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GENERAL NOTICE NO. 102

Licence No. CLF/AIRTEL/ASL/7/22



THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY
INDIVIDUAL APPLICATION SERVICES IN MALAWI

Issued to

Airtel Malawi plc

Issued pursuant to section 39 of the Communications Act 2016

A licence is hereby granted to Airtel Malawi plc. in respect of the provision of application services with effect from the Effective Date and shall be valid up to 6th February 2024.

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 term and condition may lead to suspension or revocation of this Licence

Notice issued at Blantyre, this 26th day of August, 2022.

STANLEY C. KHAILA PhD
Chairperson

MR. DAUD SULEMAN
Director General

1. Definitions

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

“**Act**” means the Communications Act, Act No. 34 of 2016;

“**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;

“**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;

“**Electronic Communication network**” means transmission systems and where applicable switching or routing equipment and other resources that permit the conveyance of signals by wire radio optical or other electrical means;

“**Facility Services**” means any services comprising electronic communication infrastructure, including earth station, fixed links and cables, radio communication transmitters and links, satellite hubs, satellite control station, submarine cables, and cable landing station;

“**Gross Annual Revenue**” means the total invoiced revenue of the Licensee derived from the provision of Network Services but shall not include 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
- (b) 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;

“**Licensee**” means Airtel Malawi plc.;

“**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;

2. Commencement And Licence Period

Period of Licence

- (a) The Licence shall become effective on the Effective Date and shall be valid up to the 6th February 2024.

3. Scope of Licence

- 3.1. This Licence is issued subject to the Act and any Regulations made there-under.
- 3.2. The Licensee is authorized to construct, commission, operate and maintain an electronic communication network for the purposes of providing network services using any applicable technology;
- 3.3. For the purpose of providing the Services under this Licence, the Licensee is authorised:
 - (a) to provide network services to Application and Content Service Licensees
 - (b) to construct, operate and maintain an electronic communication network;
 - (c) to connect to other network service operators in the Republic of Malawi;
 - (d) to procure, rent, and maintain Network Equipment for use in connection with its Network Services; and
 - (e) to do all other things necessary or requisite to the provision of the Network Services.

- 3.4. The Licensee may use electronic communication network capacity of other network service Operators.
- 3.5. This Licence is valid in the Republic of Malawi.
- 3.6. The services that the Licensee is authorised to provide by means of its telecommunication network include:
 - (a) domestic interconnectivity;
 - (b) international interconnectivity;
 - (c) signal distribution
 - (d) bandwidth services
 - (e) space segment services
 - (f) Any equivalent, similar or improved network services as approved by the Authority from time to time.
- 3.7. The Licensee shall provide international connectivity services to its Customers by means of any connection to an International Gateway Licensee.
- 3.8. Where the Licensee requires operation of its own international gateway, it shall apply for a separate international gateway licence authorizing such services.

4. Rights and Obligations to provide Telecommunication Services

- 4.1. The Licensee shall construct, commission, operate and maintain an electronic communication network within Malawi and provide [domestic and international] network services in accordance with the Act, Regulations and licence terms and conditions.
- 4.2. The Licensee may enter into Interconnection and access agreements with other network service operators in accordance with the provisions of Sections 60, 62, 63 and 64 of the Act respectively and any Regulations made there-under.
- 4.3. Without prejudice to clause 4.1, the Licensee shall operate and maintain or lease the use of any electronic communication system or equipment, including; subject to any terms and conditions that may from time to time be prescribed by the Authority and which are applicable to all network service operators.
- 4.4. Subject to clause 4.5, the Licensee shall be entitled by virtue of this Licence to operate the electronic communication system and to provide all of the Services together with all other rights granted hereunder.
- 4.5. The Licensee is authorized to exercise any of its rights granted under this Licence, by itself or in co-operation with any agent, contractor or Service Provider ("Third Party"), provided that, where the Licensee elects to exercise any of its rights under this Licence in co-operation with any Third Party it shall be on the basis that:
 - (a) the Licensee shall be liable for any acts or omissions of any Third Party in relation to the exercise of the rights granted under this Licence and such liability shall be limited to acts or omissions which constitute contraventions of this Licence;
 - (b) the Licensee shall enter into a written agreement with any such Third Party with terms that ensure compliance with the terms and conditions of this Licence at all times ;
 - (c) the Licensee shall notify the Authority of any agreement entered into with any third party pursuant to this clause at least thirty (30) days prior to the commencement of such agreement;
 - (d) the Authority, acting reasonably and having due regard to the commercial considerations applying to the Licensee at any material time, may require the Licensee to modify the proposed agreement thereof within thirty (30) days of receipt of the aforesaid notice, provided that the Authority shall not require any modification to be made which would, as a result, render the Licensee to be in a less favorable commercial or legal position than any other telecommunication operator;
 - (e) the Authority shall, upon becoming aware of any breach of any condition of this Licence, by the Third party, or of any complaint lodged with the Authority in relation thereto, notify the applicant in writing to correct such breach;
 - (f) failure by the Authority to notify the Licensee of any contravention shall not in any way negate or limit the Authority's rights in respect of such contravention under this Licence.

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 One Hundred Thousand United States dollars (USD100, 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 installments. Calculation of the first three (3) quarterly installments 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. The levy referred to in this clause shall not include revenue generated from international incoming communication traffic.
- (c) Radio Licence fees in accordance with Spectrum Licence Fee Schedule published 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 this Licence if licence fees remain outstanding for a period of more than six (6) months from the date such fees became due.

6. International Call Termination Rate

- 6.1. The Licensee shall charge a minimum of USD 0.20 or as advised by the Authority from time to time for all international incoming voice traffic.
- 6.2. The Licensee shall submit to the Authority within ten (10) days any information or data required by the Authority to establish mechanisms and measures for monitoring compliance with this clause.
- 6.3. The licensee shall collect and remit to the Authority a fee of USD 0.08 per minute from the revenues generated from international incoming voice traffic.
- 6.4. All fees collected under clause 6.3 shall be payable to the Authority within seventy five (75) days from the last day of the month in which the fees were paid from international carriers, failure of which shall attract a penalty of 20% of the amount of the fees
- 6.5. The Authority may, from time to time, revise the minimum rate and the amount of the fee applicable to international incoming voice traffic under this clause.

7. Accounting Requirements

7.1. 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.

7.2. The Licensee shall maintain management accounts in accordance with generally accepted accounting standards.

8. Performance Guarantee

- 8.1. The Licensee shall provide a guarantee acceptable to the Authority in the amount of Forty Thousand United States Dollars (USD 40, 000) to secure the performance of the Licensee's obligations contained in this Licence.
- 8.2. The Licensee shall ensure that the guarantee is issued within thirty (30) days from the Effective Date or anniversary of the Effective Date, whichever applies. The Licensee shall renew the guarantee annually within twenty eight (28) days of the date of its expiry.
- 8.3. Failure to furnish the performance guarantee under this clause by the Licensee shall be deemed as a substantial breach of this Licence and the Authority may revoke the Licence in accordance with its terms and conditions.

- 8.4. In the event that the Authority imposes a penalty upon the Licensee for any breach of the Licence conditions, the Authority shall, without prejudice to any of its rights or remedies under the Licence or the Act, have the right to draw upon the performance guarantee to partly or fully satisfy the penalty so imposed upon giving seven (7) days notice to the Licensee, together with reasons for doing so.
- 8.5. The Authority may take any other action against the Licensee to satisfy the penalty imposed where the guarantee is inadequate to satisfy the penalty.

9. Provision of Information

- 9.1. 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.
- 9.2. 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.
- 9.3. 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.
- 9.4. 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.
- 9.5. The Licensee shall bear the cost of any expenses it incurs in ensuring compliance with record keeping and provision of information.

10. Compliance

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

11. Network Coverage

- 11.1. Unless otherwise approved by the Authority, the Licensee shall provide network services in the areas and by the dates specified in Schedule 1.
- 11.2. The Licensee shall submit to the Authority not later than thirty (30) days after the end of its financial year a report of its performance in relation to the network service targets stipulated in Schedule 1 in the preceding financial year.
- 11.3. Network Service Targets set in Schedule 1 shall be reviewed by the parties after five (5) years.

