are made against the Signal Distributor, the Broadcaster shall deal with the Claims at its sole expense although it may require the Signal Distributor to act on its behalf in the suit, but the Broadcaster shall not make any arrangement or enter into any settlement that in any way involves or compromises the Signal Distributor or requires the Signal Distributor to issue an apology for the transmission of the Content.

10.1.4 The Signal Distributor shall assist the Broadcaster at its request in providing copies or recordings of any matter alleged to relate to the Claims without delay.

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10.1.5 The Broadcaster shall keep the Signal Distributor fully informed of the progress and outcome of any Claims and shall make payment to the Signal Distributor in full and without any deduction or set-off or counterclaim, of any amount for which the Broadcaster has indemnified the Signal Distributor and which is calculable in money and proven.

10.1.6 For this purpose the Broadcaster shall maintain public liability and other appropriate insurance during the Term and for two (2) years after the termination and/or expiry of this Agreement.

10.2 Liability

10.2.1 Each party's liability to the other under this Agreement arising out of or in connection with provision of the Services (except for the liability of the Broadcaster under clause 9.1) shall be limited in aggregate whether arising in delict, contract or otherwise, to [one hundred thousand United States Dollars (USD100,000)] for each year during the Term.

10.1.7 Neither party shall (except as expressed in clause 9.1.1), have any liability to the other for any claims arising from indirect or consequential loss, including loss of business, damage to reputation, loss of revenue, loss of profits, and loss of goodwill.

10.1.8 Nothing in this Agreement shall limit a party's liability for death or personal injury resulting from its own or its agent or sub-contractor's negligent or intentional act.

10.1.9 The Signal Distributor shall maintain public liability and other appropriate insurance during the Term and for two (2) years after the termination and/or expiry of this Agreement.

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11. Dispute resolution

Any dispute arising out of the application of this Agreement shall be resolved in accordance with the Kenya Information and Communications (Dispute Resolution) Regulations, 2010.

12. Expiry, breach and termination

12.1 Either party may, in the case of a breach of this Agreement by the other party (“the defaulting party”) issue a Written Notice on not less than seven (7) days’ notice to the defaulting party.

12.2 If the breach is not remedied or if it is not capable of remedy, then the other party may terminate this Agreement on up to ninety (90) days’ notice to the defaulting party. This period is left to the discretion of the other party to enable it to conclude an agreement with an alternative Broadcast Signal Distributor.

12.3 Either party may terminate this Agreement:

12.3.1 for failure to make payment of an overdue invoice as set out in clause 4.8;

12.3.2 for an event of force majeure as set out in clause 9;

12.3.3 if a party’s permits are changed with the results set out in clause 15.3;

12.3.4 if the other party ceases to carry on business in the normal course or commits an act of insolvency or is determined to be bankrupt or placed or enters into liquidation, or enters into an arrangement with its creditors, or if a liquidator or receiver or administrator is appointed over it or its assets;
or

12.3.5 by agreement with the other party.

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12.4 The expiry or termination of the Agreement does not affect the accrued rights and obligations of the parties to the date of termination, or which are intended to survive the expiry or termination of the Agreement.

12.5 In the event of termination of this Agreement other than by reason of a breach by the Broadcaster, the Signal Distributor will, at the Broadcaster's request, provide reasonable assistance to the Broadcaster in handing over the provision of Services to a new provider.

13. Amendment of the agreement/change control procedure

13.1 Except as set out in clause 13.3, the parties shall agree any changes to this Agreement in writing and the changes shall be signed by the Authorized Representatives.

13.2 The provisions of this clause do not apply to the Charges.

13.3 Either party may make the following changes to the Agreement on prior written notice to the other party:

13.1.1 replacing the Authorized Representative;

13.1.2 in the case of the Signal Distributor, amending or requiring an amendment to the form in which the Content is presented or to the Interface or to the System where, without that or those changes the Signal Distributor would not comply with a technical standard or requirement of the Authority; or where the change is required to facilitate the provision of the Services to the quality required in the Service Level Agreement and has been occasioned by a change in technology which does not constitute a breach of this Agreement by the Signal Distributor;

13.1.3 amending notice details including the address for service under clause 16 of the Agreement; and

13.1.4 making those changes that are required by a regulatory authority in Kenya, provided that in this case, the party advised or required to make the changes shall immediately notify the other party of the changes in writing.

