



# THE MALAWI GOVERNMENT GAZETTE

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GENERAL NOTICE NO. 106

Licence No. CLF/ISP/02



## MALAWI COMMUNICATIONS REGULATORY AUTHORITY

### APPLICATION SERVICE LICENCE

Issued to

**BENGO NET**

#### ISSUED PURSUANT TO SECTION 39 OF THE COMMUNICATIONS ACT 2016

A licence is hereby granted to **BENGO NET** (“the Licensee”) in respect to the provision of Application Services (Internet Services) with effect from the Effective Date.

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.

Notice issued at Blantyre, this 13th day of December 2019.

GODFREY ITAYI  
*Director General*

**1. Commencement and Licence Period****1.1. Period of Licence**

- (a) The commencement date of the Licence shall be the Effective Date as published in the Gazette.  
(b) The Licence shall be valid for a period of Five (5) years from the Effective Date.

**2. Service Coverage**

- 2.1. "The licensee is authorized to provide services in the Republic of Malawi.

**3. Licence Fees**

- 3.1 The Licence fees payable by the Licensee to the Authority shall be as follows:

- (a) An annual Licence fee of Ten Thousand United States Dollars (USD10, 000) payable in advance on or before each anniversary of the Effective Date.  
(b) A levy equal to three point five percent (3.5%) of Gross Annual Revenue for each year payable at the end of each quarter in four instalments. Calculation of the first three (3) quarterly instalments shall be based upon the management accounts for that particular period. A final quarterly payment shall be made based on Gross Annual Revenue within thirty (30) days of issue of the audited accounts. Adjustment shall be made for the first three (3) quarterly payments if the Gross Annual Revenue in the management's accounts differs from the one in the audited accounts.  
(c) All outstanding fees and levies shall be payable within three (3) months from their due dates, failing which they shall attract at the base lending rate until full liquidation thereof.

- 3.2 If, in any year, any licence fees remain outstanding for a period of more than six (6) months from the date such fees became due, the Licence may be revoked.

**4. General Terms and Conditions for an Application Service Licence for the Provision of Data and Internet Services**

The Licensee shall comply with the General Terms and Conditions for an Application Service Licence for the provision of Data and Internet Services published by the Authority in the Government Gazette and as amended from time to time.

**5. Notices**

- 5.1 All communication between the parties made pursuant to this Licence shall be in writing, and shall be sent or transmitted to the following addresses:

In case of the Authority, to:

The Director General

MACRA House

Salmin Armour Road

Private Bag 261

Blantyre

Telephone number: (265) 1 883 611

Facsimile number: (265) 1 883 890

E-mail address: [dg-macra@macra.org.mw](mailto:dg-macra@macra.org.mw)

In case of the Licensee; to

The General Manager

Bengo Net

BW-399, Waller Close Road

Sunnyside, Blantyre

P.O. Box 511488

Limbe

Malawi

Telephone number: (+265) 993 888 803

(+265) 999 116 711

E-mail address: [md@bengol.net](mailto:md@bengol.net),

[ansarul.cse@gmail.com](mailto:ansarul.cse@gmail.com)

Should the Licensee's particulars change, the Licensee shall inform the Authority not later than seven (7) days prior to the change.

Signed on this 13th day of December, 2019.

GODFREY ITAYE

*Director General*

GENERAL NOTICE NO. 107

Licence No. CLF/ISP/NT/03



**MALAWI COMMUNICATIONS REGULATORY AUTHORITY**

**Network Services Licence for Internet Services (Self Provisioning)**

**Issued to**

**SKYBAND CORPORATION LIMITED**

**ISSUED PURSUANT TO SECTION 39 OF THE COMMUNICATIONS ACT 2016**

A licence is hereby granted to **SKYBAND CORPORATION LIMITED** ("the Licensee") in respect to the provision of Network Services Licence (self-provisioning) with effect from the Effective Date.

This Licence is issued subject to the following terms and conditions and to any other terms and conditions time be incorporated herein under the Communications Act and the Regulations thereto

Notice issued at Blantyre, this 13th day of December 2019.

GODFREY ITAYE  
*Director General*

1. **Service Coverage**

The Licensee is authorised to provide the services throughout the Republic of Malawi.

2. **General Terms and Conditions for a Network Service Licence for Internet Services (Self- Provisioning)**

The Licensee shall comply with the General Terms and Conditions for a Network Service Licence for Internet Services (self-provisioning) published by the Authority in the Government Gazette and as amended from time to time.

3. **Notices**

3.1 All communication between the parties made pursuant to this Licence shall be in writing, and shall be sent or transmitted to the following addresses:

In case of the Authority, to:

The Director General

MACRA House

Salmin Armour Road

Private Bag 261

Blantyre

Telephone number: (265) 1 883 611

Facsimile number: (265) 1 883 890

E-mail address: [dg-macra@macra.org.mw](mailto:dg-macra@macra.org.mw)

In case of the Licensee; to

The General Manager

Physical address:

Postal address:

Telephone number:

Facsimile number:

E-mail address:

Should the Licensee's particulars change, the Licensee shall inform the Authority not later than seven (7) days prior to the change.

Signed on this 13th day of December, 2019.

GODFREY ITAYE

*Director General*

GENERAL NOTICE NO. 108

Reference:

Licence No. P/DCCSL/2019/02/VIP

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



**MALAWI COMMUNICATIONS REGULATORY AUTHORITY**  
**DOMESTIC COMMERCIAL COURIER SERVICES LICENCE**

This is to certify that

**VIP COURIERS**

of: P.O. Box 32285  
 Chichiri,  
 Blantyre.

is licensed to provide International Commercial Courier Services under Part XV of the Communications Act, 2016, for a period of FIVE (5) Years commencing on 1<sup>ST</sup> December, 2019 and ending on 31<sup>ST</sup> December, 2024 subject to the Licensee's compliance with all Terms and Conditions of the Licence and the Communications Act. The licence fees payable by the Licensee to MACRA shall be as follows—

An Annual Licence Fee of the Malawi Kwacha equivalent of Five Thousand United States of America Dollars (US\$ 5,000.00) payable before the Gazetting of the Licence and on each and every anniversary of the Licence.

A levy equal to one and half percent (1 ½ %) of the Licensees' Net Operating Revenue for each year payable in advance in four equal instalments. Calculation of the first three quarterly instalments shall be based on the management accounts of the Licensee for the financial year. A final quarterly payment shall be made based on Net Operating Revenue within 30 days of issue of audited accounts. Adjustments shall be made for the first three quarterly payments if the Net Operating Revenue in the budget differs from the audited accounts.

Nothing in this Licence shall be taken as discharging or exempting the Licensee from the obligation to comply with any other law applicable to its business.

REV. ALEX MAULANA  
 Board Chairperson

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

*Issued without alteration or erasure, and void if altered or erased*

**Domestic Commercial Courier Services Licence for VIP**

**1. Interpretation and Definitions**

- 1.1 This document constitutes the Licence in its entirety;
- 1.2 The Schedules hereto shall form part of this Licence;
- 1.3 Terms used but not expressly defined in this Licence shall have the meaning given in the Act;
- 1.4 All technical terminology used in this Licence shall have the same meaning ascribed by the Universal Postal Union (UPU);
- 1.5 A provision conferring rights and obligations shall, notwithstanding that it is only in the interpretation Clause, be given effect if it were a substantive Clause in the Licence;
- 1.6 Words importing the singular shall include the plural and vice versa; words denoting persons shall include corporate bodies and unincorporated associations of persons and vice versa
- 1.7 Unless the subject matter or context otherwise requires, the following terms and conditions shall have the following meanings:
- (a) “**Act**” means the Communications Act 2016.
- (b) “**Authority**” means the Malawi Communications Regulatory Authority (MACRA), established under Section 4 of the Act.
- (c) “**Cease and desist order**” means an order made by the Authority requiring a licensee to stop a breach.
- (d) “**Commercial Courier Article**” means any letter, packet, small packet, or any other article whatsoever packaged in a Commercial Courier package or in any other packaging bearing a clear Commercial Courier Label, which has been collected by, or delivered to the Licensee for onward transmission through a Commercial Courier Service, but excludes any article which by the Act or any lawful regulations is prohibited from being accepted for transmission through post.
- (e) “**Commercial Courier Label**” means a piece of paper, affixed onto a Commercial Courier package or commercial courier article, bearing the Licensee’s logo, the name of the courier service, the weight, the charge, time of posting, the sender’s and the recipient’s address and a unique identification number for tracking and tracing purposes.
- (f) “**Commercial Courier service**” means a service for the conveyance, for reward, of Commercial Courier Articles in respect of which an undertaking is given to deliver the article to a specified destination within a specified time.
- (g) “**Compliance order**” means an order made by the Authority requiring a licensee to comply with the Communications Act, Regulations, the licence or any other order made by the Authority.
- (h) “**Domestic Commercial Courier Service**” means a courier service performed in respect of commercial courier articles accepted, conveyed and delivered within Malawi.
- (i) “**Effective Date**” means the date when the Licence comes into force, namely when published in the *Gazette*.
- (j) “**International Commercial Courier Service**” means any commercial courier service performed in respect of courier articles posted within Malawi to an address outside Malawi, or received from a place outside Malawi for delivery within Malawi.
- (k) “**Licensee**” means entity that has been awarded a licence to operate courier business.
- (l) “**Net Operating Revenue**” means the total revenue of the Licensee, less discounts given, Value-Added Tax and other taxes, derived from the provision of commercial courier services, net of any terminal dues paid or payable to courier operators. For the avoidance of doubt, ‘net operating revenue’ does not include revenue from the sale of assets.
- (m) “**Successor Company**” means any successor company formed in terms of the Companies Act of the Laws of Malawi or any subsidiary of a successor company that takes on the burdens of the Licensee through merger, acquisition, or other means of succession.

- (n) "Tariff" means fees and charges that may be charged by the Licensee in respect of the provision of licensed services.
- (o) "Universal Service Fund" means a fund set up to cover a policy of the Government to make ICT services available throughout the country including rural and underserved areas at affordable prices.

## 2. Applicable Law

- 2.1 This licence shall be governed by the laws of Malawi.