12. Public Emergency Services

- 12.1. The Licensee shall provide connectivity to Application Service Operators for emergency services twenty- four (24) hour free of charge.
- 12.2. The Licensee shall facilitate and cooperate with all government bodies, departments and official agencies responsible for emergency services and national security in line with the National Numbering Plan.
- 12.3. The Licensee may facilitate connectivity to emergency services through a centralised call centre designated by the Authority.
- 12.4. Where interconnection for the connectivity to emergency numbers or short codes is required, the Licensee shall not claim or charge interconnection fees from any other network service operator.

13. Network Service Development

- 13.1. The Licensee shall submit for notification to the Authority a Development Plan setting out targets for on-going development of its network services and shall outline the achievement measurements for the targets of the plan and the Authority reserves the right to require the Licensee to review any aspect of the plan that is inconsistent with the Act and any Regulation.
- 13.2. The Licensee shall submit to the Authority the Plan stipulated in clause 13.1 within thirty (30) days from the Effective Date.

13.3. The Licensee may from time to time review its Development Plan to accommodate technological changes in the industry.

14. Quality of Service Standards

14.1. 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.

14.2. The Licensee shall achieve the Quality of Service (QoS) standards as specified in the Communications (Quality of Service) Regulations 2016 as currently in force and as the same may hereafter be amended, re-enacted or superseded from time to time and in any other applicable Regulations.

14.3. The Licensee shall ensure that voice and data traffic passes through its network with minimal interference, degradation or loss.

14.4. 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 QoS targets a second time it shall be deemed to have been issued with a final warning and any subsequent failure to meet QoS target shall be deemed substantial and continuing breach of this licence entitling the Authority to revoke the Licence

14.5. 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.

14.6. The Licensee shall maintain records regarding its compliance with this clause and the Authority may at any time request the submission of such records.

14.7. Without compromising the QoS standards the Licensee shall ensure efficient use of spectrum.

14.8. 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.

14.9. The Authority may not impose any penalties for failure to meet QoS targets as a result of force majeure, provided that the Licensee shall promptly notify the Authority within three (3) 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.

14.10. In any circumstances under clause 15.9 above, the Licensee shall make public announcements of the network failure through radio, print media or any other reasonable means possible.

14.11. The Authority reserves the right to inspect and independently verify the cause and extent of the failure to comply with the QoS targets.

14.12. The Licensee shall make all reasonable endeavors to comply with the applicable recommendations of the ITU and its associated organizations.

15. Application of International Telecommunication Regulations

15.1. The Licensee shall comply with any international agreements that have been ratified by the Government of Malawi.

15.2. 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.

15.3. The Licensee shall comply with any Regulations issued by the Authority on traffic routing, accounting rates and settlement procedures for international Voice Telephony Services.

16. Spectrum Obligations

- 16.1. The Licensee shall not use any frequency without prior assignment by the Authority.
- 16.2. 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 date of receipt of the application.
- 16.3. 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.
- 16.4. The Licensee shall submit to the Authority a spectrum usage report within fourteen days from the date of request.
- 16.5. The Authority may assign or re-farm frequencies assigned to the Licensee as required to meet the growth in demand for the Service in accordance with the National Frequency Band Plan and any applicable Regulations.
- 16.6. 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.
- 16.7. The Authority will make re-arrangement stipulated under clause 17.6 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.
- 16.8. The Authority shall at any time inspect and analyze the spectrum efficiency of any assigned frequencies to ensure proper utilization of the frequencies.
- 16.9. 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.
- 16.10. 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 other ground specified by the Authority.

17. Type Approval

- 17.1. 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.
- 17.2. The Licensee shall not permit any Application Service Operator to connect any Terminal equipment unless it is type approved by the Authority.
- 17.3. 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.
- 17.4. The Licensee shall consult with the Authority from time to time regarding the arrangements for testing and type approval of Terminal Equipment

18. Numbering

The Licensee shall facilitate the provision of services requested by the Application service operator and other authorized entities using assigned Numbering resources in line with the National Numbering Plan.

19. Tariff

- 19.1. The Licensee shall before providing any network service, submit to the Authority for approval its proposed tariff structure for the network service.
- 19.2. The tariff structure proposal under Clause 19.1 above shall include:
- (a) a description of the service;
 - (b) terms and conditions on which the services are offered;
 - (c) the methodology adopted for determining the charges and the justification for any changes in the methodology;
 - (d) any relevant information that it proposes to publish to Network Service operators. Information to be published shall be in a form which is readily available, current and easy to understand; and
 - (e) any other information as stipulated by the Authority.
- 19.3. The Licensee shall ensure that charges for its network service are based on the approved tariff structure.
- 19.4. The Licensee shall not impose any charges for the provision of any specified network service without the prior approval of the Authority.
- 19.5. For the avoidance of doubt, the Licensee shall provide the specified service at the charges, terms and conditions so approved by the Authority and shall not depart or change the tariff structure without prior approval of the Authority.
- 19.6. In approving the tariff structure under this clause the Authority shall be guided by the need to ensure that such charges are transparently derived from relevant costs with a rate of return considered reasonable.
- 19.7. The Licensee shall notify the Authority on any increase in tariffs and shall cause the same to be published in the licensee's website within seven (7) days of their coming into operation.

20. Interconnection Obligations

- 20.1. Subject to the Act, the Licensee shall enter into an interconnection agreement with any network service operator and such interconnection agreement shall include:
- (a) the connection of the Licensee's network to any other licensed network service operator in accordance with Section 60 of the Act and any applicable Regulations made there-under;
 - (b) the handing over of traffic in either direction between the Licensee and other network service operators;
 - (c) the provision of related services requested by other network service operators; and
 - (d) any other services as approved by the Authority from time to time
- 20.2. If the initial interconnection agreement with a network service Operator is not concluded within three (3) months, the provisions of clause 20.10 shall apply.
- 20.3. The terms and conditions of any interconnection agreement entered into by the Licensee shall:
- (a) be in accordance with the terms and conditions of this Licence;
 - (b) comply with the Act and any Regulations made thereunder;
 - (c) not discriminate against any other network service operator;
 - (d) conform with the standards referred to in clause 24 of this Licence;
 - (e) not cause harm to any electronic communications network; and
 - (f) not discriminate based on technology used, type of carriers being connected, or the services to be provided, unless there are technical factors requiring different standards.
- 20.4. The Licensee has the right to enter into an interconnection agreement with any other network service operator, provided that arrangements for interconnection do not adversely affect the rights and obligations of the Licensee and any other network service operators or its applications service operators including such applications service operators' right to privacy and to confidentiality of any communications.

20.5. An Interconnection agreement made under the terms of this Licence shall include:

- (a) the type of services to be offered;
- (b) the method to configure and maintain the connection to the Licensee's network and vice versa;
- (c) the points of Interconnection of the networks;
- (d) the capacity required to ensure a reasonable grade of service on agreed commercial terms between the parties;
- (e) a requirement that any traffic is received with a specifically defined minimum quality of service;
- (f) the billing and collection arrangement between the parties;
- (g) that the Licensee shall provide Interconnection services to the requesting network service operator on cost based principles in accordance with applicable Regulations;
- (h) subject to the performance to other network elements and system, that the interconnection arrangements shall ensure that the quality of service offered to the application services users in the Republic of Malawi is not degraded. The arrangements for interconnection between the Licensee's network and other networks shall also ensure that there are regular exchange of technical information and network management data relevant to the operation and maintenance of the Licensee's and other electronic communication networks, including traffic routing, carried traffic, network failure rates and scheduled maintenance;
- (i) that future requirements for interconnection are facilitated in accordance with the conditions of this Licence and in consultation with other network service operators within three (3) months of a notice of such requirements being given; and
- (j) where applicable, arrangements for communication with other network service operators for the provision of access to Emergency Services.

