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# THE MALAWI GOVERNMENT GAZETTE

(Published by Authority)

3,317: Vol. LIII No. 5]

Zomba, 5th February, 2016

Registered at the G.P.O. as a Newspaper

Price: K1500.00

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GENERAL NOTICE NO. 10



GOV PUBLICATIONS  
J08 0023 5438



## MALAWI COMMUNICATIONS REGULATORY AUTHORITY

### AMENDMENT OF LICENCE OF AIRTEL MALAWI LIMITED TO PROVIDE PUBLIC TELECOMMUNICATIONS SERVICES IN THE REPUBLIC OF MALAWI

NOTICE IS HEREBY GIVEN that the Malawi Communications Regulatory Authority (MACRA) intends to amend some provisions of the Individual Licence (the Licence) awarded to Airtel Malawi Limited (the Licencee) to provide Public Telecommunications Services in the Republic of Malawi as follows—

#### Clause 9.5—International Call Termination Rate

It is proposed to modify the period of payment of International Call Termination Fees from 15 days to 75 days from the month international incoming voice traffic was terminated in Malawi.

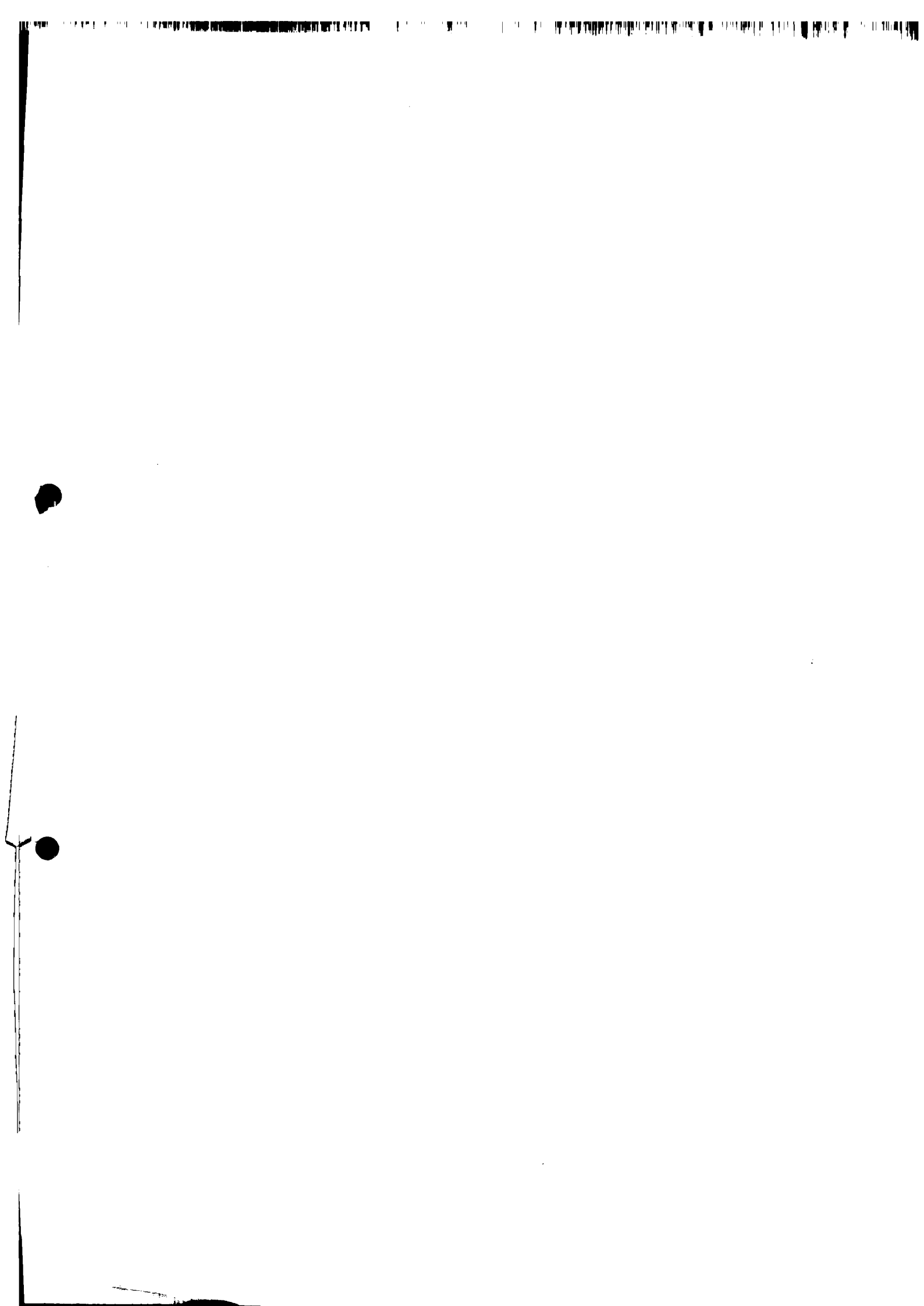
#### Clause 9.5—will therefore be amended to read as follows—