## 3. Validity, Effective Term and Renewal

- 3.1 This Licence shall be valid for a period of Five (5) years from the Effective date unless revoked in terms of the provisions herein.
- 3.2 This Licence may be renewed at Authority's discretion for such number of years as may be agreed between the parties at the expiry of the licence term.
- 3.3 The application for renewal shall be made in writing not later than twelve (12) calendar months before expiration of the term of the licence.
- 3.4 The Authority shall stipulate the fee payable in respect of any renewal of the licence.
- 3.5 The Licensee shall give notice of the intention to terminate the licence at least 12 months before the date of the proposed termination date.

## 4. Scope of the licence

- 4.1 The Licensee is authorised by this licence to provide International Commercial Courier Services, to convey, deliver; and perform all the incidental services of receiving, collecting, sending, despatching and delivering Commercial Courier articles for reward; and in respect of which an undertaking is given to deliver the article to a specified destination within a specified time.
- 4.2 The Licensee shall lodge with the Authority commercial courier label; registered trademark or logo, which will be prominently displayed on all correspondence and at all official premises of the Licensee.

## 5. Operating Environment

- 5.1 The Licensee shall operate from permanent premises, which will have the following basic amenities and facilities—
- (a) well-built public counters;
  - (b) rooms or lobbies and amenities for the comfort of customers waiting to be served;
  - (c) secure and lockable units or strong-rooms, lockers, cages, drawers, cupboards, safes for storing articles awaiting delivery, processing or forwarding;
  - (d) scales, in good working order for weighing courier articles for purposes of determining the tariff; and
  - (e) adequate transport arrangements for the conveyance of Commercial Courier articles.
- 5.2 The Licensee shall ensure that the scales referred to in clause 5.1 (d) are assized in terms of the Weights and Measures (assize) Regulations, Cap 48:04 of the Laws of Malawi.
- 5.3 The Licensee shall obtain and provide the Authority with proof that there is adequate insurance cover for the Commercial Courier articles conveyed.
- 5.4 The Licensee shall provide adequate security arrangements and measures during the transmission of the courier articles.
- 5.5 The Licensee shall dispose of all undeliverable Commercial Courier articles according to the Act and Regulations made under the Act.
- 5.6 In accepting Commercial Courier articles for conveyance, the Licensee shall comply with the law with regard to the transmission of prohibited articles.



## 6. Agents, Sub-contractors and Service Providers

- 6.1 The Licensee may offer Commercial Courier Services under this licence through an agent, sub-contractor or service provider. Provided that before entering into an arrangement or contract with any agent, sub-contractor or service provider the Licensee shall seek the prior approval from the Authority.
- 6.2 The Authority may in giving its approval under Clause 6.1 above, impose such terms and conditions it deems appropriate. Such terms and conditions may be changed by the Authority any time with written notice to the Licensee.
- 6.3 The Licensee shall ensure that any arrangement or contract entered with an agent, sub-contractor or service provider does not affect the Licensee's ability to comply with the terms and conditions of this licence.
- 6.4 The Licensee shall ensure that its agent, sub-contractor or service provider complies with the terms and conditions of this licence.
- 6.5 The Licensee shall be responsible for the acts or omissions of its agent, sub-contractor or service provider provided that the liability of the licensee shall be limited to acts or omissions which constitute contravention of the terms and conditions of this licence;
- 6.6 The Licensee shall, upon becoming aware of an act or omission by its agent, sub-contractor or service provider amounting to a breach of any term or condition of this licence, the Licensee shall act as expeditiously as is reasonably possible to remedy the breach.
- 6.7 The Authority shall, upon becoming aware of any breach of any term or condition of this licence, by an agent, sub-contractor or service provider of the Licensee notify the Licensee in writing to correct such a breach.
- 6.8 The failure by the Authority to notify the Licensee of a breach by the Licensee's agents, sub-contractors or service provider contravention shall not in any way negate or limit the Authority's rights in respect of such contravention under this licence or otherwise.

## 7. Licence Fees

- 7.1 The licence fees payable by the Licensee to the Authority shall be as follows—
  - (a) A basic Licence Fee of the Malawi Kwacha equivalent of (US\$ 5,000.00) Fifteen Thousand United States of America Dollars on or before the Effective Date and on each and every anniversary of the licence.
  - (b) An annual levy equal to one and half percent (1½ %) of the Licensee's net operating revenue for each year payable in four (4) equal instalments. Calculation of the first three (3) quarterly instalments shall be based on the management accounts of the Licensee for the financial year. A final quarterly payment shall be made based on net operating revenue within thirty (30) days of issue of audited accounts. Adjustments shall be made for the first three (3) quarterly payments if the net operating revenue in the budget differs from the one in the audited accounts.
- 7.2 The Authority may exempt the Licensee from paying the basic licence fee or annual levy or both in any particular year.

## 8. Universal Service Fund

- 8.1 The Licensee shall from time to time consult with the Authority on the actions to be taken to achieve the objectives of the National Communications ICT Policy.
- 8.2 The Licensee shall be required to contribute to the Universal Service Fund (USF) when so requested by the Authority in accordance with the provisions of the National Communications Policy and Universal Service Regulations provided that the Licensee shall not be required to contribute in any year in which no other Courier Operator providing International Courier Services so contributes.

## 9. Service standards

### 9.1 Customer service

- 9.1.1 The Licensee shall maintain adequate trained personnel to receive and respond promptly to complaints from customers.
- 9.1.2 The Licensee shall take all commercially reasonable measures to promptly remedy and avoid the recurrence of the cause of all customer complaints that relate to the quality, availability or delivery of its service.
- 9.1.3 The Licensee shall take all commercially reasonable actions and insurance necessary to guarantee that amounts due to customers are paid in full if this operating licence is revoked.
- 9.1.4 The Licensee shall establish efficient procedures that take account of the predominant local languages so that customers can receive assistance from its personnel during normal business hours. These procedures shall be included in the Licensee's standard terms and conditions for the provision of Courier services.
- 9.1.5 These procedures shall include without limitation—
- (a) Procedures for dealing with customer complaints
  - (b) Customers' right of appeal to the Authority.
- 9.1.6 The Licensee shall submit to the Authority for approval a Master Customer Contract containing Service Level Agreements and standard terms and conditions for the provision of Courier Services within one month from the Gazetting of this licence.
- 9.1.7 The Licensee may amend the Master Customer Contract with the prior approval of the Authority.
- 9.1.8 An application for approval of an amendment to a Master Customer Contract shall be made by the Licensee to the Authority in writing. If the Authority fails to respond in writing to the Licensee's application for the amendment of the Master Customer Contract within thirty (30) days from the date of receipt of the application, the amendment shall be deemed to have been approved.
- 9.1.9 The Licensee shall display a copy of the approved Master Customer Contract shall be displayed at its principal offices and any branch offices open to the public.
- 9.1.10 The Licensee shall make available a copy of the Master Customer Contract to any interested party upon request.

### 9.2 Customer privacy

- 9.2.1 The Licensee shall use all reasonable endeavours to ensure that information obtained or received in the provision of the service by itself or its agents, sub-contractors or service providers is kept confidential, that is, not disclosed or made accessible to third parties or used otherwise than for the purposes or furtherance of the provision of the service.
- 9.2.2 The Licensee shall not disclose information of a customer except with the consent of the customer, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorised by or under the law.

### 9.3 Services for Physically Challenged Persons

- 9.3.1 The Licensee shall provide facilities at its premises giving due regard to the requirements of the physically challenged members of the society. In particular, counters and access to service facilities shall be accessible to physically challenged persons.

### 9.4 Quality of service targets

- 9.4.1 The Licensee shall meet the service targets and standard of performance set out in schedule 1 and as may be determined by the Authority from time to time.

- 9.4.2 The Licensee shall, within fourteen (14) days after every quarter of the year submit to the Authority a report providing details of the performance of the Licensee during the previous quarter.
- 9.4.3 In the event of poor performance for the period in question, the Authority shall impose punitive measures in line with Schedule 1 of this licence.
- 9.4.4 The Licensee shall, within three months after the end of each financial year, submit to the Authority a report providing details of the performance of the Licensee during the previous financial year against the standards set in this licence.
- 9.4.5 Notwithstanding any punitive measures taken under this clause, the Authority reserves the right to impose any regulatory sanctions deemed necessary for poor performance.

## 10. Tariffs

- 10.1 All tariffs set by the Licensee shall be just and reasonable and shall be cost based.
- 10.2 The Licensee shall notify the Authority of proposed new tariff rates at least fourteen (14) days before the proposed tariffs become effective.
- 10.3 The proposal submitted by the Licensee to the Authority shall set out—  
(a) details of the nature and amount of charges payable for the licensed Services  
(b) the method of determining the charges.
- 10.4 The format of tariff proposals shall be as per Tariff Guidelines or any official communication provided by the Authority.
- 10.5 The Licensee shall publish any new tariff adjustments in the press at least seven (7) days before they come into effect.
- 10.6 The Authority shall have the power to order the discontinuance of any tariff which it determines to be unjust and unreasonable and not cost based.
- 10.7 The Licensee shall make available to its customers the tariffs for Commercial Courier articles and services offered to various destinations and at various weight steps for the benefit of the public, at all business premises.

## 11. Roll out

- 11.1 The Licensee shall begin to offer commercial courier services not later than three (3) months from the effective date of this licence. Failure to comply shall be considered material breach of the terms and conditions of the licence.
- 11.2 The Licensee shall establish and maintain service coverage throughout Malawi as agreed with the Authority. Notwithstanding the foregoing the licensee shall maintain continuously a physical presence in the four (4) main cities of Malawi namely, Blantyre, Zomba, Lilongwe and Mzuzu.
- 11.3 The Licensee shall within 3 months from the effective date submit to the Authority a roll out plan for approval by the Authority which when approved shall be set in Schedule 2 of this Licence.

## 12. Provision of information

### 12.1 Confidentiality

- 12.1.1 All information furnished by the Licensee to Authority and marked "confidential" shall be held in confidence by the Authority. Such information may be released by the Authority to the extent that its release is required by the law.

- 12.1.2 This requirement of confidentiality shall continue after the termination or expiry of this licence or revocation of the licence.

## 12.2 Regulatory Reporting

- 12.2.1 The Licensee shall submit written Reports such as annual financial statements including budgets for the coming financial year, Quality of Service returns and any other documents or reports in a format determined by the Authority, at least sixty (60) days after the anniversary date of the licence, and on such other occasions as the Authority may require.