20.6. The Licensee shall, after negotiating an interconnection agreement, submit to the Authority an application for approval of the interconnection.

20.7. The application made under Clause 21.6 shall be accompanied by a copy of the proposed interconnection agreement.

20.8. The Authority shall, within thirty days of receipt of the application, make a decision on the application.

20.9. The Authority may declare void any term of the proposed interconnection agreement considered to be inconsistent with the Act or any applicable Regulation.

20.10. Where the Licensee requests for interconnection and is unable to conclude an interconnection agreement with any network service operator within three (3) months from the written request for interconnection it shall refer the matter to the Authority for determination with a copy to the other licensee.

20.11. In making its determination pursuant to clause 21.8 above, the Authority shall consider such factors that it considers necessary including terms and conditions that are:

- (a) consistent with the objectives of any applicable ICT related policy;
- (b) not less favourable than those for any similarly licensed operator providing network services in the Republic of Malawi; and
- (c) based on commercial terms.

20.12. When requested to make its determination under clause 12.10, the Authority shall determine the terms and conditions of interconnection within thirty (30) days of receipt of the written request from the Licensee.

20.13. Any network interconnection agreement made pursuant to this clause shall be filed with the Authority and may be open to inspection by the public upon written request to the Authority.

20.14. The Licensee may at time, make a written request to the Authority to review any term(s) of the interconnection agreement. Where such request has been made, the Licensee shall supply the other party copies of the request.

20.15. The Licensee may refuse to interconnect with other operators on any of the grounds set out in section 62(4) of the Act.

20.16. Where the Licensee refuses to interconnect with any other operator it shall submit to the Authority the reasons for such refusal and the Authority reserves the right to make an assessment of the reasons given and either uphold or overrule the decision of the licensee.

21. Network Access by Application and Content Service Operators

21.1. The Licensee may enter into Network Access Agreement with Application, Network and Content Service operators for access to its electronic communication network as specified under the applicable Regulations.

21.2. The Network Access Agreement under Clause 22.1 shall be made on a non-discriminatory basis by means of the connection offered to all users in accordance with access arrangements specified in this clause.

21.3. The Licensee shall not impose restrictions on usage of the services acquired by a Application and Content Service Operators from the Licensee under the network access agreement.

21.4. The Licensee shall offer any of its network services to any Application and Content Service provider at wholesale rates.

21.5. The Licensee shall notify the Authority of any Network 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.

21.6. When requested to make a determination or to resolve a dispute under this clause, the Authority shall make such determination or resolution within sixty (60) days of receipt of the written request.

21.7. The Licensee may refuse to offer access of its network to Application and Content Service operators if it is technically or economically not feasible to do so.

21.8. Where the Licensee refuses to offer access of its network to Application and Content Service operators it shall submit to the Authority the reasons for such refusal and the Authority shall reserve the right to make an assessment of the reasons given and either uphold or overrule the decision of the licensee

22. International and Domestic Roaming

The Licensee shall facilitate domestic and international roaming services by application service operators.

23. Anti-Competitive Conduct, Unfair Competition and Discrimination

23.1. 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.

23.2. Acts of anti-competitive conduct envisaged in clause 23.1 include engaging in predatory price cutting which may be implied where:

(a) a service is priced at less than marginal cost for two (2) consecutive months or more;

(b) costs charged are likely to price competition out of the market or deter competitors from entering the market;

(c) the Licensee is able to recoup the full amount of the loss incurred during the period of price cutting;

(d) engaging in cross subsidizing where revenues for any services are used to unfairly cross subsidize the price of other services or equipment;

(e) engaging in unfair pricing such as to reduce or eliminate competition including fixing prices for services or equipment at a level which cannot be re-sold with a profit margin to application and content service operators;

(f) entering into exclusive arrangements which deny competitors access to network services.

23.3. 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 including:

(a) asserting false or misleading claims on the availability or quality of its or competitors networks;

- (b) degrading the availability or quality of its or competitor's networks or unfairly raising its business, operations or technical costs;
- (c) unlawfully interfering with the suppliers or customers of its or competitors' networks; or
- (d) providing false information to other electronic communications operators or competitors or to any other third party.

23.4. In the provision of the Services, the Licensee shall not discriminate against or show any preference to any other Application and Content Service operators and shall provide network services to Application and Content Service operators that are equal in quality, subject to the same conditions and provided within the same provisioning time intervals that the licensee provides to others.

23.5. Unless otherwise expressly provided for in this Licence, the Licensee shall not prohibit, prevent or frustrate the provision of electronic communication network services by any person lawfully able to provide such services.

23.6. 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 network services.

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

23.8. 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.

23.9. In making a determination on anti-competitive practices under clause 23.8, the Authority may consult the Competition and Fair Trading Commission.

24. Significant Market Power (SMP)

24.1. Where the Authority determines that the Licensee has Significant Market Power (SMP) in accordance with any applicable law or Regulations, it shall impose additional obligations relating to anti-competitive practices in its licence to prohibit the Licensee from abusing its dominant position through anti-competitive conducts.

24.2. In determining whether or not a Licensee has significant market power and in determining additional obligations to be imposed on a Licensee found to hold significant market power, the Authority shall have recourse to applicable laws and shall consult the Competition and Fair Trading Commission.

25. Universal Service (US) Obligations

25.1. The Licensee shall contribute to the Universal Service Fund (USF) through levies payable under Clause 5 and in accordance with the provisions of the Universal Service (US) Regulations.

25.2. The Authority shall from time to time determine the percentage of the levies payable to the Universal Service Fund from the levies collected under Clause 5.

26. Customer Confidentiality

26.1. The Licensee shall maintain confidentiality in respect of all information provided by Application and Content service operators

26.2. The Licensee shall not use any information received to unduly benefit it or any associated person or use it in a manner that is anti-competitive towards other network service operators.

27. Monitoring

27.1. The Authority shall have the right to establish, maintain and install an electronic monitoring system using any applicable technology for the purposes of allowing off line and on line data submission necessary for the monitoring and enforcing compliance by the Licensee with its obligations under the Act and any Regulations.

27.2. Unless otherwise agreed by the parties, the Licensee shall within seven (7) days upon request from the Authority provide any information or data of its network that is necessary for the electronic monitoring system, in the manner and format specified by the Authority.

27.3. The Licensee shall facilitate, provide and maintain appropriate interface points and links between its network and the Authority's monitoring system at all times for the purposes of monitoring its network services and application services being carried on their network

27.4. In complying with 28.3 above, the Licensee shall comply with directions issued by the Authority

28. Resource Sharing

28.1. The Licensee may whenever technically and economically feasible and subject to a negotiated agreement, make available its network resources or part of it to any other network service operators.

28.2. The Licensee may collaborate on installing a shared network with other networks service operators to facilitate One Stop Shop (OSS) services for all VAS providers so as to enhance easy interconnectivity.

29. Health and Environmental Concerns

29.1. 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.

29.2. 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.

29.3. 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.

30. Ownership

30.1. The holder of this Licence must be incorporated in Malawi.

30.2. The Licensee shall ensure it has at least twenty (20%) local Malawian shareholding which shall be maintained throughout the period of the Licence.

30.3. 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 or fails to comply with local ownership requirements under clause 30.2.

30.4. The Licensee shall notify the Authority of any changes that affects more than 10% of its shareholding.

30.5. 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.

31. Local Empowerment

31.1. 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.

31.2. The Licensee shall, during the term of licence, take measures to ensure participation in its management structure by local indigenous Malawians.

32. Transfer of Licence

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

33. Licence Amendment

33.1. The Authority may modify or amend any term or condition of this license if it is in the public interest to do so or if it is necessary to take into account developments in the industry or for any other reason deemed necessary by the Authority.

33.2. Before amending any provision of this Licence, the Authority shall:

(a) notify the Licensee 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 Authority shall give the Licensee not less than thirty (30) days from the date of the notice to submit a response to the proposed amendment.

33.4. If the Licensee does not respond within the period given under clause 23.3 the Authority shall proceed with the proposed amendment which shall take effect upon its publication in the *Gazette*.