“The Licencee shall pay to the Authority the fees collected under clause 9.4 for all international incoming voice traffic terminated in Malawi in any particular month within 75 days from that month, failure of which shall attract a penalty of 20% of the amount of fees.”

Rationale for Amendment: The amendment has been proposed following a request by the Licencee for adequate time to make reconciliations with carriers of international voice traffic and receive payment from the international carriers.

PURSUANT to section 23 of the Communications Act, the general public and all interested persons are hereby requested to make any written representations on the proposed amendments which should reach the address below within 10 days from the date of publication of this Notice.

The Director General  
 Malawi Communications Regulatory Authority  
 MACRA House  
 Salmin Armour Road  
 Private Bag 261  
 Blantyre  
 Malawi  
 Tel: +265 1 883 611  
 Fax: +265 1 883 890  
 E-mail: dg-macra@macra.org.mw



GENERAL NOTICE NO. 11

Reference: TEL-2016-001-PTN



Licence No. 001

(This licence number must be quoted on all correspondence and at interviews)

**MALAWI COMMUNICATIONS REGULATORY AUTHORITY****A PROVISIONAL LICENCE**

to install, maintain and operate

**A PRIVATE TELECOMMUNICATIONS NETWORK**

issued to

**VALE LOGISTICS LIMITED**

The Malawi Communications Regulatory Authority hereby issues this Provisional Licence upon and subject to the terms and conditions set forth herein below, and in accordance with section 17 of the Malawi Communications Act, Cap 68:01 of the Laws of Malawi.

Notice issued at Blantyre, this 5th day of February, 2016.

GODFREY ITAYE  
*Director General*

This Licence is issued subject to the terms and conditions hereto, and to any other terms and conditions and promises of performance that may from time to time be incorporated herein under the Communications Act and the Regulations thereto. Failure to comply with any terms and conditions may lead to suspension or revocation of this Licence

*Provisional Licence for Vale Logistics Limited*

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## TERMS AND CONDITIONS

**1. Interpretations**

- 1.1 This document constitutes the Licence in its entirety.
- 1.2 Any reference to this Licence shall include its Schedules.
- 1.3 In this Licence, unless otherwise stated, words and terms used shall have the same meaning as defined in the Act and related Regulations.
- 1.4 Technical terminology used in this Licence shall have the same meaning as that ascribed to the terminology by the International Telecommunication Union (ITU).
- 1.5 The use of headings and divisions into clauses is for convenience of reference only and shall not affect the construction or interpretation of the Licence.
- 1.6 Unless the context indicates otherwise, 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 and words denoting the masculine gender shall include the feminine gender and vice versa.
- 1.7 Words and expressions defined in any clause shall, for the purposes of that clause, bear the meaning assigned to such words and expressions in such clause.
- 1.8 A provision conferring rights and obligation shall, notwithstanding that it is only in the interpretation Clause, be given effect as if it were a substantive Clause in the Licence.