## 12.3 Preparation of accounts

- 12.3.1 The Licensee shall at all times keep at its principal place of business within Malawi, all proper books of accounts accurate and up to date in accordance with Internationally Generally Accepted Accounting Principles (GAAP) and good business practices. All financial information submitted by the Licensee to the Authority for any purpose shall be prepared and presented in accordance with GAAP or as the Authority shall direct.

## 13. Inspections

### 13.1 Access to inspection

- 13.1.1 The Licensee shall grant unhindered access to all its facilities, installations, office records, any equipment associated with its Commercial Courier service in Malawi to all authorized inspectors or Monitors of the Authority during normal working hours or, following prior written notice, for access after working hours, for purposes of verifying the performance by the Licensee of its obligations under this licence.

- 13.1.2 The Licensee may provide a representative to be present at any such inspection.

- 13.1.3 The mere fact that the Licensee has not provided a representative as provided in clause 13.1.2 above will not invalidate any findings of the Authority's inspectors or monitors.

### 13.2 Monitoring of service provision

- 13.2.1 The Authority may monitor, inspect and test the service or any equipment associated with the Licensee's Commercial Courier service in Malawi without prior notice to the Licensee where there are reasonable grounds to believe that prior notification to the Licensee will prejudice the Authority's inspectors in the exercise of their duty.

## 14. General conditions

### 14.1 Ownership

- 14.1.1 The Licensee must be incorporated in Malawi. The Licensee shall ensure that foreign ownership in the Licensee is in accordance to the Laws of Malawi.

- 14.1.2 The Licensee shall seek approval from the Authority before effecting any change in its shareholding structure.

### 14.2 Transfer of licence

- 14.2.1 The licence shall not be assigned or otherwise transferred or pledged without the written consent or approval of the Authority.

### 14.3 Amendment

- 14.3.1 Any amendment to the licence shall be in accordance with the Act.

- 14.3.2 No amendment shall be of any force or effect, unless reduced to writing and signed by the Authority.

**14.4 Penalties**

- 14.4.1 The Authority shall reserve the right to impose any regulatory sanction deemed appropriate for breach of any licence terms or conditions.
- 14.4.2 The regulatory sanctions stipulated in 14.4.1 above may include—
- (a) Impose such fines which it sees fit and are proportional to the breach;
  - (b) Compensation;
  - (c) Warnings;
  - (d) Suspension;
  - (e) Cease or desist order;
  - (f) Compliance order;
  - (g) Revocation; or
  - (h) Any other sanction deemed appropriate by the Authority.
- 14.4.3 Notwithstanding Clause 14.4.2 above the Authority shall impose specific penalties and fines as set out in Schedule 3 of this licence

**14.5 Suspension or Revocation**

- 14.5.1 The Authority may suspend or revoke this license on any of the following grounds—
- (a) if the Licensee is in substantial breach of any term or condition of this license;
  - (b) if the Licensee fails to pay outstanding license fees within a period of 12 (twelve) months from the date the fees became due and payable;
  - (c) if the Licensee has been declared insolvent;
  - (d) if the Licensee takes steps to deregister itself or is deregistered; or
  - (e) if the licensee agrees in writing on cancellation of the license.
  - (f) if the Licensee has ceased to provide the services specified in the licence.

**14.6 Exercise of powers**

- 14.6.1 In exercising any powers granted to the Authority in terms of this licence, the Authority shall—
- (a) act reasonably having regard to all surrounding circumstances;
  - (b) prior to exercising any power, afford the Licensee every reasonable opportunity to make representations to the Authority in respect of all relevant issues;
  - (c) at the request of the Licensee, furnish written reasons for any decisions made.

**14.7 Force majeure**

- 14.7.1 Any failure by the Licensee to comply with any obligation, terms or conditions of the licence shall be excused to the extent that it is caused by an event which is beyond the control of the Licensee, including, but not limited to extreme weather conditions, fire, war or civil strife or any other cause beyond the reasonable control of the Licensee.
- 14.7.2 The Licensee shall use reasonable endeavours to minimise the impact on its operations of any event of this nature and to remedy, if possible, the failure. The Licensee shall keep the Authority informed of any problems that may be encountered, their consequences on its operations and the steps it is taking to address the problems.

**14.8 Liability**

- 14.8.1 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 any third party as a result of or in relation to the activities of the Licensee, its service providers, servants, or agents, in connection with the provision of the service

#### 14.9 Fair trading

- 14.9.1 The Licensee shall not show undue preference to, or exercise undue discrimination against, particular persons or persons of any class or description in respect of the provision of commercial courier services under this licence.
- 14.9.2 The Licensee may be deemed to have shown undue preference or undue discrimination as described in clause 13.9.1 if the Authority determines that it unfairly favours to a material extent any business carried on by it so as to place at a significant competitive disadvantage persons lawfully competing with that business.
- 14.9.3 The Licensee will not alone or together with others, engage in or continue or knowingly acquiesce in any anti-competitive practices and, in particular, the Licensee shall—
- (a) not engage in any cross-subsidization;
  - (b) not engage in the abuse of its dominant position, if any;
  - (c) not enter into any agreements or undertakings with any person, including any supplier of services that compete with the service, which have as their objective or effect the fixing of prices or any other restraint on competition;
  - (d) not engage in any anti-competitive tied or linked sales practices, provided that the Licensee may bundle services so long as the bundled services are also available separately;
  - (e) not use information obtained from competitors if the object or effect of such use is anti-competitive.

#### 15. Compensation and Safety Measures

- 15.1 The Licensee shall be responsible for all commercial courier articles entrusted to it and shall pay compensation as may be appropriate to customers for losing, misplacing or failing to guarantee the integrity of any commercial courier article.
- 15.2 The Licensee shall in respect of all its systems, tools, equipment and installations, possessed, operated, maintained or used under this licence, take all proper and adequate safety measures to safeguard life of staff and property.
- 15.3 The Licensee shall not accept for transmission any prohibited articles as specified by written laws of the country, international conventions and Postal Regulations.

#### 16. Severability

- 16.1 Should any provision of this licence be invalid or unenforceable, the same shall be severed from the licence and the remaining provisions shall remain valid and enforceable.

#### 17. Notices

- 17.1 Any notice required or permitted under the terms and conditions of this Licensee shall be in writing in the English language and shall be sufficiently served if delivered by hand or sent by registered mail as follows;

- (a) In the case of MACRA, to—

The Director General,  
MACRA,  
Private Bag 261,  
Blantyre,  
Malawi.

(b) In the case of the Licensee, to—

The Managing Director,  
VIP Couriers  
P.O. Box 32285,  
Chichiri,  
Blantyre.

#### 18. Arbitration

Any dispute arising out of or in relation to this license shall, if not settled amicably on the written request of either party be referred to arbitration in accordance with the Arbitration Act.

Issued at Blantyre on this 20th day of September 2019.

Signed:REV. ALEX MAULANA

*Chairperson*

Malawi Communications Regulatory Authority (MACRA)

GODFREY ITAYE

*Director General*

Malawi Communications Regulatory Authority (MACRA)

#### Schedule 1: Quality of Service Targets

##### Domestic Courier Transmission Targets

Service Category	Target Year 1	Target Year 2	Target Year 3
Same Day Delivery	90%	95%	98%
Overnight Service-Intercity (24 HOURS)	90%	95%	98%

##### Service Requirements

	Compulsory	Optional
1. Track and Trace		
2. Door-to-Door Delivery		
3. Pick-up services		
4. Record of Delivery		
5. Service during Public Holidays and Weekends		
6. Five-day week service (Mon-Fri)		
7. Display of hours of Business		
8. Display of current Tariffs		
9. Commercial Courier Label		

**Glossary of Terms:**

- Same-day service:** Refers to a service where the delivery of commercial courier articles accepted occurs during the day of such acceptance.
- Overnight service:** Refers to a service where commercial courier articles accepted are delivered on or before close of business the following day.
- Track and Trace:** Refers to system that allows for the ascertaining the exact location of Courier articles along the transmission course. It relies on a unique identification number that is allocated to the article at the time of acceptance, conveyance or delivery.
- Door-to-Door:** Refers to the delivery of courier articles to a physical address indicated on the article or otherwise advised by the addressee.
- Record of Delivery:** Refers to any written document, delivery note, consignment note, commercial courier label or equivalent showing delivery or attempted delivery details
- Pick-up Service:** Refers to the activity where a Licensee, his Agents, Strategic Alliances, or Sub-contractors provide collection services of the customers' courier items, from the customer's premises or sites designated or indicated by the customer for such collection to be effected

**Schedule 2: Roll-out Plan**

(The schedule shall provide the Licensee's plans in providing coverage and location of offices in the main cities of the country)



## Schedule 3: Penalties and Fines

1. Domestic Commercial Courier Services License	US Dollar US\$
(a) Implementing tariffs without notifying the Authority	600
(b) Failure to meet roll out targets per service area	2150
(c) Failure to meet quality of service standards	1,000
(d) Failure to comply with customer service provisions	1,000
(e) Operating without assized scales per station	600
(f) Implementing unpublished tariffs	175
(g) Failure to dispose undeliverable articles	175
(h) Not affixing commercial courier label on article	600
(i) Failure to display tariffs and services offered at all business places	600
(j) Any other offence not covered above shall attract a maximum penalty of	2,000

GENERAL NOTICE NO.109



## MALAWI COMMUNICATIONS REGULATORY AUTHORITY

### GENERAL CONDITIONS FOR A CONTENT SERVICE LICENCE

#### 1. Application

These General Terms and Conditions for a Content Service Licence (hereinafter referred to as the "General Terms and Conditions") shall apply to all licensees providing Content Services

#### 2. Definitions

2.1. In these General Terms and Conditions unless the context otherwise requires, the terms used will have the same meaning as set out in the Communications Act, Cap 68:01 and—

(a) any word or phrase importing any one gender shall include all other genders;

(b) any word or phrase importing the singular shall include the plural;

(c) words and phrases shall have the meanings assigned herein—

"Act" means the Communications Act Cap 68:01 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, established under section 3 of the Act;

"Application Services" means the provision of electronic communication services to end users using licensed network services but does not include content services;

"Content Services" means broadcasting services consisting of electronic media including sound, data, text or images for general reception by the public;

"Constitution" means the Constitution of the Republic of Malawi;

"Current Affairs" means contemporary issues and events of national importance;

"Delay Machine" delay means a device that enables a licensee to postpone, block or obliterate, obscene, unwanted or offensive content;

"Drama" means story-telling by means of play-acting using human characters and other props, through the medium of audio (sound), conveyed by means of sound broadcasting signals and equipment;

"Licence" means a Licence authorizing the Licensee to provide content services

"Licence year" means every twelve months period commencing initially on the Effective Date, and thereafter on each and every anniversary of the Effective Date;

"Licensee" means any person holding a Content Services licence;

"Local content" means the total of all television or radio programmes that contain Malawian material;

"Effective date" means the date on which a Content Service Licence is published in the Gazette for the purpose of bringing the Licence into effect or on the date stipulated in the Gazette that the Licence shall come into effect;

"Studio equipment" means all equipment that is found in a studio and used for broadcasting purposes

"Subscriber" means any person who subscribes to the Licensee in order to access content services.