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 (15th) day after the date of the Authority's second notice.

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

34. Revocation of Licence

34.1. 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 networks service roll-out targets;

(ii) failure to achieve specified Quality of Service Standards;

(iii) failure to provide performance guarantee;

(iv) providing false information regarding the information necessary for renewal or any other information requested by the Authority pursuant to this Licence;

(v) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;

(vi) conducting in uncompetitive market behavior or trade practices;

(vii) failure to pay outstanding License fees for over a period of six (6) months from the Effective Date or anniversary of the Effective Date; or

(viii) any other breach of the licence which is deemed substantial by the Authority taking into consideration the factors listed in Clause 34.2;

(b) if the Licensee has been declared insolvent; or

(c) if the Licensee agrees in writing to cancel the Licence.

34.2. Without prejudice to Clause 34.1, 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.

34.3. 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.

34.4. 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.

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

35. Regulatory Sanctions

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.

36. Emergency Crisis Management

- 36.1. The Licensee shall 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.
- 36.2. The Authority shall communicate its decision on the Business Continuity Plan submitted under Clause 27.1 for approval within 90 days from the date of submission.
- 36.3. 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.
- 36.4. The Licensee shall as soon as possible provide information for the restoration of its networks service.
- 36.5. 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.

37. 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.

38. Force Majeure

- 38.1. 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.
- 38.2. 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.
- 38.3. 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.

39. Corporate Social Responsibility (CSR)

The licensee shall endeavor to carry out corporate social responsibility as part of its obligations under the Licence.

40. 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 the networks service.

41. 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

42. Renewal of the Licence

- 42.1. This Licence may be renewed by the Authority at the expiry of its term provided the Licensee is in compliance in all material respects with its licence provisions.
- 42.2. 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 this 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.

42.3. The Licensee shall apply for renewal in writing not later than twelve (12) calendar months before the expiration of the term of its Licence.

42.4. 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.

43. **Dispute Resolution**

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

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

44. **Miscellaneous**

44.1. The Licensee shall comply with all terms and conditions of this Licence, applicable laws and Regulations issued by the Authority from time to time.

44.2. 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.

44.3. The Authority or any Government department shall not be liable for any loss, damage, claim, charge or expense which may be incurred as a result of or in relation to the activities of the Licensee, its employees, agents, or authorized representatives.

44.4. 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.

44.5. 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.

44.6. 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.

44.7. Notwithstanding clause 45.6, 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.

44.8. Nothing in the provisions of this License 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.

44.9. 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 this 26th Day of August, 2022.

STANLEY C. KHAILA PhD

Chairperson

MR. DAUD SULEMAN

Director General

SCHEDULE 1:—TARGETS (SERVICE QUALITY & COVERAGE)

Table S1A—Service Quality Targets.

Table S1B—Coverage Targets.

TABLE S1A – SERVICE QUALITY							
PHASE	IMPLEMENTATION TARGET	COVERAGE TARGETS				PENALTY	
		(Received Signal Strength (RxLev) Received signal Quality (RxQual))			QoS Targets		
		INDOOR	OUTDOOR	IN CAR			
PHASE ONE 7th February 2014 + 12 months	Blantyre, Lilongwe, Mzuzu & Zomba, plus feeder roads up to 25 Km from each city centre	≥-75.6dbm	≥-93.26dbm	≥-77.6dbm	0<5	90% of the coverage area	\$100000 or proportion thereof in relation to number of places unserved
PHASE TWO 7th February 2014 + 24 Months	Mulanje, Thyolo, Chikhwawa, Balaka, Mwanza, Mangochi, Ntcheu, Dedza, Kasungu, Salima, Rumphi, Karonga, Mzimba Nchalo, Makwasa, Chitakale, Luchenza, Namadzi, Liwonde, Ntaja, Ulongwe, Nkopola, Monkey Bay, Kamphata, Nthenje, Mvera	≥-75.6dbm	≥-93.26dbm	≥-77.6dbm	0<5	90% of the coverage area	\$100000 or proportion thereof in relation to number of places unserved
PHASE THREE 7th February 2014 + 36 Months	Nsanje, Chiradzulu, Machinga, Phalombe, Mchinji, Nkhoskotota, Dowa, Ntchisi, Chitipa, Nkhata-Bay Ngabu, Muloza, Chimwala, Makanjila, Zalewa/Mwanza T/O, Manjawila, Lizulu, Linthipe, Namitete, Mponela, Dwangwa, Chintheche, Vizara, Likoma Island, Mzokoto, Livingstonia, Chiweta, Nyungwe	≥-75.6dbm	≥-93.26dbm	≥-77.6dbm	0<5	90% of the coverage area	\$100000 or proportion thereof in relation to number of places unserved

PHASE FOUR Effective Date + 60 Months	A minimum of 10 Km either side of the M1 and M2 roads and up to 10 Km for M3, M5 and M12 trunk roads	≥-75.6dbm	≥-93.26dbm	≥-77.6dbm	0<5	90% of the coverage	\$100000 or proportion thereof in relation to number of places unserved
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TABLE SIB—GEOGRAPHIC COVERAGE							
PHASE	IMPLEMENTATION TARGET	PENALTY					
PHASE ONE 7th February 2014 + 12 Months	Mwenwenya - Karonga Ruarwe - Rumphu Dzaone - Zomba Kameme - Chitipa Matope - Balaka Njerenje - Balaka Chigwaja - Blantyre Maliya - Blantyre Pensulo - Blantyre	\$100000 or proportion thereof in relation to number of places unserved					
PHASE TWO 7th February 2014 + 24 Months	Padzuwa - Blantyre Chilombo - Zomba Uhumba - Zomba Misomali - balaka Ligowe - Ntcheu Kawaliza - Mwanza Thaboni - Thyolo Thukuta - Thyolo Nambazu - Phalombe	\$100000 or proportion thereof in relation to number of places unserved					
PHASE THREE 7th February 2014 + 36 Months	Mlolo Sono - Chikhwawa Sitolo - Mulanje Namanja - Mulanje Nkhulambe - Phalombe bamba - Machinga Mphonde - Phalombe Chinyama - Mulanje Mpinda - Phalombe Mpala - Mulanje	\$100000 or proportion thereof in relation to number of places unserved					
PHASE FOUR 7th February 2014 + 60 Months	Chimwanjale - Mwanza Chitawo - Chiradzulu Chiswang'oma - Phalombe Chambe - Mulanje January - Thyolo Nierenje - balaka Nyanyika - Machinga Chunda - Machinga Kadewege - Machinga Sitolo - Mulanje Mkwepele - Machinga	\$100000 or proportion thereof in relation to number of places unserved					

GENERAL NOTICE No. 103

Licence No. CLF/TV/AIRTEL/ASL/7/22



**THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY
CONTENT SERVICE LICENCE**

Issued to

AIRTEL MALAWI plc.

(Airtel TV)

Issued pursuant to sections 6 (2) (b) and 98 of the Communications Act 2016

A licence is hereby granted to Airtel Malawi plc. ("the Licensee") in respect to the provision of a Television Content Service with effect from the Effective Date and valid for a period of seven (7) years.

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 term and condition may lead to suspension or revocation of this Licence.

Notice issued at Blantyre, this 26th day of August, 2022.

STANLEY C. KHAILA PhD

Chairperson

DAUD SULEMAN

Director General

1. Definitions

In this licence, unless stated otherwise or the context otherwise requires—

“**Act**” means the Communications Act Cap, 2016 of the laws of Malawi;

“**Authority**” means the Malawi Communications Regulatory Authority established under the Act;

“**Content Service**” means a service consisting of electronic media including sound, data, text or images

“**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;

“**Gross Annual Revenue**” means the total revenue of the Licensee derived from the provision of the services but shall not include revenue from the sale or rental of assets including terminal equipment;

“**Licensee**” means Airtel Malawi plc.;

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

“**Subscriber**” means a person who is authorised by the Licensee to receive access to the licensee content services.