**2. Definitions**

- 2.1 In this Licence unless the context requires otherwise, the terms below shall have the following meanings:

“Act” means the Communications Act, Cap 48:01 of the Laws of Malawi, as currently in force and as the same may hereafter be amended, re-enacted or superseded from time to time.

“Authority” means the Malawi Communications Regulatory Authority, as established under section 3(1) of the Act.

“Domestic Transmission Infrastructure” means telecommunications infrastructure required to operate a telecommunication network and includes fibre optic, wired and wireless transmission facilities.

“Effective Date” means the date on which this licence is published in the Gazette for for the purpose of bringing the Licence into effect or on the date stipulated in the Gazette that the Licence shall come into effect;

“ITU” means the International Telecommunication Union.

“Licence” means the licence issued to the Licensee upon and subject to these terms and conditions.

“Licensee” means Vale Logistics Limited, a company duly registered and incorporated under the company laws of the Republic with company registration no. 11621

“Private Telecommunications Network” means a telecommunications network built maintained and operated by the Licensee for the exclusive use of the Licensee through which no public telecommunication services may be provided.

“Regulations” means any and all regulations, rules, procedures, guidelines, directives, orders, decisions, rulings, determinations and other administrative acts of the Authority, as the same may be in force from time to time.

“Republic” means the Republic of Malawi.

### 3. Commencement And Period Of Licence

#### 3.1 Period of Provisional License

- (a) The Licence is issued provisionally before the introduction by the Authority of the Converged Licensing Framework.
- (b) The commencement date of the Provisional License shall be from the effective date as published in the Gazette.
- (c) The Provisional License shall be valid—
  - (i) for a period of one (1) year from the effective date; or
  - (ii) until the coming into force of the Communications (Licensing) Regulations introducing the Converged Licensing Framework; whichever happens earlier.

### 4. Scope of Licence

#### 4.1 The Licensee is authorised under this licence to—

- (a) set up, own and operate a private telecommunication network for non commercial purposes;
- (b) install, commission and operate any domestic transmission capacity and switching infrastructure for its private telecommunication network.
- (c) to deploy voice and data traffic through its network

4.2 The Licensee shall set up and operate its Private Telecommunications Network in the areas set out in Schedule 1.

4.3 The licensee shall not connect its network to any other licensed telecommunications network without the prior written approval of the Authority.

### 5. Resale of Excess Capacity

5.1 The Licensee shall not lease or resale any excess capacity on its telecommunications network without the prior written authorisation of the Authority.

### 6. Licence Fees

6.1 The licence fees payable by the Licensee to the Authority shall be as follows:

- (a) A Provisional licence fee of USD 50,000, which shall be due and payable in advance on or before the Effective Date.
- (b) If the Licensee has been assigned any radio frequencies, the Licensee shall pay annual radio licence fees in the amounts and at the times prescribed by the Authority in the table of radio frequency licence fees established and published by the Authority from time to time.

6.2 The Licensee shall pay and settle all licence fees under clause 6.1 no later than the dates specified the clause. Any late payments shall bear simple interest from the date due until payment at an annual rate equal to the prevailing bank commercial lending rate plus five (5) percentage points.

6.4 Nothing herein shall limit the right of the Authority to engage all legally acceptable means, including, without limitation, institution of legal proceedings, to collect any unpaid and past due Licence fees from the Licensee.

**7 Provision of Information**

- 7.1 The Licensee shall establish and maintain adequate records to permit the effective supervision and enforcement by the Authority of the Licensee's obligations under this Licence.
- 7.2 The Licensee shall furnish the Authority records, raw technical data or any other information that may be reasonably required by the Authority for the purpose of monitoring and enforcing compliance by the Licensee with its obligations under this Licence.
- 7.3 The Licensee shall submit information requested by the Authority under this clause within reasonable time and in a manner and format as specified by the Authority.
- 7.5 The Licensee shall bear the cost of any expenses it incurs in ensuring compliance with record keeping and provision of information.