"Subscription broadcasting service" means broadcasting service which transmit programmes by satellite or terrestrial or any other means whether by means of encoded or unencoded signals and is made available to

persons on payment of a subscription fee;

“News” means reports on events and occurrences of the day covering international and local matters;

“Ordinary broadcasting hour” means any hour falling between 09h00 and 15h00 on any one day, and between 22h00 of the same day and 06h00 the next day;

“On-air” means a continuity broadcast in a studio and live from an outside broadcast facility;

“Station identification jingle” means an electronically recorded jingle in which the station or Licensee is identified on air;

“Republic” means the Republic of Malawi as constituted under Chapter 1 of the Constitution;

### 3. Licence Principles

3.1 A Content Service Licence shall be issued by the Authority subject to and in accordance with the following principles —

- (a) the protection of the best interests of consumers and other users of broadcasting content services;
- (b) promotion of open access to information by means of broadcasting content services;
- (c) promotion of efficiency within broadcasting content service of the Licensee;
- (d) encouraging the introduction of new and innovative programmes to enhance the needs, aspirations and best interests of the people of Malawi;
- (e) fostering the development of broadcasting content services in accordance with recognized national and international standards;
- (f) informing and educating the masses on religious, development, political, social and economic issues; and
- (g) entertaining the public in accordance with the national and cultural values

### 4. Protection of Constitutional Rights and Freedoms

4.1. The Licensee shall uphold and respect the constitutional rights, freedoms and privileges enshrined in the Constitution. Without derogating from the generality of the foregoing, the Licensee shall function without any political bias and independently of any person or body of persons, but shall in so doing respect citizens' and the community's rights, among others, to—

- (a) privacy;
- (b) economic activity;
- (c) economic, social, cultural and political development;
- (d) freedom of association;
- (e) freedom of conscience and opinion;
- (g) freedom of expression;
- (h) access to information;
- (i) administrative justice; and
- (j) equality and equity.

### 5. Scope of a Content Service Licence

5.1. A Content Service Licence shall be issued subject to the Act and any Regulations made thereunder.

5.2. For the purpose of providing the Services under the Licence, the Licensee shall be authorized:

- (a) to provide content Services ; and
- (b) to do all other things necessary or requisite to the provision of content services:

5.3. The Licence shall be valid in the Republic of Malawi.

### 6. Station Identification

6.1. A Licensee shall ensure that its radio station identifies itself on-air at intervals of not more than twenty (20) minutes or at a programme junction, whichever is convenient, provided that the station is not obliged to interrupt its programmes. For this purpose, it shall be permissible for the Licensee to use real-time speech or pre-recorded station identification jingles, as the case may be.

6.2. The Licensee may not alter the name of the Station without notification to the Authority in accordance with such procedures as may be determined by the Authority from time to time.

#### 7. Rights and Obligations

7.1. A Licensee shall provide content services in accordance with the Act and applicable Regulations.

7.2. Without prejudice to clause 7.1, the Licensee shall be entitled to—

(a) establish studios where applicable; or

(b) in the case of Television content services provide an interface to a licensed network service operator.

7.3. In providing the services under the Licence, the Licensee shall—

(a) protect the best interests of the community, consumers and other users of content services;

(b) promote open access to information;

(c) encourage introduction of new and innovative content services to enhance the needs, aspirations and best interests of the people of Malawi;

(d) foster the development of content provision service in accordance with recognised national and international standards;

(e) inform and educate the masses on issues of national importance including religious, academic, development, political, social and economic issues; and

(f) entertain the public in accordance with the national and cultural values.

7.4. Where the licensee provides subscription based services, the Licensee shall ensure that it develops and maintains Master Service Contracts which shall include service level agreements for its services.

#### 8. Universal Service (US) Obligations

8.1. The Licensee shall contribute to the Universal Service Fund (USF) through levies payable under the Licence and in accordance with the provisions of the Universal Service (US) Regulations.

8.2. The Authority shall from time to time determine the percentage of the levies payable to the Universal Service Fund from the levies collected under the Licence.

#### 9. Hours of broadcast

9.1. The Licensee may provide its Services up to twenty four hour a day but not less than eighteen (18) hours a day.

9.2. The Licensee shall notify the Authority of any service interruption within two (2) hours of becoming aware of such interruption and shall take reasonable steps to ensure resumption of the Service within the shortest time possible.

9.3. Notwithstanding the provisions of sub-clauses 9.1 and 9.2, the Licensee may, on good cause shown, for example for the purposes of carrying out maintenance, and subject to the prior written authorization from the Authority, temporarily suspend the provision of the Service subject to such terms and conditions as the Authority may reasonably impose.

#### 10. Programming

10.1. The Licensee shall ensure that at least 60 percent of its programming is comprised of local content.

#### 11. Accounting Requirements

11.1. The Licensee shall within three (3) months of the end of each financial year either—

(a) provide the Authority with annual financial statements audited in a manner consistent with internationally recognized standards and certified by a qualified independent auditor; or

(b) provide the Authority with a written statement of the reasons the audited financial statements cannot be provided within that period and agree with the Authority a date for their provision, which date shall not be more than six (6) months after the end of the financial year to which the accounts relate.

11.2. The Licensee shall maintain management accounts in a manner specified by the Authority.

#### 12. Provision of Information

12.1. 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.

12.2. The Licensee shall furnish the Authority with records, audited financial statements, management accounts, estimates ICT indicators, reports, returns, 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.

12.3. 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.

12.4. The Authority may inspect files, records, accounts 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.

12.5. The Licensee shall bear the cost of any expenses it incurs in ensuring compliance with record keeping and provision of information.

### 13. Compliance

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

### 14. Technical Standards

14.1. In the provision of its content services, the Licensee shall comply with technical standards prescribed by the Authority from time to time.

14.2. The Licensee shall ensure that its content service equipment conforms to Schedule 1.

### 15. Type Approval

15.1 Subject to applicable Regulations, the Licensee shall submit to the Authority for type approval any content service equipment to be used for connection or access to the network services licensee prior to its installation.

15.2. Any submissions made to the Authority by the Licensee pursuant to this clause shall be made in the form and manner specified by the Authority.

15.3. The Licensee shall from time to time consult with the Authority on arrangements for testing and type approval of its content service equipment.

### 16. Access to Network Service Operators

16.1. The Licensee shall enter into agreement with Network Service Operators for access to its network services for the provision of services under this licence.

16.2. The Licensee shall notify the Authority of any Network Services Access Agreement it has entered into and file a copy of the agreement with the Authority within fifteen (15) days from the conclusion of the Agreement.

16.3. Where a dispute arises between any parties to the agreement under clause 18.1, either party may request the Authority to make a determination.

16.4. The Authority shall make a determination or resolution on a dispute submitted to it 18.3 within sixty (60) days from the date of submission.

### 17. Consumer Protection

17.1. The Licensee shall ensure that Consumer Rights applicable to content services consumers are respected in the provision of services under this Licence.

17.2. The Licensee shall comply with any Consumer Protection Regulations made under the Act.

17.3. The Licensee shall provide clear and understandable information to consumers .

17.4. The licensee shall notify consumers about the availability of complaint procedures and they have in place systems for registering and handling complaints.

17.5. Where applicable, the Licensee shall submit to the Authority for approval Master Customer Contract with Service Level Agreements (SLA) containing the standard terms and conditions for the provision of services under this Licence.

17.6. The Master Customer Contract stipulated in clause 17.5 shall include—

(a) consumer rights

(b) the services offered and covered by the terms of the agreement;

(c) the conditions referring to suspension or interruption of the service in case of non-payment by the customer;

(d) the compensation or refund arrangements for the consumers which apply if the agreed service levels are not met and, if none are applicable, a statement to that effect;

- (e) information on service quality levels offered;
- (f) procedure for settling disputes with consumers as approved by the Authority; and
- (g) any other reasonable condition deemed necessary by the Authority.

17.7. In exercising its powers under clause 17.5 the Authority may direct the Licensee to amend or alter any term or condition of the Master Customer Contract to ensure compliance with the Act or any Regulations made there under.

17.8. The licensee shall honor all terms and conditions under its Master Customer Contract.

17.9. Where a dispute arises between a consumer and the Licensee on the interpretation of a service agreement that had not been submitted to the Authority for approval prior to the dispute or complaint and the dispute is submitted to the Authority for resolution, the decision of the Authority shall prevail over the provisions in the service agreement.

17.10. The Licensee shall make available to the public any approved Master Customer Contract in any of the following ways—

- (a) filing a copy with the Authority;
- (b) making copies available during regular business hours at its principal offices and any branch offices open to the public;
- (c) by posting a copy on its website; or
- (d) Any other mode specified by the Authority.

17.11. Where applicable, the licensee shall establish and maintain a call centre at all times and Customer Care Centre during working hours.

17.12. The Licensee shall submit to the Authority every quarter or as directed by the Authority a report summarising the number of complaints received from its customers, the nature of the complaint and the steps taken by the Licensee to address those complaints. The report shall be in a manner and format as specified by the Authority

17.13. The Licensee shall provide services under this Licence to the public generally without discrimination.

17.14. Where applicable, the Licensee shall ensure that it offers affordable basic packages for its services to the average local Malawian.