2. Ownership And Control

- 2.1. The Licence shall be owned, controlled by Airtel Malawi Plc. an entity that is duly registered as such in terms of the applicable law of the Republic.
- 2.2. The content service shall be operated by the Licensee or by bona fide employees of the Licensee.
- 2.3. The Licensee may exercise any of its rights granted under this Licence, by itself or in co-operation with any agent, contractor or Service Provider (“hereinafter referred to the Third Party”), provided that, where the Licensee elects to exercise any of its rights under this Licence in co-operation with any Third Party it shall be on the basis that:
 - (a) the Licensee shall be liable for any acts or omissions of the Third Party in relation to the exercise of the rights granted under this Licence and such liability shall be limited to acts or omissions which constitute contraventions of this Licence;
 - (b) the Licensee shall enter into a written agreement with any such Third Party with terms that ensure compliance with the terms and conditions of this Licence at all times;
 - (c) the Licensee shall file with the Authority any agreement entered into with any third party pursuant to this clause within thirty (30) days from the date of execution of such agreement;
 - (d) the Authority, acting reasonably and having due regard to the commercial considerations applying to the Licensee at any material time, may require the Licensee to modify the proposed agreement thereof within fifteen (15) days of receipt of the aforesaid notice, provided that the Authority shall not require any modification to be made which would, as a result, render the Licensee to be in a less favorable commercial or legal position than any other content service licensee;
 - (e) the Authority shall, upon becoming aware of any breach of any condition of this Licence, by the Third party, or of any complaint lodged with the Authority in relation thereto, notify the applicant in writing to correct such breach;
 - (f) failure by the Authority to notify the Licensee of any contravention shall not in any way negate or limit the Authority’s rights in respect of such contravention under this Licence.
- 2.4. The Licensee shall not transfer or assign or sell a licence granted to it or cede control in the operations of the licence or merge with another person or licensee without prior written approval of the Authority.
- 2.5. The Licensee shall not transfer any shares, ownership or change any person in control of the business, without prior approval of the Authority.
- 2.6. The Licensee shall provide the Authority with a certified copy of its controlling entity’s constitution, deed of trust or other founding documents.

3. Commencement And Licence Period

3. Commencement And Licence Period

The Licence shall be valid for a period of seven (7) years from the Effective Date.

4. Rights and Obligations

- 4.1. The Licensee is authorized to provide content services including live television and video on demand service through the Licensee's electronic communications network.
- 4.2. The Licensee shall provide the services free of charge provided that the subscriber has access to the Licensee's internet services.
- 4.3. The name of the service shall be "Airtel TV".
- 4.4. The Licensee shall not change the name of the service without obtaining the prior written authorization of the Authority.

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 One Thousand Five Hundred United States dollars (USD1500) payable in advance on or before each anniversary of the Effective Date.
- (b) A levy equal to one percent (1%) of Gross Annual Revenue for each year payable at the end of each quarter in four installments. Calculation of the first three (3) quarterly installments 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. The Licensee shall pay the levy under this Clause if it made any revenue from the service in the previous year, otherwise such levy shall not be payable.

5.2. All fees 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. 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.

6. Roll Out Obligations

6.1. The licensee shall roll out services within twelve (12) months from the effective date of the license.

6.2. Where the Licensee fails to roll out within the prescribed period, the Licence shall be deemed to be automatically revoked.

6.3. The Authority may extend the roll out period referred in subsection (1):

- (a) only once;
- (b) for a period not longer than 12 months; and
- (c) only on grounds of force majeure event as accepted the Authority.

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

9. Accounting Requirements

9.1. 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.

9.2. The Licensee shall maintain management accounts in a manner consistent with generally acceptable accounting standards.

10. Consumer Protection

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

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

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

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

10.5. The Licensee shall within 30 days from the Effective Date submit to the Authority for approval, its Master Customer Contract with Service Level Agreements (SLA) containing the standard terms and conditions for the provision of services under this Licence.

10.6. The Master Customer Contract stipulated in Clause 10.5 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.

10.7. In exercising its powers under clause 11.5 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.

10.8. The Licensee shall honour all terms and conditions under its Master Customer Contract.

10.9. 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.

10.10. 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.

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

10.12. 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

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

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

11. Notifications to Customers

11.1. Where applicable and subject to applicable Regulations, the Licensee shall give its customers seven (7) days notice prior to carrying out planned service outages.

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

11.3. 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.

12. Anti-Competitive Conduct, Unfair Competition and Discrimination

12.1. 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.

12.2. The anti-competitive conduct envisaged in clause 12.1 include engaging in predatory price cutting which may be implied where:

- (a) a service is priced at less than marginal cost for two (2) consecutive months or more;
- (b) costs charged are likely to price competition out of the market or deter competitors from entering the market;
- (c) the Licensee is able to recoup the full amount of the loss incurred during the period of price cutting;
- (d) engaging in cross subsidizing where revenues for any services are used to unfairly cross subsidize the price of other services or equipment;
- (e) engaging in unfair pricing such as to reduce or eliminate competition including fixing prices for services or equipment at a level which cannot be re-sold with a profit margin to application and content service operators;
- (f) entering into exclusive arrangements which deny competitors access to network services.

12.3. 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 including:

- (a) asserting false or misleading claims on the availability or quality of its or competitors networks;
- (b) degrading the availability or quality of its or competitor's networks or unfairly raising its business, operations or technical costs;

(c) unlawfully interfering with the suppliers or customers of its or competitors' networks; or

(d) providing false information to other electronic communications operators or competitors or to any other third party.

12.4. 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 network services.

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

12.6. 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.

12.7. In making a determination on anti-competitive practices under clause 12.6, the Authority may consult the Competition and Fair Trading Commission.

13. Significant Market Power (SMP)

13.1. Where the Authority determines that the Licensee has Significant Market Power (SMP) in accordance with any applicable law or Regulations, it shall impose additional obligations relating to anti-competitive practices in its licence to prohibit the Licensee from abusing its dominant position through anti-competitive conducts.

13.2. In determining whether or not a Licensee has significant market power and in determining additional obligations to be imposed on a Licensee found to hold significant market power, the Authority shall have recourse to applicable laws and shall consult the Competition and Fair Trading Commission.

14. Transfer of Licence

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

15. Licence Amendment

15.1. The Authority may modify or amend any term or condition of this license if it is in the public interest to do so or if it is necessary to take into account developments in the industry or for any other reason deemed necessary by the Authority.

15.2. 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.

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

15.4. If the Licensee does not respond within the thirty (30) day period under clause 16.3 the amendment shall take effect on the thirtieth (30th) day after the date of notice.

15.5. 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

(d) in which case the amendment shall take effect on the fifteenth (15th) day after the date of the Authority's second notice.

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

16. Revocation of Licence

16.1 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 service roll-out targets;
 - (ii) concealing or providing false information regarding the information necessary for renewal or any other information requested by the Authority pursuant to this Licence;
 - (iii) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;
 - (iv) conducting in uncompetitive market behavior or trade practices;
 - (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 16.2;
- (b) if the Licensee has been declared insolvent; or
- (c) if the Licensee agrees in writing to cancel the Licence.

16.2. Without prejudice to Clause 16.1, 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.

16.3. 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.

16.4. 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.

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

17. Regulatory Sanctions

Notwithstanding any criminal sanctions under the Act, the Authority 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.

18. 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.

19. Force Majeure

- 19.1. 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.
- 19.2. 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.
- 19.3. 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.

20. 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 the networks service.

21. Renewal of the Licence

- 21.1. 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.
- 21.2. In deciding whether to renew the Licence the Authority shall consider:
 - (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 this 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.
- 21.3. The Licensee shall, apply for renewal in writing not later than six (6) calendar months before the expiration of the term of its Licence.
- 21.4. 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.