**8. Inspection**

- 8.1 The Licensee shall permit or ensure that permission is granted to an authorized officer of the Authority upon production of proof of identity, to enter or access any property, building or premises where the Licensee's Network is installed or is being installed, to enable such officer to inspect, examine or test any equipment comprised in the network.
- 8.2 The Authority may inspect files, records, and any other data if necessary make copies of the documents inspected for the purpose of enabling the Authority to monitor and enforce compliance with this Licence.

**9. Compliance**

- 9.1 The licensee shall comply with any order or directions made by the Authority in pursuant with any powers granted to it under the Act, Regulations and this Licence.

**10. Ownership, transfer of Licence or change of Control**

- 10.1 The Licensee shall be registered and incorporated in Malawi.
- 10.2 The Licensee shall not transfer any shares or ownership in the Licensee without prior approval of the Authority.
- 10.3 The Licensee shall not transfer, assign, or pledge this Licence without the prior written consent of the Authority.
- 10.4 Any transaction, agreement or undertaking entered into by the Licensee with any other party that could have the effect of transferring or assigning or changing the control of the Licensee, including, without limitation, any option to purchase or any pledge of assets or shares to a lender or other creditor, shall require prior written approval by the Authority.

**11. Spectrum Obligations**

- 11.1 The Licensee shall not use any frequency without prior assignment by the Authority.
- 11.2 The Licensee shall apply for radio licences for individual transceiver stations within its network in the manner and form as specified by the Authority and the Authority shall respond within 14 days from the application date.
- 11.3 The Licensee shall only use assigned frequencies after the grant of a valid radio Licence covering those frequencies and in accordance with the terms of the radio Licence.
- 11.4 The Licensee shall pay for radio frequencies in accordance with Schedule 2 of this Licence.

- 11.5 The Authority may re-allocate or re-farm frequencies assigned to the Licensee as required to meet the growth in demand for the Service in accordance with the National Frequency Allocation Plan and any applicable Regulations.
- 11.6 The Authority will make the re-arrangement stipulated under clause 15.5 for any of the following reasons:
- (a) to create a level playing field for all operators;
  - (b) to achieve objectives of the Authority under the Act and any other relevant Regulations made thereunder; or
  - (c) to comply with international best practices.
- 11.7 The Authority shall at any time inspect and analyze the spectrum efficiency of any assigned frequencies to ensure proper utilization of the frequencies.
- 11.8 The Licensee shall ensure that transmission is restricted as per ITU Radio Regulations and any applicable Regulations to avoid harmful interference within its assigned frequency band.
- 11.9 The Authority shall revoke a radio licence assigned to the licensee for any of the following reasons:
- (a) frequency hoarding;
  - (b) failure to pay frequency fees;
  - (c) use of frequencies contrary to terms and conditions of a radio licence;
  - (d) use of unassigned frequencies; or
  - (e) any other ground specified by the Authority.

## 12. Health and Environmental Concerns

- 12.1 The Licensee shall ensure the use of energy efficient, environmental friendly network equipment and also ensure proper safety and health hazard issues in the installation and location of its network equipment including transceivers and other locations of installations.
- 12.2 The Licensee shall ensure that deployment of its network equipment including transceivers conform to any applicable EMF Radiation Guidelines issued by the Authority from time to time as well as other relevant guidelines or rules by recognized international bodies.

## 13. Confidentiality

- 13.1 The Licensee shall not disclose the content of any signal or communication transmitted or intended to be transmitted over its telecommunication network, unless required to do so by a court order or under any law of the Republic.

## 14. Amendment

- 14.1 The Authority may modify or amend any term or condition of this license if it is in the public interest to do so or if it is necessary to take into account developments in the industry or for any other reason deemed necessary by the Authority.
- 14.2 Before amending any provision of this Licence, the Authority shall—
- (a) give the Licensee not less than seven (7) days' notice and publish a notice in the Gazette stating the amendment that it proposes to make and the reasons for it, and shall give any Licensee or any person with an interest an opportunity to make representations concerning the proposed amendment; and
  - (b) give due consideration to any representations made by the Licensee or any person.



