



10<sup>th</sup> September 2018

Mr. Jerome Ochieng  
Principal Secretary, ICT & Innovation  
Ministry of Information, Technology and Communication  
Teleposta Towers  
P.O Box 30025 Nairobi

Dear Sir,

**RE: SUBMISSIONS ON THE DATA PROTECTION BILL, 2018 AND RELATED POLICY**

We applaud the Ministry of Information, Technology and Communication on publishing the Data Protection Bill, 2018 (the “**Bill**”) and the related Privacy and Data Protection Policy (the “**Policy**”). We support the publishing of the Bill and the Policy, each of which is in accordance with global trends and best practices for the greater good of all Kenyans.

We do have some comments with respect to the implementation of the Bill and the Policy and certain provisions contained therein. In particular, we draw your attention to the following:

1. Given the significant operational overhaul and the associated time and cost that will be needed to comply with the Bill, an equally meaningful post adoption grace period should accompany this Bill. We believe the two-year grace period that was given to firms to comply with the EU General Data Protection Regulation (“**GDPR**”) should be the *minimum* grace period for compliance, especially given the similarities between the Bill and the GDPR.
2. We believe a minimum two-year phase in period is also needed to ensure that the Office of the Data Commissioner (the “**Office**”) will be fully operational and able to process applications prior to the effective date of the Bill. If the Office is not fully functional and able to effectively process applications prior to the effective date of the Bill, hundreds if not thousands of firms will run afoul of the registration requirements under Section 15 on day one.
3. Section 44 the Bill obligates data controllers or processors to ensure that at least one copy of any data which is transferred out of Kenya is retained on a server within Kenya. We believe this could significantly undermine the business reality and benefits of cloud computing which allows firms to store information globally and have business continuity processes at an affordable rate. Instead, we believe firms should demonstrate that they have adequate disaster recovery and back up plans and be given the flexibility to store

data where most effective and appropriate, keeping in line with the requirements of the Bill.

4. Section 45 of the Bill requires that data controllers or processors give proof to the Data Commissioner on the appropriate safeguards in place in other countries prior to data being transferred to such other countries. We believe doing this on a case-by-case basis will be highly subjective and very impractical. We believe a white list of third party countries should be established by the Data Commissioner which would allow firms to transfer data to countries contained on this list. We would expect that all countries in the EU for example to be included given GDPR.
5. With respect to data minimization and Policy sections 5.2.2 and 5.3.3, we believe that data controllers or processors should be given the opportunity to re-purpose data provided fresh consent is received. 5.2.2 and 5.3.3 would imply that re-purposing of data would never be permitted.
6. With respect to the other laws likely to be affected by this Bill, we write to draw your attention to the Central Bank of Kenya (Credit Reference Bureau Regulations) that require sharing of information by institutions. However, the Regulations do require the consent of the customer to be obtained before the data can be shared.

We trust that you will take our comments in consideration.

Your faithfully,



**Pauline Githugu**  
**Director for External Affairs**