## 18. Notifications to Customers

18.1. Where applicable and subject to applicable Regulations, the Licensee shall give its customers three (3) days notice prior to effecting any changes in its tariffs and seven (7) days notice prior to carrying out planned service outages.

18.2. A licensee shall immediately and without delay notify its customers of any problems affecting thirty (30) percent of the national service area.

18.3. The notices to customers under this clause shall be published in the following manner—

- (a) media; or
- (b) any other mode deemed necessary by the Authority.

## 19. Anti-Competitive Conduct, Unfair Competition and Discrimination

19.1. The Licensee shall not engage in anti-competitive conduct which in the view of the Authority inhibits or impedes fair competition including exploiting a position of dominance such as to unreasonably gain an advantage which impedes, limits, restricts or distorts fair competition.

19.2. The Licensee, on his own or through others, shall not engage in any practice which unfairly restrict or is likely to restrict competition in the industry or which deters or restricts or is likely to deter or restrict new entrants into the market .

19.3. The Licensee shall provide the services to any individual in Malawi including consumers located in the rural and under- served areas without discrimination.

19.4. The Licensee shall not enter into any contract with, merge with or acquire any other entity with the intention or effect of preventing, restricting or distorting competition in the provision of content services.

19.5. The Licensee shall comply with any other laws and Regulations which relate to fair trading or competitive behaviour.

19.6. Where the Authority is satisfied that there are reasonable grounds to believe that the Licensee is, alone or in concert with others, engaged in anti-competitive practices to the disadvantage of users of the Services contrary to the Act and any applicable law, it shall make a determination and impose any applicable regulatory sanctions under this licence.

19.7. In making a determination on anti-competitive practices under clause 19.6, the Authority shall consult the Competition and Fair Trading Commission established under the Competition and Fair Trading Act. (Cap ..... of the Laws of Malawi

**20. Monitoring**

20.1 The Authority shall monitor and enforce compliance by the Licensee with its obligations under the Act, any applicable Regulations and this Licence.

**21. Syndicates And Re-Broadcasts**

21.1. The Licensee shall not syndicate, relay or re-broadcast any programme material from any other source or station without the prior written authorization of the Authority.

**22. Live Broadcasts**

22.1. The Licensee may broadcast live any programme or event provided that such broadcasts are in compliance with the Licence conditions, the Act and any regulations made there under.

22.2. The licensee shall not conduct any live broadcasts without the aid of a Delay Machine.

22.3. The Authority shall restrict live broadcasts if it is in the public interest to do so.

22.4. The Authority shall restrict the Licensee from live broadcasts if the Licensee broadcasts hate speech whether live or recorded.

**23. Entertainment**

23.1 The Licensee shall provide entertainment programmes that meet the needs of its target audiences.

**24. Public Announcements and Service**

24.1 Notwithstanding the Government standing procedures, the Licensee shall, when requested in writing by the Inspector-General of Police, or the Minister responsible for Disaster Preparedness or Office of the President and Cabinet, without charge, broadcast any reasonable and lawful information of immediate or impending grave danger or disaster.

24.2 The Licensee shall, when requested by the Authority, without charge broadcast the information in sub-clause 24.1. above and such other information and particulars at such intervals as the Authority may require.

**25. Records of Broadcast Programmes**

25.1. The Licensee shall keep a record of all broadcast programmes, in a form determined by the Authority from time to time and notified to the Licensee, and in an unedited version.

25.2. The records contemplated in sub-clause 25.1 shall be kept and maintained for a period of not less than forty-five (45) days.

25.3. The Authority reserves the right to request the Licensee to produce any such record or records for any lawful purpose. Provided that this right shall not extend to disclosure of journalistic sources.

**26. Editorial and Programme Policy**

26.1. The Licensee shall develop an Editorial Policy in line with this Licence, the Communications Act and the Laws of Malawi and shall submit it to the Authority within 6 months from the Effective Date.

**27. Election Coverage**

27.1. During any proclaimed election period, the Licensee shall neither be obliged nor be obligated to cover political parties, election candidates or political party electoral issues;

27.2. Notwithstanding the foregoing, if the Licensee opts to cover electoral issues, it shall ensure that all political parties, election candidates and electoral issues are treated equitably.

27.3. In the event that the Licensee opts to proceed as envisaged in clause 27.2 above, it shall ensure that it abides by Schedule 2 hereto.

**28. Public Complaints**

28.1. The Licensee shall, within six (6 months) of the Effective Date or such extended period as the Authority may allow, submit to the Authority for approval its public complaints handling procedures.

28.2. The Licensee shall designate a person or persons of sufficient seniority and competence to deal with any complaints concerning the Licensee's public sound or television broadcasts from any source whatsoever.

- 28.3 The Licensee shall ensure that the Authority is informed in writing of the name or names of such person or persons within the period stipulated in sub-clause 28.1.
- 28.4. The Licensee shall, at least once a day during Peak Hours, broadcast information to the public on how to lodge complaints about its programming. Such broadcasts shall include a notice that members of the public have a right to complain directly to the Authority.
- 28.5. The Licensee shall comply with the Authority's complaint handling and adjudication procedures.
- 28.6. The Licensee shall, within sixty (60) days after the end of the each Licence Year submit to the Authority, a written report on all complaints received and how they were addressed by the Licensee.
- 29. Contracts With Other Broadcasters**
- 29.1. Subject to Clause section 21.1 hereof and any applicable laws and regulations, the Licensee may enter into contracts with any foreign broadcasters in relation to the provision of programme material or the re-broadcast of foreign-sourced programme material. Provided that any such contracts shall be subject to prior consultation with the Authority.
- 29.2. The Licensee shall not enter into any contracts with any person or entity, involving the change to the assignment or allocation of broadcasting frequencies.
- 30. Local Empowerment**
- 30.1. The Licensee shall ensure that at least 50% of its executive management are Malawian nationals and that it shall not employ more than five percent (5%) of foreign nationals for the rest of its staff.
- 30.2. The Licensee shall, during the term of licence, take measures to ensure participation in its management structure by local indigenous Malawians.
- 31. Regulatory Sanctions**
- 31.1. 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.
- 32. Revocation of Licence**
- 32.1. 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 achieve the Technical or Service Standards;
    - (ii) failure to provide performance guarantee;
    - (iii) hiding or providing false information regarding the information necessary to the Authority;
    - (iv) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;
    - (v) conducting in unfair commercial trade practices;
    - (vi) 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
    - (vii) 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.
- 32.2. Before taking any action to impose a punishment on the Licensee under the 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 seven (7) 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

### 33. Licence Amendment

33.1. The Authority may modify or amend any term or condition of the License including these General Terms and Conditions if it is—

(a) in the public interest to do so;

(b) necessary to take into account developments in the industry; or

(c) for any other reason deemed necessary by the Authority.

33.2. Before amending any provision of the 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.

33.3. The Licensee may submit a response to the proposed amendment within thirty (30) days of the notice.

33.4. If the Licensee does not respond within the thirty (30) day period under clause 33.3 the amendment shall take effect on the thirtieth (30<sup>th</sup>) day after the date of notice.

33.5. 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 (15<sup>th</sup>) day after the date of the Authority's second notice.

33.6. Notwithstanding clause 33.1, the Licensee may apply for an amendment of its licence.

33.7. Where the Licensee applies for amendment of its Licence, the Licensee shall ensure that its application for amendment is accompanied by payment of a non-refundable amendment fee as the Authority may determine from time to time.

33.8. The Licensee shall comply with all new terms and conditions issued by the Authority.

### 34. Impact of Revocation of Licence

34.1. 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.

34.2. The revocation of the Licence shall not relieve the Licensee from any obligations accrued and due under any law or this licence.

### 35. Exercise of Powers

35.1. In exercising any powers granted to the Authority in terms of this licence, the Authority shall—

(a) act reasonably having regard to all surrounding circumstances;

(b) prior to exercising any power, afford the Licensee reasonable opportunity to make representations to the Authority in respect of all relevant issues; and

(c) at the request of the Licensee, furnish written reasons for any decision made.

### 36. Force Majeure

36.1. Any failure by the Licensee to comply with any obligation, term or condition of the Licence shall be exempted to the extent that it is caused by an event beyond the control of the Licensee, including extreme weather conditions, fire, war or civil strife.

- 36.2. The Licensee shall use reasonable endeavours to minimize the impact on its operations of any event of this nature and to remedy, if possible, the failure.
- 36.3. The Licensee shall keep the Authority informed of any problems which may be encountered, their consequences on its operations and the steps it is taking to address them.
- 37. Intellectual Property Rights (IPR)**
- 37.1. The licensee shall not violate any Intellectual Property Rights of any person, and shall be held responsible for any violation of these rights under the relevant laws in Malawi.
- 38. Corporate Social Responsibility (CSR)**
- The licensee shall endeavor to carry out corporate social responsibility as part of its obligations under the Licence.
- 39. Liability**
- 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, its service providers, servants, or agents in connection with the provision of content services.
- 40. Performance Assessment**
- The Authority shall in the second (2nd) and fourth (4th) years of this Licence review the performance of the Licensee against the terms and conditions of the Licence
- 41. Renewal**
- 41.1. This Licence may be renewed for such number of years 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.
- 41.2. 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) consumers' satisfaction with the performance of the Licensee during the term of the licence
  - (c) any other factor deemed necessary by the Authority
- 41.3. The Licensee shall apply for renewal in writing not later than twelve (12) calendar months before the expiration of the term of its Licence.
- 41.4. On renewal, the Authority may amend the provisions of this Licence as necessary to take into account any changes in the industry or address any challenges experienced by the Authority and the Licensee.
- 41.5. The Authority shall renew the licence subject to payment of applicable renewal fees and any outstanding fees
- 42. Dispute Resolution**
- 42.1. Any dispute arising out of or in relation to the 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.
- 42.2. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction.
- 43. Miscellaneous**
- 43.1. The Licensee shall comply with all terms and conditions of this Licence, applicable laws and Regulations issued by the Authority from time to time.
- 43.2. 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.
- 43.3. 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.
- 43.4. 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.
- 43.5. 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.
- 43.6. A waiver of any provision of the licence shall not be construed as a waiver of any other provision or the same provision on another occasion.

**44. Applicable law**

44.1. The Licence and its performance shall be subject to any other applicable Laws of land.

Dated the 13th day of December, 2019.