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- 13.4 A change request in relation to the System, Site or the Services or any matter set out in Annexures A or B shall require that the party making the request:
- 13.4.1 give an indication in writing of the change required together with the technical design changes (if any) and cost estimate to effect the change;
 - 13.4.2 give details of the consequences or possible but likely consequences of failing to make the change as requested;
 - 13.4.3 confirm that the cost to make the change can or cannot be absorbed by the Charge;
 - 13.4.4 set out a proposed timetable to implement the change; and
 - 13.4.5 disclose any other information that the other party requires, without delay.
- 13.5 The party receiving the change request shall consider it within a period of not more than thirty (30) days, and preferably a shorter time where the request relates to a minor change.
- 13.6 If the party receiving the change request refuses to make the change, the party requesting that change may submit the request again but not within the following three (3) month period, or may submit the request to the Authority for dispute resolution.

14. Assignment, sub-contracting, partnership and agency

- 14.1 Neither party shall bind or act on behalf of or represent that they have authority to act on behalf of the other party as agent during the Term without express, specific, prior written authorization having been given to the Authorized Representative.
- 14.2 Nothing in this Agreement and no activity undertaken by a party in its implementation shall constitute the parties or be deemed to constitute them as a partnership, joint venture or consortium for any purpose.

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- 14.3 Neither party may assign the benefit or burden of this Agreement without the prior written consent of the other party, which is not to be unreasonably withheld.
- 14.4 Either party may appoint a sub-contractor to carry out its duties and obligations under this Agreement provided that the sub-contractor is of equal or better technical expertise than the Signal Distributor if that is the party wishing to sub-contract, and in all cases, the party appointing the sub-contractor shall be liable for all the acts and omissions of its sub-contractor. The party appointing the sub-contractor shall give written notice of the appointment to the other party without delay.

15. Warranties and undertakings

- 15.1 Each party warrants and undertakes to the other that it has and holds in good order all such licenses, permits, the Licenses, and other authorizations required to conduct its business and to fulfill its obligations under this Agreement (“the permits”), and it will continue to do so for the Term.
- 15.2 If any changes are made to any of the permits, the party whose permits have been changed shall immediately notify the other party of the changes and the possible implications for this Agreement.
- 15.3 If any such changes will result in difficulty or impossibility of performance, the other party may terminate this Agreement on ninety (90) days’ notice in writing to the other party without prejudice to its rights under this Agreement.

16. Notices

- 16.1 The parties appoint the following addresses for the giving of notice or any communication to the other, provided that it shall be in writing and for the attention of the Authorized Representative:

Signal Distributor:

Broadcaster:

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16.2 A notice shall be deemed to have to have been received:

16.2.1 if delivered by hand, then at the time of delivery;

16.2.2 if sent by email, then on the date and at the time indicated on the sent email; and

16.2.3 if sent by courier, at the date and time evidenced by the delivery note.

17. Entire agreement

This Agreement constitutes the entire agreement between the Parties and replaces any other agreements that may have been concluded prior to the Effective Date.

18. Governing law

This Agreement shall be governed by and interpreted in accordance with the laws of Kenya, and the parties agree that the courts of Kenya shall have exclusive jurisdiction to hear and settle any dispute arising out of or in connection with this Agreement.

19. Approval by the Authority

Communications Authority of Kenya

This Agreement is conditional on the approval of the Authority for the Agreement being given in writing. If the Authority has not approved this Agreement within thirty (30) days of the date on which it is submitted, the Authority shall be deemed to have approved it.

SIGNED AT _____ ON THIS ____ DAY OF _____
2016.