- 14.3 The Licensee may submit a response to the proposed amendment within thirty (30) days of the notice.
- 14.4 If the Licensee does not respond within the thirty (30) day period under clause 14.3 the amendment shall take effect on the thirtieth (30th) day after the date of notice.
- 14.5 If the Authority receives a response from the Licensee, it shall consider the response and notify the Licensee within thirty (30) days of the reply of its decision to either;
- (a) rescind the amendment;
  - (b) modify the amendment; or
  - (c) proceed with the proposed amendment in which case the amendment shall take effect on the fifteenth (15th) day after the date of the Authority's second notice.
- 14.6 The Licensee shall comply with all new terms and conditions issued by the Authority.

## 15. Revocation of Licence

- 15.1 The Authority may revoke the Licence on any of the following grounds—
- (a) if the Licensee is in substantial or continuing breach of any of the terms and conditions of this licence including—
    - (i) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;
    - (ii) failure to pay outstanding Licence fees for over a period of twelve (12) months from the Effective Date or anniversary of the Effective Date; or
    - (iii) any other substantial breach of the licence.
  - (b) if the Licensee has been declared insolvent; or
  - (c) if the Licensee agrees in writing to cancel the Licence.
- 15.2 Before taking any action to impose a punishment on the Licensee under Licence, the Authority shall follow the procedure set out below—
- (a) the Authority shall notify the Licensee of the alleged breach in writing;
  - (b) the Authority shall allow the Licensee not less than thirty (30) days from the date of notification in accordance with sub clause (a) above to remedy the breach or to show cause why it should not be punished; provided, however, that the Licensee may request additional time, not exceeding thirty (30) days, to remedy the breach and such request shall not be unreasonably denied by the Authority.
  - (c) Having taken into account the licensee's representations, the nature, gravity and consequences of the breach, the Authority may take any action that it considers appropriate including revoking the Licence.
- 15.3 The revocation of the Licence for any reason shall not prejudice any other legal rights or remedies of the Authority conferred by the Act or any other law for the time being in force or by this licence.
- 15.4 The revocation of the Licence shall not relieve the Licensee from any obligations accrued and due under any law or this licence.

## 16. Regulatory Sanctions

- 16.1 Notwithstanding any criminal sanctions under the Act, the Authority reserves the right to impose regulatory sanctions for breaches of licence conditions including—
- (a) issuing of warnings;

- (b) directing the licensee to take appropriate remedial steps by issuing a compliance order;
- (c) directing the licensee to desist from non-compliance by issuing a cease and desist order;
- (d) imposing a fine proportional to the effects of the non-compliance;
- (e) revocation of the licence; or
- (f) other penalties deemed necessary by the Authority.

## 17. Force Majeure

17.1 The Licensee shall not be liable for any default or delay in the performance of its obligations under the Licence if and to the extent that—

- (a) such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions or any force majeure event beyond the reasonable control of the Licensee; and
- (b) the Licensee is without any fault in causing such default or delay.

17.2 If any force majeure event described in clause 17.1 occurs, as a condition to being excused from any default or delay hereunder, the Licensee shall promptly notify the Authority in writing of such event, its impact on the Licensee's ability to perform, and the steps the Licensee has taken, is taking and intends to take to rectify and remove the event. The Licensee shall continue to provide periodic updates to the Authority regarding the force majeure event, at such intervals and in such detail as the Authority may request, until the force majeure event has ended or its impact on the Licensee has been overcome.

## 18. Notices

18.1 All notices to the Licensee may be sent to its main or registered office and such telephone, fax and email addresses as it shall notify the Authority from time to time.

18.2 Any notice addressed to the Licensee at its physical address shall be delivered by hand or by registered post, and notice sent by email or fax shall be confirmed.

18.3 Any notice shall be deemed to have been given:

- (a) on delivery, if sent by hand during business hours on a business day;
- (b) Seven (7) days after mailing if sent by registered post mailed from Malawi to an address within Malawi; or
- (c) on receipt, if sent by confirmed fax or email.