GODFREY ITAYE

*Director General*

## Schedule 1 - Equipment Standards

## Clause 14.2

INDOOR INSPECTION			
ITEM		STANDARD REQUIREMENTS	
1	EQUIPMENT TECHNICAL INFORMATION	Provision of Installation and Service manuals at the site	
		Should be in English, legible and comprehensible	
		Should contain Details of the equipment	
2	ROOM SPACE	Passages and working space	
		Rack clearance from ceiling and walls: 0.5m	
3	CABLING	Cable labeling	
		Tray and trunk fixtures	
		DDF layout, labelling, and neatness	
		Use of correct color coding for power cables	
		Cable entrance Provision	
4	MAINTENANCE TRACK RECORD	Log book to be provided on site. It should contain:	
		Date	
		Activity	
		Name and signature of officer	
		Comments	
5	ROOM ILLUMINATION	Ability to see during maintenance: Standard room (3m by 3m by 4m) should have a 40 watt 4ft fluorescent lamp	
6	POWER SOURCE	Mains specification to be provided: Voltage ( AC/DC)	
		Circuit breakers to labeled	
		Minimum gen set power requirements to be specified	
7	EQUIPMENT IDENTIFICATION	Operator Name	
		Location	
		Direction of link	
		Frequency	
		Make of equipment	
		Power ratings	

8	ROOM CONDITIONS	Cleanliness	
		Painting	
		Leakage due to rain	
		Room should have thermometer. Temperature should not exceed 20 degrees C(68 degrees F)	
		Room security: Locks etc	
9	SAFETY EQUIPMENT	Fire extinguishers	
		Bucket of sand	
		Detectors (Smoke , Temperature Sensors, Humidity, Infrared)	
		First aid kit	
10	MONITORING/SUPERVISORY TOOLS	Voltage	
		Current	
		Fault alarm	
		Temperature	
11	RECEIVER/TRANSMITTER/REPEATER PARAMETERS	Output power	

## Schedule 2

## Clause 27.3

**BROADCASTING CODE OF CONDUCT ON ELECTION COVERAGE**

Licensee :

Station Name :

**1. Interpretation**

Every person interpreting or applying this schedule shall do so in a manner that is consistent with and gives effect to and takes into account the provisions of the Constitution, the electoral laws, the Communications Act and the provisions of this schedule.

**2. Definitions**

In this schedule, provision has been made for a separate list of definitions that may be constantly referred to during election coverage. Any word or expression to which a meaning has been assigned for in the Constitution, Act and Electoral Laws shall bear such meaning unless the context indicates otherwise.

“The Authority” means the Malawi Communications Regulatory Authority established under section 3 of the Communications Act, 1998.

“The Commission” means the Malawi Electoral Commission established by section 75 of the Constitution.

“Election Period” means the period running from the nomination date of candidates to 48 hours before polling date. This definition shall apply mutatis mutandis to “Campaign Period”

“Elections” means any general election, by-election, local government election and referendum.

“Electoral Commission Act” means the Electoral Commission Act, 1998.

“Electoral Laws” means the laws governing the conduct of elections in Malawi that is, the Parliamentary and Presidential Elections Act and the Local Government Elections Act.

“Party” means a political party registered in terms of the Political Parties (Registration and Regulation) Act and, by extension, any independent candidate duly nominated and registered for any elections.

“Party Election Broadcast” means a direct address or message broadcast free of charge on a broadcaster under an arrangement, if any, with either the Commission or the Authority which is intended or calculated to advance the interests of a political party. Provided that the Licensee shall neither be obliged nor be obligated to enter into such arrangement(s).

“Political advertisement” means an advertisement broadcast on a broadcasting station that is intended or calculated to advance the interests of any political party, for which advertisement a broadcaster has received or is to receive, directly or indirectly, any money or other consideration.

“Polling day” means any day appointed either by the State President or the Commission or any other lawful authority, as applicable, in terms of sections 89(1)(i) and 196(1)(a) of the Constitution, sections 36(1)(c) and 48 (1) (b) of the Parliamentary and Presidential Elections Act and Section 28 of the Local Government Elections Act for the holding of a poll.

**3. General provisions in respect of political advertisement or a party election broadcasts.**

3.1 Any party that wishes to have a political advertisement or a party election broadcast transmitted by a broadcaster shall submit that political advertisement or party broadcast to, pre-recorded and presented thereto 48 hours before transmission-

(a) in a form and manner that complies with a broadcaster’s technical, editorial and programme standards as approved by the Authority; and

(b) in completed form, ready for broadcast.

3.2 Every political advertisement or party election broadcast submitted by a party to a broadcaster for transmission shall be prepared by or at the instance or request of, that party.

3.3 A broadcaster shall be entitled to reject and refuse to transmit any political advertisement or party election broadcast if it does not comply with its technical standards or editorial and programme policies, the Constitution, the Electoral Laws, the Act or this schedule.

3.4 A broadcaster shall not in any way alter any political advertisement or party election broadcast, whether before or after transmission.

- 3.5 A broadcaster upon rejection or refusal of any political advertisement or party election broadcast submitted to it by a party for transmission shall, within 48 hours of such rejection or refusal, as the case may be, furnish the party with written reasons for such rejection or refusal, whichever applies, and that party shall be entitled to alter or edit the political advertisement or party election broadcast and re-submit it to a broadcaster at least 48 hours before the intended time for its transmission.
- 3.6 Any party whose party election broadcast has been rejected or refused by the broadcaster TV shall have the right to refer the matter to the Authority.
- 3.7 A party that submits a political advertisement or party election broadcast to the broadcaster for transmission shall ensure that the political advertisement or party election broadcast does not:
- contravene the provisions of the Constitution, the Electoral Laws, the Communications Act and any other applicable laws in addition to this Schedule;
  - contain any material that is calculated, or that, in the ordinary course of things, is likely to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as condoning or lending support to any such act.
- 3.8 Neither a party that submits a political advertisement or a party election broadcast to a broadcaster for transmission, nor any member or official of any such party, shall have any claim against the broadcaster arising from the transmission by it of that political advertisement or party election broadcast.
- 3.9 A broadcaster shall ensure that every party that submits a political advertisement or a party election broadcast to it for transmission shall have indemnified a broadcaster in respect of any claim that a third party may bring against it arising from the transmission of that political advertisement or party election broadcast.
- 3.10 At the end of the campaign period, the broadcaster shall provide detailed information about the electoral process up to the close of the poll and to offer a comprehensive election results at the earliest possible opportunity.
- 4. Specific provisions in respect of Party Election Broadcasts**
- 4.1 A broadcaster shall:
- make available, on daily basis throughout the election broadcast period time-slots of two (2) minutes each for the transmission of election broadcasts and shall do so in accordance with the sequence and timing prescribed by the Commission or the Authority in terms of clause 6 of this schedule. Provided that the Commission or the Authority shall be entitled to prescribe an increased number of daily time-slots for the transmission of election broadcasts;
  - ensure that all party election broadcasts transmitted by it are clearly identified as party election broadcasts.
  - ensure that all party election broadcasts transmitted by it are identified or announced in a similar manner both at their introduction and at their conclusion.
- 4.2 Party election broadcasts transmitted by a broadcaster shall be allocated equitable time duration not exceeding two minutes each.
- 4.3 A broadcaster shall not transmit a party election broadcast immediately before or after another party election broadcast or immediately before or after a political advertisement.
- 4.4 No party shall be obliged to use the air time allocated to it in terms of this Schedule for the transmission of party election broadcasts provided that:
- any air-time allocated to it but not used by the party shall be forfeited;
  - if any party does not wish to use any air time allocated to it, such air time shall not be allocated to another party but shall be used by a bro for the purpose of transmitting conventional programming or material.
- 5. Live Broadcasts**
- 5.1 A broadcaster may provide live broadcasts of those events where the incumbent President is acting purely in his or her capacity as Head of State and any other candidate, presidential or otherwise inclusive of the incumbent state president, as applicable, on terms mutually agreeable between the said candidate and a broadcaster.
- 5.2 Broadcasts of the incumbent president pursuant to clause 5.1 hereinbefore require no balancing by the media. Provided that where presidential and other candidates' broadcasts carry campaign message(s), a broadcaster shall take steps to balance these messages with appropriate coverage of the campaigns of other candidates.
- 5.3 Balanced coverage shall also apply to any broadcast by a Minister (or government official) speaking in an official capacity that contains a clear campaign message on behalf of his or her political party.
- 5.4 In the event of live broadcast unofficial results, the station shall identify them as such at the beginning and the end of the report and also inform the public that the official and final results shall be declared by the Commission.

5.5 The Station shall not start broadcasting unofficial results until the last polling station in the election has closed. In the event that polling spills over to the next day, the station shall have to wait until that centre closes.

**6. Allocation of air-time in respect of party election broadcasts.**

6.1 Air-time in respect of party election broadcasts, if any, shall be allocated by either the Commission or the Authority to the various parties contesting the Parliamentary and Presidential elections, Local Government Elections referenda and any other elections.

6.2 Party election broadcasts shall be recorded at professional studios and a broadcaster shall reserve the right to assess the technical, editorial and programme quality of such recorded material. A broadcaster shall not broadcast any material that fail to meet its required technical, editorial and programme standards.

6.3 Complete party election broadcasts ready for transmission shall be handed over to a broadcaster on completion. A broadcaster shall retain the final transmission copies thereof for evidence in case of any subsequent complaint.

6.4 Upon completion of nominations of electoral candidates, the Commission and the Authority in collaboration with a broadcaster shall determine the sequence in which party election broadcasts are to be transmitted throughout the entire election broadcast period.

**7. Equitable treatment of political parties by the broadcasting licensee during election period.**

7.1 During the official campaign period, broadcaster shall afford reasonable opportunity for the discussion of conflicting views and shall treat all political parties equitably and fairly.

7.2 In the event of any criticism against a political party being levelled in a particular programme without such party being afforded an opportunity to respond thereto in such programme or without the view of such political party being reflected therein, a broadcaster shall be obliged to afford such political party a reasonable opportunity to respond thereto. Provided that if such criticism is broadcast within 48 hours to the polling day, the said response shall also be broadcast within the same 48 hours to the polling day.