Witnesses: _____

[SIGNAL DISTRIBUTOR] _____

SIGNED AT _____ ON THIS ____ DAY OF _____
2016. Witnesses: _____

[BROADCASTER] _____

ANNEXURE A: SERVICE LEVEL AGREEMENT

1. Service delivery requirements

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a. The Transmission Network shall meet the following parameters:

QOS parameter	KPI
Transmission quality (ETSI TR 101 290)	<0.5% first priority error
MER (RMS) for signal from DVB-T2 transmitter	>32dB
BER for signal from DVB-T2 transmitter	<10E8
Overall system availability (broadcast + distribution network)	≥99.5%
Recovery period (centre head end)	≤1 hour
Recovery period (overall system) excluding force majeure	Average 2 hours, not greater than 24 hours
NOC monitoring	24/7
Availability of DVB platform	≥99.5%
Signal strength	>32dbm/μV
Redundancy facility for transmitters	100% of the time
Changeover to alternative transmitter	≤2 minutes

b. The ERP shall be delivered using a defined antenna pattern that shall ensure that network and international interference are minimized and international restrictions are complied with as far as is reasonably possible.

c. The Distribution Network shall meet the following parameters:

Broadcast signal distribution cost modeling and reference access offer | 68

QOS parameter	KPI
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Carrier power to noise ratio, C/N	$\geq 10.0^*$ dB
Bit energy to noise power density ratio, Eb/No	$\geq 7.0^*$ dB
Link margin, LKM	$\geq 1,0^*$ dB
Packet error rates, PER	$< 0E-7^*$
Availability of distribution network	$\geq 99.5\%$

QOS parameter	KPI
Billing error (rate between error bills and all bills)	10E4
Information changes/adjustments of service)	(predictable notification) 24 hours in advance
Customer service	24/7
Fault report to content service providers	Within 24 hours of occurrence
Online resolution of problems	80%
Sound and quality (except new 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
Activate an updated EPG Reference offer publicly available on the website	100% of the time

d. The Services shall meet the following parameters:

2. Engineering Performance Measures

[To be completed]

3. Signal specification

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- a. The Content presented at each Interface shall be transmitted for a television service in the following form:
 - i. Standard definition: [mbps]
 - ii. High definition: [mbps]
 - iii. [Anything else]
 - b. The System operation data that the Signal Distributor shall include is, as a minimum:
 - i. audio, video and data;
 - ii. EIT, EPG, service information, conditional access and any other operational data required for the interoperability of all Digital Terrestrial Television multiplexes operated by the Signal Distributor
 - c. The transport stream shall be encoded and multiplexed as follows:
 - i. Video encoding: [mpeg]
 - ii. Audio encoding: [mpeg]
- 4. Best efforts obligations**
- a. The Signal Distributor shall transmit at the highest technical standard possible even where it is not possible to transmit the Content in multiplexed form as a transport stream (“transport stream”) within the parameters indicated.
 - b. A transport stream is valid if it complies with ETR 101 290 with no first priority alarms, is DVB-compliant, has correct Programme association data, and can be properly decoded by a receiver approved by the Authority.

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- c. The Signal Distributor shall comply with ITU Radio Regulations (2012 edition) for out of band harmonics and emissions, and the provisions of its Licenses.
- 5. System parameters**
- a. The Signal Distributor and the Broadcaster shall agree the parameters for the determination of the success of acceptance testing of the Services which parameters shall be based on the Service Levels (“the agreed parameters”).
 - i. The acceptance tests shall be carried out at least one (1) month in advance of the proposed Commencement Date of the Service to ensure that the Service is fully operational.
 - ii. The Broadcaster shall not be liable for any Charges or other fees in respect of these tests.
 - iii. The Broadcaster shall provide such material for the testing as the Signal Distributor may reasonably require.
 - iv. The Broadcaster may not dispute the success of the acceptance tests unless the Signal Distributor fails to meet the agreed parameters.
 - v. Should the Signal Distributor fail to meet the agreed parameters, the tests shall be repeated and the Signal Distributor shall make such adjustments as may be required to the System, at its own cost.
 - b. From the Commencement Date, the Broadcaster shall present the Content at the Interface from which point the Signal Distributor shall accept, multiplex, distribute and transmit the Content on the licensed frequencies and from the Sites listed [*below*].
 - c. The Signal Distributor shall multiplex and transport the Content as transport streams to the Sites using a combination of fibre optic cables, microwave links and satellite, for transmission from those Sites.