18.4 All written notices to the Authority shall be marked for the attention of the Director General and shall be hand delivered or otherwise sent to the official addresses for notices published by the Authority from time to time.

18.5 Any notice given pursuant to this Licence shall be deemed to be appropriately served if the same is done in accordance with the laws currently in force in Malawi.

## 19. Liability

19.1 The licensee shall indemnify the Authority against any losses, claims, charges or expenses, actions, damages or demands which may be made against the Authority by third parties as a result of or in relation to the activities of the Licensee.

**20. Renewal of the Licence**

- 21.1 This Licence may be renewed for such period as may be determined by the Authority at the expiry of its term provided the Licensee is in compliance in all material respects with its licence provisions.
- 21.2 In deciding whether to renew the licence the Authority shall take into account the following;
- (a) the satisfactory performance by the Licensee of its obligations under the Licence
  - (b) any other factor deemed necessary by the Authority
- 21.3 The Licensee shall apply for renewal in writing not later than three (3) calendar months before the expiration of the term of its Licence.

**21. Dispute Resolution**

- 21.1 Any dispute arising out of or in relation to this Licence, shall if not settled amicably on the written request of either party be referred to arbitration in accordance with the Arbitration Act and the seat of arbitration shall be Blantyre, Malawi.
- 21.2 This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction.

**23. Miscellaneous**

- 23.1 The Licensee shall comply with all terms and conditions of this Licence, applicable laws and Regulations issued by the Authority from time to time.
- 23.2 The Licensee shall observe the requirements of any applicable international conventions on telecommunications to the extent that such a convention imposes obligations on Malawi unless otherwise expressly exempted by the Authority.
- 23.3 The Authority or any Government department shall not be liable for any loss, damage, claim, charge or expense which may be incurred as a result of or in relation to the activities of the Licensee, its employees, agents, or authorized representatives.
- 23.4 Unless otherwise agreed by the parties, all correspondences from the Authority shall be in writing and shall be sent to the Licensee's principal place of business.
- 23.5 Any correspondence issued by the Authority marked as private and confidential, shall remain private and confidential and the Licensee shall not disclose the same without prior consent of the Authority.
- 23.6 Nothing in the provisions of this Licence shall be deemed to have been waived by any act of or acquiescence on the part of the Authority, unless the same is issued in writing by the Authority.
- 23.7 A waiver of any provision of this licence shall not be construed as a waiver of any other provision or the same provision on another occasion.

Notice issued at Blantyre, this 5th day of February, 2016.

GODFREY ITAYE  
*Director General*

## SCHEDULE 1—NETWORK COVERAGE (Clause 4.2)

1. The Licencee shall construct, operate and maintain its telecommunications network along the the Nacala Railway line in Malawi in the sites indicated in Table 1.

TABLE 1

<i>Site Name</i>	<i>Coordinates</i>
Kachasu	S15 49 9.9 E34 16 50.5
Chileka	S15 53 25.82 E34 25 04.71
Ng'onzo	S15 46 16.7 E34 29 26.4
Nikisi	S15 42 29.3 E34 31 41.7
Adayelo	S15 33 45.8 E34 40 05.5
Nkwinda	S15 25 18.8 E34 48 32.5
Chikapa	S15 18 14.1 E34 54 25.2
Ayanjaawo	S15 15 43.3 E34 55 43.5
Nkaya	S15 07 11.9 E35 02 11.8
Maduwani	S15 06 33.5 E35 04 38.4
Liwonde	S15 03 46.6 E35 14 01.1
Molipa	S15 03 15.3 E35 19 16.7
Mashepa	S15 00 21.0 E35 26 58.5
Lambulira	S14 59 57.2 E35 31 01.0
Namanja	S14 57 54.9 E35 41 23.4