7.3 A broadcaster shall transmit news or current affairs programming on elections in an impartial and objective manner.

**8. Complaints**

8.1 A Broadcasting Monitoring and Complaints Committee is hereby established and mandated to receive and investigate complaints about the Licensee from the public and any interested stakeholder(s) during elections.

8.2 The Broadcasting Monitoring and Complaints Committee shall be composed of the Director General of the Authority, the Chairperson of the Media, Civic and Voter Education Committee from the Commission and the Chairperson of the Malawi Law Society.

8.3 The Broadcasting Monitoring and Complaints Committee shall determine its rules and procedures.



GENERAL NOTICE NO. 110



**GENERAL TERMS AND CONDITIONS FOR A NETWORK SERVICES LICENCE FOR INTERNET SERVICES  
(SELF-PROVISIONING)**

**1. Application**

These General Terms and Conditions (hereinafter referred to as the "General Terms and Conditions") shall apply to all licensees with a Network Services Licence for Internet Service (self-provisioning).

**2. Definitions**

2.1. In this licence, unless stated otherwise or the context otherwise requires:-

"Acts" means the Communications Act (Cap 68:01 of the laws of Malawi);

"Application Services" means the provision of electronic communication services to end users using licensed network services but does not include content services;

"Authority" means the Malawi Communications Regulatory Authority;

"Content Services" means broadcasting services consisting of electronic media including sound, data, text or images for general reception by the public;

"Customer" means a Network Service, Application Service and Content Service Licensee who utilizes the Network Services provided by the Licensee;

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

"Facility Services" means any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of network services, but does not include end user terminal equipment;

"Gross Annual Revenue" means the total invoiced revenue of the Licensee derived from the provision of Network Services but shall not include capital expenditure recovery charges or revenue from the sale or rental of assets including terminal equipment;

"interconnection" means the physical and logical connection of two or more electronic communications networks;

"International Gateway Licensee" means an electronic communications operator in the Republic of Malawi who is-

(a) authorized to connect directly to networks in other countries authorized to provide electronic communication services; and

(a) authorized to provide transportation of any communications originating-

(i) in an electronic communication network in Malawi and terminating outside of Malawi; and

(ii) outside Malawi and terminating in any electronic communications network in Malawi;

"License" means the document that grants rights to the Licensee to provide Network Services;

"Licensee" means a holder of Network Services License for Internet Services;

"Network Equipment" means equipment including software and physical devices together with ancillary parts which are required for operating and maintaining an electronic communication network for providing Network Services but shall exclude equipment and devices that fall under a Network Facilities Licence;

"Network Services" means a service consisting of transmission of any form of electronic signals (sound, data, text or images,) used in an electronic communication network but does not include services provided solely to the end user.

### 3. Commencement and Licence Period

#### 3.1. Period of Licence

- (a) The commencement date of the Licence shall be from the effective date as published in the Gazette.
- (b) The Licence shall be valid for a period of ten (10) years from the effective date.

### 4. Scope of Licence

- 4.1. The Licence is issued subject to the Act and any Regulations made there-under.
- 4.2. The Licensee is authorized to operate and maintain an electronic communications network for provision of internet services (self-provisioning).
- 4.3. For the purpose of providing the Network Services under this Licence, the Licensee is authorised:
  - (a) to install, operate and maintain an electronic communication network provided that this does not include such faculties that falls under a Network Facilities Licence.
  - (b) to connect its electronic communications network to other licensees' networks in the Republic of Malawi;
  - (c) to procure, rent, and maintain Network Equipment for use in connection with its Network Services; and
  - (d) to do all other things necessary or requisite to the provision of the Network Services.
- 4.4. The Licensee shall not provide network services to Network Services, Application or Content Service Licensees;
- 4.5. The Licensee may use electronic communication network capacity of other network service Operators.
- 4.6. The Licensee may access the network of any International Gateway Operator. Where the Licensee requires operation of its own international gateway, it shall apply for a separate international gateway licence authorizing such services.
- 4.7. This Licence is valid in the Republic of Malawi.

### 5. Licence Fees

- 5.1. The Licence fees payable by the Licensee to the Authority shall be as follows:
  - (a) An annual Licence fee of US\$20, 000 (Twenty Thousand United States Dollars) payable in advance on or before each anniversary of the Effective Date.
  - (b) Radio Licence in accordance with radio frequency spectrum fees set by the Authority under the Act.
- 5.2. All fees and levies outstanding for a period of more than six (6) months from their due dates shall attract interest at the base lending rate until full liquidation thereof.
- 5.3. The Authority may revoke the licence if, in any year, any licence fees remain outstanding for a period of more than six (6) months from the date such fees became due.

### 6. Accounting Requirements

- 6.1. The Licensee shall within four (4) months of the end of each financial year either:
  - (a) provide the Authority with annual financial statements audited in a manner consistent with internationally recognized standards and certified by a qualified independent auditor; or
  - (b) provide the Authority with a written statement of the reasons the audited financial statements cannot be provided within that period and agree with the Authority a date for their provision, which date shall not be more than six (6) months after the end of the financial year to which the accounts relate.
- 6.2. The Licensee shall maintain management accounts in accordance with generally accepted accounting standards.

### 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, audited financial statements, management accounts, raw technical data, ICT indicators, reports, returns, 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.

- 7.4. The Authority may inspect files, records, accounts 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.
- 7.5. The Licensee shall bear the cost of any expenses it incurs in ensuring compliance with record keeping and provision of information.

#### 8. Compliance

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

#### 9. Performance of Network

The Licensee shall take all reasonable steps to ensure that its network performs in accordance with Schedule 1.

#### 10. Quality of Service Standards

- 10.1. The Licensee shall ensure that its network shall conform to ITU, ETSI, and GSM MoU specifications and any other national and international standards as specified by the Authority as applicable to all public telecommunication networks in the Republic of Malawi.
- 10.2. The Licensee shall ensure that voice and data traffic passes through its network with minimal interference, degradation or loss.
- 10.3. Where the Licensee fails to meet six (6) or more QoS targets with margin failure of 10% or more, the Licensee shall be deemed to have been issued with a first warning for failure to meet such targets for the first time and if the Licensee fails to meet six or more QoS targets a second time it shall be deemed to have been issued with a final warning and any subsequent failure to meet four or more QoS target shall be deemed substantial and continuing breach of this licence entitling the Authority to revoke the licence in accordance with clause 19 of this licence.
- 10.4. The Licensee shall adhere to the following service conditions:
- (a) the provision of a system designed and maintained to provide the Services continuously twenty four (24) hours a day throughout the year;
  - (b) the rectification of all failures and restoration of service within the shortest practicable time; and
  - (c) the use of its best endeavors to minimize down-time for essential maintenance and network upgrade.
- 10.5. The Authority may in consultation with the Licensee, vary, change, amend, modify or revise the QoS targets from time to time and the Licensee shall comply with the new set targets within the time periods stipulated by the Authority.
- 10.6. The Licensee shall submit to the Authority quarterly reports on its compliance with each of the QoS target within 14 days after the end of each quarter, in such form and manner as stipulated by the Authority.
- 10.7. The Licensee shall maintain records regarding its compliance with this clause and the Authority may at any time request the submission of such records.
- 10.8. Without compromising the QoS standards the Licensee shall ensure efficient use of spectrum.
- 10.9. Where there is the possibility of cross border radio interference, the Licensee shall provide support to the Authority in coordination meetings with the affected country.
- 10.10. The Licensee shall without undue delay, and in any case not later than 1 hour, notify the Authority of any significant failure of its network.
- 10.11. The Authority may not impose any penalties for failure to meet QoS Targets set out in Schedule 1 of this Licence as a result of force majeure, provided that the Licensee shall promptly notify the Authority within twelve (12) hours of the facts and circumstances giving rise to such inability to comply and the Licensee shall take any commercially reasonable action necessary to correct any fault or avoid any such circumstances so as to re-establish compliance with QoS targets.
- 10.12. In any circumstances under clause 10.11 above, the Licensee shall notify its customers of the network failure through any other reasonable means possible.
- 10.13. The Authority reserves the right to inspect and independently verify the cause and extent of the failure to comply with the QoS targets.
- 10.14. The Licensee shall make all reasonable endeavors to comply with the applicable recommendations of the ITU and its associated organizations.

#### 11. Application of International Telecommunication Regulations

- 11.1. The Licensee shall comply with any international agreements that have been ratified by the Government of Malawi.
- 11.2. Where any international organization to which a network service operator in the Republic of Malawi wishes to belong and requires that there should be a single signatory per country, the Licensee may be that signatory upon liaising with other interested network service operators provided that the Licensee shall protect and promote the interests of all network service operators in Malawi.
- 11.3. The Licensee shall comply with any Regulations issued by the Authority on traffic routing, accounting rates and settlement procedures for international Voice Telephony Services.

## 12. Spectrum Obligations

- 12.1. The Licensee shall not use any frequency that requires a license without prior assignment by the Authority.
- 12.2. 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.
- 12.3. 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.
- 12.4. The Licensee shall pay for radio frequencies in accordance with a Spectrum Fee Schedule published by the Authority from time to time.
- 12.5. The Licensee shall submit to the Authority its spectrum usage plan for its assigned frequencies within thirty (30) days from the effective date.
- 12.6. The Authority may in consultation with the Licensee re-farm frequencies assigned to the Licensee as required to meet the growth in demand for the Service in accordance with the National Frequency Band Plan and any applicable Regulations.
- 12.7. The Authority reserves the right to make any re-arrangement in the assignment within the band for maintaining the continuity of spectrum allocated or assigned if required in the future and the Licensee shall ensure that its equipment shall have provision to readjust according to such re-arrangement.
- 12.8. The Authority will make re-arrangement stipulated under clause 12.7 for any of the following reasons:
  - (a) to create a level – playing field for all operators;
  - (b) to achieve overall objectives of the Authority under the Act and any other relevant Regulations made there-under; or
  - (c) to comply with international best practices.
- 12.9. The Authority shall at any time inspect and analyze the spectrum efficiency of any assigned frequencies to ensure proper utilization of the frequencies.
- 12.10. 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.
- 12.11. The Authority shall revoke a radio licence assigned to any 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 substantial breach of terms and conditions of a radio licence .