22. Dispute Resolution

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

23. Notices

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

(a) 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.mw

(b) In case of the Licensee; to

The Managing Director
Physical address: Airtel Malawi PLC
Postal address: Airtel Complex, P.O. Box 57, Lilongwe
Telephone number: 265 999 901 300
Facsimile number:
E-mail address: charles.kamoto@mw.airtel.com

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

24. Miscellaneous

- 24.1. The Licensee shall comply with all terms and conditions of this Licence, applicable laws and Regulations issued by the Authority from time to time.
- 24.2. 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.
- 24.3. The Authority or any Government department shall not be liable for any loss, damage, claim, charge or expense which may be incurred as a result of or in relation to the activities of the Licensee, its employees, agents, or authorized representatives.
- 24.4. 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.
- 24.5. 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.
- 24.6. 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.
- 24.7. Notwithstanding clause 36.6, the Authority may disclose information that it has been notified should be kept confidential if such disclosure is essential in order to fulfill its functions under the Act or if so directed under an order of a court.
- 24.8. Nothing in the provisions of this License 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.
- 24.9. 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.

Signed on this 26th day of August, 2022.

STANLEY C. KHAILA PhD

Chairperson

DAUD SULEMAN

Director General

GENERAL NOTICE No. 104

Reference:



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

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

MALAWI COMMUNICATIONS REGULATORY AUTHORITY**DOMESTIC (INTER CITY) COMMERCIAL COURIER SERVICES LICENCE**

This is to certify that

VIP COURIERS

of: P.O. Box 32285
Chichiri
Blantyre

is licensed to provide Domestic (Inter City) Commercial Courier Services under Part XV of the Communications Act, 2016, for a period of FIVE (5) Years commencing on 1st September, 2019 and ending on 1st August, 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:

- (a) An Annual Licence Fee of the Malawi Kwacha equivalent of Two Thousand United States of America Dollars (US\$ 2,000.00) payable before the Gazetting of the Licence and on each anniversary of the Licence.
- (b) 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.

STANLEY CHAKHUMBILA KHAILA (PhD)
Board Chairperson

DAUD SULEMAN
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

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 Intercity Commercial Courier Service”** means a courier service performed in respect of commercial courier articles accepted, conveyed and delivered in the four cities of the Republic of Malawi, namely Blantyre, Lilongwe, Zomba and Mzuzu.
 - (i) **“Effective Date”** means the date when the Licence comes into force, namely when published in the *Gazette*.
 - (j) **“Licensee”** means entity that has been awarded a licence to operate courier business.
 - (k) **“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.
 - (l) **“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.
 - (m) **“Tariff”** means fees and charges that may be charged by the Licensee in respect of the provision of licensed services.

(n) “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 Domestic (Inter City) 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 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) An annual licence fee of Malawi Kwacha equivalent of two thousand United States of America Dollars (US\$2000) payable 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 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 untill full liquidation thereof.
- 7.3 The Authority may revoke this licence if in any licence year, any fees or levies remain outstanding for a period of more than six (6) months from their due dates.

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 Postal 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 Postal Policy and Universal Service Rules and Regulations provided that the Licensee shall not be required to contribute in any year in which no other Courier Operator providing 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 approval Master Customer Contract 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 license.

- 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 The Licensee shall set tariffs that are just, reasonable, and cost based.
- 10.2 The Licensee shall, before providing the services, submit to the Authority for approval its proposed tariff for the services
- 10.3 The Licensee shall not change its approved tariff without the prior written approval of the Authority
- 10.4 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 license. 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 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 registered 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 14.9.1 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.
Email - dg@macra.mw

- (b) In the case of the Licensee, to:

The Managing Director ,
VIP Courier
P.O. Box 32285,
Chichiri
Blantyre 3

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 th day of August, 2022.

Signed: STANLEY CHAKHUMBILA KHAILA (PhD)

Chairperson

Malawi Communications Regulatory Authority (MACRA)

DAUD SULEMAN

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 service Intercity/Intracity	90%	95%	98%
Overnight Service- Inter city 24 hrs	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. 105

Reference:



Licence No. P/DCCL/2022/01/Faster

(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

FASTER COURIER

of: P.O. Box 974
Lilongwe.

is licensed to provide Domestic Commercial Courier Services under Part XV of the Communications Act, 2016, for a period of FIVE(5) Years commencing on 1st January, 2022 and ending on 31st December, 2026 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:

(a) 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 anniversary of the Licence.

(b) 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.

STANLEY CHAKHUMBILA KHAILA (PhD)
Board Chairperson

DAUD SULEMAN
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

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) **“Licensee”** means entity that has been awarded a licence to operate courier business.
 - (k) **“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.
 - (l) **“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.
 - (m) **“Tariff”** means fees and charges that may be charged by the Licensee in respect of the provision of licensed services.
 - (n) **“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 Domestic 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 regarding 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 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) An annual Licence Fee of the Malawi Kwacha equivalent of five Thousand United States Dollars (US\$5000) payable 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. 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 untill full liquidation thereof.
- 7.3. The Authority may revoke this licence if in any licence year, any fees or levies remain outstanding for a period of more than six (6) months from their due dates.

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 Postal Policy.
- 8.2. The Licensee shall be required to contribute to the Universal Service Fund (UFA) when so requested by the Authority in accordance with the provisions of the National Postal 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 Intra City Courier Services so contributes.

9. Service standards

9.1. Customer service

- 9.1.1. The Licensee shall maintain adequately 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. The Licensee shall set tariffs that are just, reasonable, and cost based.
- 10.2. The Licensee shall, before providing the services, submit to the Authority for approval its proposed tariff for the services.
- 10.3. The Licensee shall not change its approved tariff without the prior written approval of the Authority.
- 10.4. 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 always 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

- 13.1.1 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 registered 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 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,
Email: dg@macra.mw

(b) In the case of the Licensee, to:

The Managing Director
Faster Courier
P.O. Box 974
Lilongwe.
Email: rmakondi@rtminitiative.com

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 21st day of January, 2022.

Signed: DR. STANLEY CHAKHUMBILA KHAILA (PhD)

Chairperson

Malawi Communications Regulatory Authority (MACRA)

DAUD SULEMAN

Director General

Malawi Communications Regulatory Authority (MACRA)

Schedule 1: Quality of Service Targets

Domestic Courier Transmission Targets

Service Category

.....Target

Service Category	Year 1	Year 2	Year 3
4 hour service Intracity	90%	95%	98%
48-hour service	95%	98%	98%
Same-day service - (Intercity/Intracity)	90%	95%	98%
24-hour service (Overnight service)	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. 106

Licence No. CLF/DTH/WANANCHI/1/22



**THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY
RENEWAL OF INDIVIDUAL CONTENT SERVICES LICENCE**

for the provision of

Subscription Management Services in Malawi (DTH)

Issued to

Wananchi Limited

Issued pursuant to section 99 of the Communications Act 2016

A licence is hereby granted to Wananchi Limited ("the Licensee") in respect of the provision of subscription management services with effect from the Effective Date and valid for a period of seven (7) years

This licence shall be subject to the following standard conditions and other conditions as may be declared by the Malawi Communications Regulatory Authority ("the Authority") from time to time.

Failure to comply with any term and condition may lead to suspension or revocation of this Licence.

Notice issued at Blantyre, this 26th day of August, 2022.

STANLEY C. KHAILA PhD

Chairperson

DAUD SULEMAN

Director General

1. Definitions

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 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;

“**Current Affairs**” means contemporary issues and events of national importance;

“**Facility Services**” means any passive 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;

“**Licence**” means a Content Services Licence authorising the provision of Subscription Management Services;

“**Licensee**” means a person issued with a Content Services Licence for the provision of Subscription Management Services;

“**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;

“**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;

“**Gross Annual Revenue**” means the total revenue derived by the Licensee from the provision of the services;

“**Subscriber**” means any person who subscribes to a subscription broadcasting services on whose behalf the Licensee provides subscription management services.

“**Subscription Content service**” means a content service provided under subscription contract;

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

2. Commencement and Licence Period

2.1. 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 seven (7) years from the Effective Date.