## SCHEDULE 2—ERRESTRIAL SERVICES, FEE SCHEDULE (Clause 11.4)

## TERRESTIAL SERVICES (FEES SCHEDULE)

#	TYPE	BASIS	ASSIGNMENT FEE (USD)	ANNUAL FEE (USD)	AMMENDMENT FEE (USD)
1	HF Voice Data	Frequency	534	267	133
2	SW Sound Broadcasting	Apparatus	534	267	133
3	MW Sound Broadcasting	Apparatus	534	267	133
4	VHF/UHF PMR Fixed Station	Apparatus	356	178	89
5	VHF/UHF Centralized Radio Alarm System	System	534	267	133
6	VHF/UHF PMR Vehicle Mobile Station	Apparatus	178	89	44
7	VHF/UHF PMR Handheld	Apparatus	89	44	22
8	VHF/UHF Private Trunking System	Apparatus	178	89	44
9	UHF PAMR Trunking Network	Frequency	890	445	222
10	VHF/UHF Radiotelephone Link	Frequency	890	445	222
11	FM Sound Broadcasting Mono	Apparatus	356	178	89
12	FM Sound Broadcasting Stereo	Apparatus	712	356	178
13	Public Paging	Frequency	356	178	89
14	Private Paging	Apparatus	178	89	44
15	VHF/UHF Television	Apparatus	1780	890	445
16	Cellular (GSM) Channel Pair (200 KHz)	Frequency	4000	4000	445
17	Amateur	Apparatus	41	20	15
18	Microwave Radio Link Tx	Frequency	356	178	89
19	Wireless Local Loop (25 KHz)	Frequency	534	267	133
20	Spread Spectrum	System	356	178	89
21	Aeronautical HF	Apparatus	534	267	133
22	Aeronautical VHF/UHF	Apparatus	178	89	44
23	Maritime	Apparatus	178	89	44
24	Cordless Telephone	Apparatus	41	20	15
25	Citizen Band	Apparatus	41	20	15
26	VSAT (Corporate)	Apparatus	5000	2500	200
27	VSAT (SOHO)	Apparatus	500	250	20
28	Broadband General Bands (1 MHz)	Frequency	1000	1000	100
29	CDMA Bands (10 MHz paired)	Frequency	200,000	200,000	2500
30	3G / UMTS / WCDMA Bands (5 MHz paired)	Frequency	250,000	250,000	2500
31	Mobile Broadband (4G) Bands (1 MHz)	Frequency	60,000	60,000	600
32	Broadband 1800 MHz Band	Frequency	2000	2000	200

## CONDITIONS FOR USE

1. The Authority shall allocate spectrum subject to full payment of the applicable radio (spectrum) licence fees by the Licensee.
2. The spectrum Fees shall be non refundable once the requisite spectrum has been assigned.
3. A radio license issued by the Authority shall be valid for a period of one (1) year and shall be due for renewal on or before the anniversary date of the licence.
4. A licensee shall make a written application for renewal of its radio licence one month before the expiry of its radio licence.
5. The Authority shall renew a spectrum licence subject to technical verification of appropriate spectrum utilization during its licence year.
6. Any radio licence shall automatically be revoked if the licensee does not put the licensed spectrum to use within the licence period.
7. The Authority reserves the right not to renew any radio (spectrum) licence if the licensee is in breach of any licence condition.
8. Failure by a licensee to pay the appropriate spectrum fees constitutes an offence entitling the Authority to withdraw the assigned spectrum from the licensee.
9. The Authority reserves the right to review spectrum fees as and when necessary subject to applicable Regulations.
10. A radio licence issued by the Authority shall confer on the Licensee rights of use as opposed to proprietary rights and the Authority may re allocate or reassign the frequencies in line or in conformity with International standards subject to applicable Regulations.
11. A Spectrum licensee or user shall not use any frequencies other than those assigned or for the purposes assigned to them by the Authority, and any contravention of this provision shall be an offence entitling the Authority to take any appropriate action deemed necessary under the Act or appropriate Regulations.
12. The Authority shall in addition to any other appropriate regulatory sanction under the Act or appropriate Regulations, require any person found guilty of any illegal usage of a radio license or radio frequencies to pay a monetary penalty of 300% of the normal annual applicable fees per frequency unit.

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*Provisional Licence for Vale Logistics Limited*