## 13. Type Approval

- 13.1. Subject to applicable Regulations, the Licensee shall submit to the Authority for type approval any network equipment in use and to be used for connection or access. The Licensee shall make the submissions in a form and manner as specified by the Authority.
- 13.2. The Licensee shall accept as conclusive evidence that terminal equipment is type approved by the Authority based on a written statement of compliance issued by the Authority in line with applicable Regulations.
- 13.3. The Licensee shall consult with the Authority from time to time regarding the arrangements for testing and type approval of Terminal Equipment

## 14. Health and Environmental Concerns

- 14.1. 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 their network equipment including transceivers and other locations of installations.

- 14.2. Where applicable, the Licensee shall as much as possible use green technology in its systems, and shall ensure that the technology constitutes at least 20% of its off-grid network equipment including transceivers within five (5) years from the effective date.
- 14.3. 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.

#### 15. **Ownership**

- 15.1. The holder of this Licence must be incorporated in Malawi.
- 15.2. The Licensee shall have at least twenty (20%) local Malawian shareholding which shall be maintained throughout the period of the Licence.
- 15.3. The Authority may revoke the Licence where the Licensee effects change of shareholding that effectively affect the control of the licence without prior approval of the Authority which approval shall not be unreasonably withheld or fails to comply with local ownership requirements under clause 15.2.
- 15.4. The Licensee shall notify the Authority of any changes that affects more than 10% of its shareholding.
- 15.5. Unless otherwise agreed by the Authority, the Licensee shall notify the Authority of any joint venture agreement it may enter with third parties to provide network service in Malawi not later than thirty (30) days before any such agreement takes effect, giving particulars of that agreement including a copy thereof.

#### 16. **Local Empowerment**

- 16.1. The Licensee shall ensure that at least 50% of the executive management are Malawian nationals and that it shall not employ more than five percent (5%) of foreign nationals for the rest of its staff.
- 16.2. The Licensee shall, during the term of licence, take measures to ensure participation in its management structure by local indigenous Malawians.

#### 17. **Transfer of Licence**

The Licensee shall not assign or transfer this Licence without prior written consent of the Authority.

#### 18. **Licence Amendment**

- 18.1. Subject to the section 41 of the Act, 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.
- 18.2. 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.
- 18.3. The Licensee may submit a response to the proposed amendment within thirty (30) days of the notice.
- 18.4. If the Licensee does not respond within the thirty (30) day period under clause 18.3 the amendment shall take effect on the thirtieth (30th) day after the date of notice.
- 18.5. 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.
- 18.6. The Licensee shall comply with all new terms and conditions issued by the Authority.

#### 19. **Revocation of Licence**

- 19.1. 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 achieve specified Quality of Service Standards;
  - (ii) failure to provide performance guarantee;
  - (iii) providing false information regarding the information necessary for renewal or any other information requested by the Authority pursuant to this Licence;
  - (iv) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;
  - (v) failure to pay outstanding License fees for over a period of twelve (12) months from the Effective Date or anniversary of the Effective Date; or
  - (vi) any other breach of the licence which is deemed substantial by the Authority taking into consideration the factors listed in Clause 19.2;
- (b) if the Licensee has been declared insolvent; or
- (b) if the Licensee agrees in writing to cancel the Licence.

19.2. Without prejudice to Clause 19.1, in determining whether a breach is substantial or not, the Authority shall consider:

- (a) the nature or gravity of the breach;
- (b) the seriousness of the consequences of the breach;
- (c) whether the breach significantly impairs the Licensee's ability to discharge its obligations under the Licence;
- (d) whether the breach demonstrates the Licensee's significant inability to meet the conditions of the Licence; or
- (e) whether the breach has been repeated or is continuing.

19.3. 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.

19.4. 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.

19.5. The revocation of the Licence shall not relieve the Licensee from any obligations accrued and due under any law or this licence.

## 20. Regulatory Sanctions

20.1. 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.

## 21. Emergency Crisis Management

21.1. The Licensee shall within 30 days from the effective date submit to the Authority for approval a Business Continuity Plan which shall include disaster recovery plan (DRP), setting out the emergency crisis management team and priorities and procedures it will apply for restoring its network in the event of a disaster or national emergency.

- 21.2. The Licensee shall from time to time review and where necessary revise its Business Continuity Plan (BCP) and in such event it shall ensure that the Authority is furnished with the most current version of the Plan.
- 21.3. The Licensee shall as soon as possible provide information for the restoration of its networks service.
- 21.4. The Authority may from time to time cause to be carried out by the licensee Practical Tests on the Licensees networks service to assess the effectiveness or functionality.
- 22. Exercise of Powers**  
In exercising any powers granted to the Authority in terms of this licence, the Authority shall-
- (a) act reasonably having regard to all surrounding circumstances;
  - (b) prior to exercising any power, afford the Licensee reasonable opportunity to make representations to the Authority in respect of all relevant issues; and
  - (c) at the request of the Licensee, furnish written reasons for any decision made.
- 23. Force Majeure**
- 23.1. Any failure by the Licensee to comply with any obligation, term or condition of the Licence shall be exempted to the extent that it is caused by an event beyond the control of the Licensee, including extreme weather conditions, fire, war or civil strife.
- 23.2. The Licensee shall use reasonable endeavours to minimize the impact on its operations of any event of this nature and to remedy, if possible, the failure.
- 23.3. The Licensee shall keep the Authority informed of any problems which may be encountered, their consequences on its operations and the steps it is taking to address them.
- 24. Corporate Social Responsibility (CSR)**  
The licensee may carry out corporate social responsibility as part of its obligations under the Licence.
- 25. Liability**  
The Licensee shall indemnify the Authority against any injury, losses, claims, charges or expenses, or which may be made against the Authority by third parties as a direct consequence of the Licensee's actions.
- 26. Performance Assessment**  
The Authority shall in the third (3rd), sixth (6th) and ninth (9th) years of this Licence review the performance of the Licensee against the terms and conditions of the Licence
- 27. Renewal of the Licence**
- 27.1. This Licence may be renewed for such number of years 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.
- 27.2. In deciding whether to renew the Licence the Authority shall consider whether:
- (a) the Licensee performed in accordance with the obligations of its licence;
  - (b) the licensee continues to meet the eligibility requirements under the Act;
  - (c) the licensee continues to be financially and technically capable of meeting his obligations under the Act and any other related laws; and
  - (d) the licensee has not, during the validity period of his licence, contravened the provisions of the Act, the terms and conditions of the licence, the rules issued by the Authority or any other relevant laws and regulations.
- 27.3. The Licensee shall apply for renewal in writing not later than six (6) calendar months before the expiration of the term of its Licence.
- 27.4. On renewal, the Authority may amend the provisions of this Licence as necessary to take into account any changes in the industry or address any challenges experienced by the Authority and the Licensee.
- 28. Dispute Resolution**
- 28.1. 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 (Cap 6:03 of the Laws of Malawi) and the seat of arbitration shall be Blantyre, Malawi.
- 28.2. The language to be used in the arbitral proceedings shall be English.

28.3. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction.

29. **Miscellaneous**

- 29.1. The Licensee shall comply with all terms and conditions of this Licence, applicable laws and Regulations issued by the Authority from time to time.
- 29.2. 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.
- 29.3. The Authority shall not be liable for any loss, damage, claim, charge or expense which may be incurred by the Licensee as a result of or in relation to the activities of the Licensee, its employees, agents, or authorized representatives unless the same is occasioned by the acts or omissions of the Authority.
- 29.4. 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.
- 29.5. 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.
- 29.6. The Authority shall keep confidential any information provided to it as part of the exercise of its functions under the Act which the Licensee has marked as confidential.
- 29.7. Notwithstanding clause 29.6, the Authority may disclose information that it has been notified should be kept confidential if such disclosure is essential in order to fulfil its functions under the Act or if so directed under an order of a court.
- 29.8. 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.
- 29.9. 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.

Dated the 13th day of December, 2019.

GODFREY ITAYE

*Director General*

MALAWI COMMUNICATIONS REGULATORY AUTHORITY



## SCHEDULE 1: NETWORK QUALITY OF SERVICE STANDARDS

No.	QoS Parameter Name	Measurement Method	Target Value	Average period to be reported
<b>Fault Repair</b>				
1.	Fault Repair Time	Time taken to repair 80 % of faults (Hrs)	24	Monthly
		Time taken to repair 90% of faults (days)	3	
		Time taken to repair 100% of faults (days)	5	
		Mean Time to Repair (Hrs)	12	Monthly
<b>Connection Establishment</b>				
1.	Successful Log-ins	Percentage of successful log-ins to access the internet when both the access network and the Internet Access point (IAP) network are available in full working order.	>98%	Monthly
2.	Dropped Internet Sessions	The proportion of successfully established internet sessions that end before they would be ended normally by users	5%	Monthly
	Internet Session Setup Time	time in seconds from the time a session is successfully established to the time the service access starts (seconds)	5	Monthly
<b>Information Transfer</b>				
1.	Network Latency	Time in milliseconds that is needed for an ICMP Echo Request/ Reply (Ping) to a valid IP address. Measurement provided as the mean value of the delay (in ms) (ETSI EG 202 057-4) For international network latency, the measurement is carried by sending a PING packet from the test point to the first international point of presence. (ITU-T Rec. Y.1541).	National 100ms International 300ms	Monthly
2.	Data Transmission Speed Achieved (Data transmission rate achieved for downloading and uploading specified test files between service provider's network and customer premises (as a percentage of advertised speed)	Maximum data transmission rate in Kbit/s achieved; Minimum data transmission rate in Kbit/s achieved; -mean value and standard deviation of the transmission rate in ;Kbit/s achieved; (ETSI EG 202 057-4)	≥80 % of that advertised by the service provider.	Monthly

2.	Unsuccessful Data Transmission Ratio	The ratio of unsuccessful data transmissions to the total number of data transmission attempts in a specified time period. Data transmission is successful if a test file is transmitted completely and with no errors. (ETSI EG 202 057-4)	<1% or $10^{-3}$	Monthly
Packet Loss				
1.	Loss Ratio	Ratio of packets lost to the total packets transmitted between two designated points for each class of service. (ITU-T Rec. Y.1541).	<1% or $10^{-3}$	Monthly
Network Service Management				
1.	Network Availability	Percentage Uptime of the network	99	Monthly