3. Scope of Licence

- 3.1. This Licence is issued subject to the Act and any Regulations made there-under.
- 3.2. The Licensee is authorized under this Licence to provide Subscription Management Services.
- 3.3. For the purpose of providing the services under this Licence, the Licensee is authorized to:
 - (a) Facilitate the provision of subscription content services;
 - (b) collect subscription fees from subscribers;
 - (c) provide subscriber support services;

- (d) sale associated equipment;
- (e) provide technical support services to subscribers; or
- (f) perform any other activity associated with the support of subscribers of subscription broadcasting services.

3.4. This Licence is valid in the Republic of Malawi.

4. Rights and Obligations to provide Subscription Broadcasting Services

- 4.1. The Licensee shall provide the services within Malawi in accordance with the Act, Regulations and licence terms and conditions.
- 4.2. The Licensee shall facilitate carriage by the subscription content service provider for whom it provides subscription management services, on a free-to-view basis, any channels of a public broadcasting service provider in Malawi, and the public broadcasting service provider will be responsible for delivering, at its own cost, its programme channels to the subscription broadcaster's point of transmission.
- 4.3 The Licensee shall meet the quality of service targets specified in Schedule 1.
- 4.4 The Licensee is authorized to exercise any of its rights granted under this Licence, by itself or in co-operation with any agent, contractor or Service Provider ("Third Party"), provided that, where the Licensee elects to exercise any of its rights under this Licence in co-operation with any Third Party it shall be on the basis that:
 - (a) the Licensee shall be liable for any acts or omissions of any Third Party in relation to the exercise of the rights granted under this Licence and such liability shall be limited to acts or omissions which constitute contraventions of this Licence;
 - (b) the Licensee shall enter into a written agreement with any such Third Party with terms that ensure compliance with the terms and conditions of this Licence at all times;
 - (c) the Licensee shall notify the Authority of any agreement entered into with any third party pursuant to this clause at least thirty (30) days prior to the commencement of such agreement;
 - (d) the Authority, acting reasonably and having due regard to the commercial considerations applying to the Licensee at any material time, may require the Licensee to modify the proposed agreement thereof within fifteen (15) days of receipt of the aforesaid notice, provided that the Authority shall not require any modification to be made which would, as a result, render the Licensee to be in a less favorable commercial or legal position than any other telecommunication operator;
 - (e) the Authority shall, upon becoming aware of any breach of any condition of this Licence, by the Third party, or of any complaint lodged with the Authority in relation thereto, notify the Licensee in writing to correct such breach;
 - (f) failure by the Authority to notify the Licensee of any contravention shall not in any way negate or limit the Authority's rights in respect of such contravention under this Licence.

5 Licence Fees

- 5.1 The Licence fees payable by the Licensee to the Authority shall be as follows:
 - (a) An initial fee of Ten Thousand US dollars (USD 10, 000.00) payable in advance on or before the Effective Date
 - (b) An annual Licence fee of Ten Thousand US dollars (USD 10, 000.00) payable in advance on or before each anniversary of the Effective Date.
 - (c) A renewal licence fee to be determined by the Authority.
 - (d) A levy equal to one percent (1%) of Gross Annual Revenue for each year payable within 30 days after the end of each quarter in four installments. Calculation of the first three (3) quarterly installments 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.

(e) Radio Licence fees in accordance with a Spectrum Licence Fee Schedule published by the Authority from time to time.

5.2 The Licensee shall pay all outstanding fees and levies within three (3) months from their due dates, failing which the Licensee shall pay interest on all outstanding fees and levies at 1 percent above the ruling commercial lending rate until full liquidation thereof.

5.3 The Authority may revoke the Licence if in any year, 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 a manner specified by the Authority.

7 Performance Guarantee

7.1 The Licensee shall provide a guarantee acceptable to the Authority in the amount of Five Thousand United States dollars (US\$5000) to secure the performance of the Licensee's obligations contained in this Licence.

7.2 The Licensee shall ensure that the guarantee is issued within thirty (30) days from the Effective Date or anniversary of the Effective Date, whichever applies. The Licensee shall renew the guarantee annually within twenty eight (28) days of the date of its expiry.

7.3 Failure to furnish the performance guarantee under this clause by the Licensee shall be deemed as a substantial breach of this Licence and the Authority may revoke the Licence in accordance with its terms and conditions.

7.4 In the event that the Authority imposes a penalty upon the Licensee for any breach of the Licence conditions, the Authority shall, without prejudice to any of its rights or remedies under the Licence or the Act, have the right to draw upon the performance guarantee to partly or fully satisfy the penalty so imposed upon giving seven (7) days notice to the Licensee, together with reasons for doing so.

7.5 The Authority may take any other action against the Licensee to satisfy the penalty imposed where the guarantee is inadequate to satisfy the penalty.

8 Roll Out Obligation

8.1 The Licensee shall roll out the services within twelve (12) months from the Effective Date.

8.2 Where the Licensee fails to roll out its services within the period specified in Clause 7.1 the license shall be deemed automatically revoked.

8.3 The Authority may extend the roll out period referred to in Clause 8.1:

(a) only once;

(b) for a period not longer than the initial roll out period; and

(c) only on grounds of a force majeure event as accepted by the Authority.

9 Hours of broadcast

9.1 The Licensee shall to the best of its ability, ensure that the services it manages or supports are available to subscribers in accordance with the agreement between subscribers and the subscription broadcasting service provider.

9.2 Notwithstanding clause 9.1, where the Licensee is aware that the services have been interrupted due to reasons beyond the control of the Licensee, the Licensee shall notify the Authority within twenty-four (24) hours of

becoming aware of such occurrence and shall liaise with the subscription broadcasting service provider to ensure that the problem is rectified within the shortest time possible.

- 9.3 Notwithstanding the provisions of 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 services subject to such terms and conditions as the Authority may reasonably impose.

10 Provision of Information

- 10.1 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.
- 10.2 The Licensee shall furnish the Authority records, audited financial statements, management accounts, 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.
- 10.3 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.
- 10.4 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.
- 10.5 The Licensee shall bear the cost of any expenses it incurs in ensuring compliance with record keeping and provision of information.

11 Compliance

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

12. Tariff

- 12.1 The Licensee shall before providing the services, submit to the Authority for approval its proposed tariff for the services.
- 12.2 The Licensee shall not change its approved tariff without the prior written approval of the Authority.
- 12.3 The Licensee shall publish the approved tariffs on its website within seven (7) days of their coming into operation.

13. Type Approval

- 13.1 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.
- 13.2 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.
- 13.3 The Licensee shall from time to time consult with the Authority on arrangements for testing and type approval of its content service equipment.

14. Consumer Protection

- 14.1 The Licensee shall ensure that Consumer Rights applicable to content services consumers are respected in the provision of services under this Licence.
- 14.2 The Licensee shall comply with any Consumer Protection Regulations made under the Act.
- 14.3 The Licensee shall provide clear and understandable information to consumers.
- 14.4 The licensee shall notify consumers about the availability of complaint procedures and they have in place systems for registering and handling complaints.
- 14.5 The Licensee shall within 30 days from the Effective Date submit to the Authority for approval, its Master Customer Contract with Service Level Agreements (SLA) containing the standard terms and conditions for the provision of services under this Licence.

14.6 The Master Customer Contract stipulated in Clause 14.5 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.

14.7 In exercising its powers under clause 14.5 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.

14.8 The Licensee shall honour all terms and conditions under its Master Customer Contract.

14.9 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.

14.10 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.

14.11 The licensee shall operate its Customer Care Center between 08h00 and 20h00 during weekdays and between 08h00 and 15h00 during weekends and public holidays.

14.12 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

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

14.14 The Licensee shall endeavor to facilitate the provision of basic introductory packages to Malawians by the subscription broadcasting service provider for whom it provides subscription management services.

15. Audience Advisories

The Licensee shall ensure that the subscription broadcasting service provider for whom it provides subscription management services, classifies its programmes to indicate the appropriate age restriction for viewing or listening to a programme in accordance with Schedule 2.

16. Notifications to Customers

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

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

16.3 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.