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- d. The Signal Distributor shall provide a network monitoring centre (NMC) in Nairobi at which the status and control of all elements of the infrastructure comprised in the System is monitored. The NMC shall provide a staffed point of contact through which all enquiries and Fault notices and other reports shall be logged and dealt with during staffed hours. The staffed hours shall be [*times for staffing of NMC*] and:
- i. all Faults shall be logged on a central database;
 - ii. every Fault shall be given a unique reference number and the data capture shall include all relevant details including name of caller, date and time, Site location, contact details, Service affected, description of nature of Fault if known, and Fault category level;
 - i. the NMC shall manage the Fault from logging to resolution and shall regularly update the Broadcaster on progress and ensure that the Broadcaster can obtain updates from a single point of contact, as follows:
 1. Level 1: before 30 minutes and then every 3 hours
 2. Level 2: before 30 minutes and then every 6 hours
 3. Level 3: before 7 days and then monthly by report
 4. Level 4: monthly by report

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6. Faults

- a. If the NMC receives information that indicates that a Fault is within the control of the Broadcaster, it shall immediately notify the Broadcaster of the Fault.
- b. When other Faults are noted or advised to the NMC, each Fault will be allocated a priority level and categorized depending on its severity, to be agreed between the Broadcaster and the Signal Distributor. Failure to agree shall result in an escalation to the Authorized Representatives of the parties for determination.
- c. Outside staffed hours the NMC shall alert the “on-call” engineer to deal with the Fault.
- d. The NMC shall undertake an initial investigation and where appropriate ask the engineer on duty to verify a Fault. It shall then be logged and addressed as set out in 5 above.
- e. If the Fault cannot be remotely remedied then the engineer shall attend the Site within the maximum response time set out below. “Maximum response time” shall mean the time between the Signal Distributor first becoming aware of the Fault at a Site, and the arrival on Site of suitably skilled personnel to remedy the Fault.
- f. Faults may be categorized as follows:

Category	Type of Fault
Level 1: main Site Fault	· Total loss of or reduction in power in an active transmitter to a level below the Lower Failure Threshold
	· Total loss of or degradation below [the Fault limit] on an active transmitter
	· Disruption to or loss of ancillary services such as the EPG, SI and/or CA on any multiplex at any main transmission Site

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	· Total failure of the primary transmission and distribution elements of the System
Level 2: priority	· Total loss of or a reduction in power to a level below the Lower
transposer or priority re-transmitter Site Fault	Failure Threshold in the output of any active priority transposer or priority re-transmitter
	· Total loss of or degradation below the [relevant threshold] on any active transmitter at a priority transposer or priority re-transmitter Site
	· Disruption to or loss of data services such as EPG, SI and/or CA on any multiplex at a priority transposer or priority re-transmitter
	· Total failure of the [secondary distribution system] (re-broadcast) at a priority transposer or priority re-transmitter Site
Level 3: transposer or re-transmitter Site Faults	· Total loss of or a reduction in power to a level below the Lower
	Failure Threshold in the output of any active transposer or re-transmitter
	· Total loss of or degradation below the [relevant threshold] on any active transmitter at a transposer or re-transmitter Site
	· Disruption to or loss of data services such as EPG, SI and/or CA on any multiplex at any transposer or re-transmitter

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	· Total failure of the [secondary distribution system] (re- broadcast) at a transposer or re-transmitter Site
Level 4	Any other Fault

- g. The Fault escalation process for Faults to be addressed by the Signal Distributor is set out below and applies whenever Fault resolution does not occur within the prescribed times included in the table:

Category	Responsible party	Time interval
Level 1	NMC Engineer	After 1 hour
	Operations Manager	After 3 hours
	Executive Director/Multiplex Manager	After 6 hours
Level 2:	NMC Engineer	After 2 hours
	Operations Manager	After 4 hours
	Executive Director/Multiplex Manager	After 8 hours

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Level 3:	NMC Engineer	After 5 days
	Operations Manager	After 8 days
	Executive Director/Multiplex Manager	After 14 days

h. The contact details for the parties representing the Signal Distributor are:

- i. NMC engineer: [contact]
- ii. Multiplex Manager: [contact]
- iii. Operations Manager: [contact]
- iv. Executive Director: [contact]

i. Fault escalation within the Broadcaster shall require notification first to the Authorized Representative of the Broadcaster, and failing resolution within twenty-four (24) hours, the Signal Distributor may escalate the Fault to the Executive Director whose details are as follows:

[Details]

7. Reporting and meeting

a. The Signal Distributor shall report to the Broadcaster monthly or more frequently in relation to Faults with at least the following detail:

- i. Reference number for each Fault logged in that month
- ii. Date
- iii. Service affected
- iv. Site/s affected

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- v. Time and duration of Fault
 - vi. Summary of issues and remedy applied
- b. The Signal Distributor shall report to the Broadcaster monthly or more frequently in relation to performance of the Services in general against the targets.
 - c. A general review meeting shall be held between the parties at least once every quarter to review the reports described in (a) and (b) and address and changes requested or maintenance planned including upgrades.
 - d. The Signal Distributor shall maintain all records under this Service Level Agreement for a period of no less than three (3) years after its expiry or termination in as accurate and complete form as possible.

8. Maintenance

- a. The Signal Distributor may undertake routine maintenance during ordinary working hours on any Day that is a working day, using its best efforts to avoid disruption to the Services.
- b. Maintenance required that is not routine shall only be carried out subject to the notice required in the Agreement.
- c. Extraordinary maintenance that is required as a result of force majeure shall be considered to form part of the Signal Distributor's obligation to mitigate and resolve force majeure.

9. Power

- a. The Signal Distributor shall maintain backup power at all Sites marked "P" on
- b. Any generator installed at these Sites shall have sufficient fuel capacity on site to run continuously for a period of two (2) days.

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10. Service availability and credits

- a. Service availability is specified in clause 1 above.
- b. The following events do not constitute Faults and shall not be taken into account for the purposes of calculating whether or not the Service is available:
 - i. a failure or omission by the Broadcaster to provide the Content to the Interface in the format required, or late provision, or no provision at all;
 - ii. health and safety requirements that are binding on the Signal Distributor result in maintenance or other work having to be undertaken by the Signal Distributor in circumstances where the Signal Distributor is not at fault;
 - iii. inclement or extreme weather conditions prevent planned maintenance or remedy of Faults within the prescribed time period;
 - iv. a breach of this Agreement by the Broadcaster which is not remedied despite Written Notice;
 - v. an interruption or cessation of Services other than as a result of a breach by the Signal Distributor, by reason of a direction from the Authority or any government agency or court of competent jurisdiction to interrupt or cease the Services;
 - vi. an event of force majeure affecting the Site at which a Fault has been identified which prevents the remedy of Faults within the prescribed time period;
 - vii. interruptions of the Service for no longer than sixty (60) seconds; or
 - viii. power outages at Sites where no backup generators are required to be installed.

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- c. Service credits shall be calculated as follows:

$$\text{Service credit payable} = C \times P \times D \times B$$

Where:

C = the per minute Charge or other tariff for the Services at all Sites for the period;

P = *the weighted population coverage percentage for each Site [as set out in Annexure B;]*

D = the number of minutes that the Site was below the service availability target in the quarter;

B = the percentage in the period of the total kbps in use on the Service used for the Broadcaster's Content.

11. Definitions

The following words and terms shall have the following meanings in this *Annexure A*:

ASI Asynchronous Serial Interface

CA Conditional Access

DTT Digital Terrestrial Television

EIT Event Information Table

EPG Electronic Programme Guide

ERP Effective Radiated Power

MPEG Moving Picture Experts Group

NMC Network Monitoring Centre

SI Service Information

ANNEXURE B: ROLLOUT PLAN

[Include coverage area/Sites as currently provided and required coverage/Sites under the rollout obligations]

ANNEXURE C: CHARGES

1. The following Charges for Services have been determined to be:
 - a. just and reasonable;
 - b. objective;
 - c. independently verifiable; and
 - d. fair, having regard to the underlying and actual costs of the Designated Licensees.

2. Determination

[Include final price table]