17. Anti-Competitive Conduct, Unfair Competition and Discrimination

- 17.1 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.
- 17.2 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.
- 17.3 The Licensee shall provide the services to any individual in Malawi including consumers located in the rural and under-served areas without discrimination.
- 17.4 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.
- 17.5 The Licensee shall comply with any other laws and Regulations which relate to fair trading or competitive behaviour.
- 17.6 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.
- 17.7 In making a determination on anti-competitive practices under clause 17.6, the Authority may consult the Competition and Fair Trading Commission established under the Competition and Fair Trading Act. (Cap 48:09 of the Laws of Malawi)

18. Significant Market Power (SMP)

- 18.1 Where the Authority determines that the Licensee has Significant Market Power (SMP) in accordance with any applicable law or Regulations, it shall impose additional obligations relating to anti-competitive practices in its licence to prohibit the Licensee from abusing its dominant position through anti-competitive conducts.
- 18.2 In determining whether or not a Licensee has significant market power and in determining additional obligations to be imposed on a Licensee found to hold significant market power, the Authority shall have recourse to applicable laws and shall consult the Competition and Fair Trading Commission.

19. Universal Service (US) Obligations

- 19.1 The Licensee shall contribute to the Universal Service Fund (USF) through levies payable under Clause 5 and in accordance with the provisions of the Universal Service (US) Regulations.
- 19.2 The Authority shall from time to time determine the percentage of the levies payable to the Universal Service Fund from the levies collected under Clause 5.

20. Monitoring

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

21. Ownership

- 21.1 The Licensee shall be incorporated in Malawi.
- 21.2 The Licensee shall ensure that foreign ownership in the Licensee is in accordance to the Laws of Malawi
- 21.3 The Authority may revoke the Licence in accordance with Clause 25 of this Licence where the licensee effects change of shareholding that effectively affect the control of the licence without prior approval of the Authority or fails to comply with local ownership requirements under clause 21.2.
- 21.4 The Licensee shall notify the Authority of any changes that affects more than 10% of its shareholding.

22. Local Empowerment

- 22.1 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.

22.2 The Licensee shall, during the term of licence, take measures to ensure participation in its management structure by local indigenous Malawians.

23. Transfer of Licence

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

24. Licence Amendment

24.1 The Authority may modify or amend any term or condition of this license if it is in the public interest to do so or if it is necessary to take into account developments in the industry or for any other reason deemed necessary by the Authority.

24.2 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.

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

24.4 If the Licensee does not respond within the thirty (30) day period under clause 24.3 the amendment shall take effect on the thirtieth (30th) day after the date of notice.

24.5 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.

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

25. Revocation of Licence

25.1 The Authority may revoke the Licence on any of the following grounds:

(a) if the Licensee is in substantial or continuing breach of any of the terms and conditions of this licence including:

(i) failure to comply with its roll out obligations specified in this Licence;

(ii) failure to achieve specified quality of service targets;

(iii) failure to provide performance guarantee;

(iv) providing false information regarding the information necessary for renewal or any other information requested by the Authority pursuant to this Licence;

(v) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;

(vi) conducting in unfair commercial trade practices;

(vii) 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

(viii) any other breach of the licence which is deemed substantial by the Authority taking into consideration the factors listed in Clause 25.2.

(b) if the Licensee has been declared insolvent; or

(c) if the Licensee agrees in writing to cancel the Licence.

25.2 Without prejudice to Clause 25.1, 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.

25.3 Before revoking 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 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.

25.4 When considering whether or not to revoke the Licence, the Authority shall take into account:

- (a) the Licensee's representations,
- (b) the nature, gravity and consequences of the breach; and
- (c) any other factor deemed necessary by the Authority.

25.5 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.

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

26. Regulatory Sanctions

26.1 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.

27. Exercise of Powers

27.1 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.

28. Intellectual Property Rights (IPR)

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.

29. Corporate Social Responsibility (CSR)

The licensee shall endeavor to carry out corporate social responsibility as part of its obligations under the Licence.

30. 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.

31. Performance Assessment

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

32. Renewal

32.1 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.

32.2 In deciding whether to renew the licence the Authority shall have regard to the factors set out in section 44(3) of the Act.

32.3 The Licensee shall apply for renewal in writing not later than six (6) calendar months before the expiration of the term of its Licence.

32.4 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.

32.5 The Authority shall renew the licence subject to payment of applicable renewal fees and any outstanding fees.

33. Dispute Resolution

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

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

34. Applicable law

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

35. Notices

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

(c) In case of the Authority, to:

The Director General

MACRA House

Armour Road

Private Bag 261

Blantyre

Telephone number: (265)1 883 611

Facsimile number: (265) 1 883 890

E-mail address: dg@macra.mw

(c) In case of the Licensee; to

The General Manager

Physical address: New Area 12, Plot #518, City Centre

Postal address: P.O. Box 31322, Lilongwe, Malawi

Telephone number: +265 (1) 772 448

Facsimile number:

E-mail address: legal@ke.wanachi.com

elias.dziko@simbanet.co.mw

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

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. Miscellaneous

37.1 The Licensee shall comply with all terms and conditions of this Licence, applicable laws and Regulations issued by the Authority from time to time.

37.2 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.

37.3 The Authority or any Government department shall not be liable for any loss, damage, claim, charge or expense which may be incurred as a result of or in relation to the activities of the Licensee, its employees, agents, or authorized representatives.

37.4 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.

37.5 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.

37.6 Nothing in the provisions of this License 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.

37.7 A waiver of any provision of this licence shall not be construed as a waiver of any other provision or the same provision on another occasion.

Issued at Blantyre on this 26th day of August 2022.

STANLEY C. KHAILA PhD

Chairperson

DAUD SULEMAN

Director General

SCHEDULE 1

QUALITY OF SERVICE

NO	PARAMETER	BENCHMARKS	ASSESSMENT PERIOD	PENALTIES AS A RESULT OF NOT MEETING
1.	BENCHMARKS Call Centre	>99% The licensee should ensure that its service centre (Call centre) remains operational between 08h00 and 20h00 during weekdays. Licensee should ensure that its call centre is also operational between 08h00 and 15h00 during weekends and public holidays	Every three (3) months	US\$ 10,000
2.	Subscriber Notification	>99% The licensee should ensure that its subscribers are notified on any change in subscription fees by the subscription broadcasting service provider	Every three (3) months	US\$ 15,000
3.	Subscriber Complaints	< 2% The licensee should ensure that there are appropriate complaints handling procedures in place to ensure speedy (within 48 Hrs) and efficient resolution of complaints by subscribers	Every six (6) months	US\$ 5,000
5.	Parental control mechanisms	>99.9% The Licensee shall ensure that the decoders it sells to subscribers are capable of applying mechanisms that enable parents or guardians to control access to broadcast content or channels that are accessible on the service but may not be appropriate for certain viewers, including children	Every three (3) months	US\$ 10,000

SCHEDULE 2

(Clause 15)

CLASS DESCRIPTION	CLASSIFICATION PROGRAMME CLASSIFICATION	TYPE OF PROGRAMMING
F	Generally acceptable content for all ages	Kids programmes
U	Universal programmes should be suitable for audiences aged four years and over, although it is impossible to predict what might upset any particular child.	Some kids programmes
PG	PG parental Guidance – General viewing, but some scenes may be unsuitable for young children. A PG film or programme should not unsettle a child aged around eight or older. Unaccompanied children of any age may watch, but parents are advised to consider whether the content may upset younger, or more sensitive, children.	Programmes, Movies
12	Films or programmes classified 12 contain material that is not generally suitable for children aged under 12. Parental Discretion is advised	Programmes, Movies
16	Generally Content not suitable for viewers younger than 16, may contain scenes of violence, sex, nudity or strong language. Viewer Discretion is advised	Programmes, Movies
18	Content may be X-rated and adult scenes, may contain extreme violent scene, profanity and other adult types of content	Programmes and Movies May be shown from 10 pm to 5 am
V	Violence	Not suitable for viewers younger than 16
S	Sex	Not Suitable for younger viewers
PG	Parental Guidance	Not suitable for viewers younger than 13 and parental guidance is advised
L	Strong Language	Not suitable for viewers younger than 10
N	Nudity	Not suitable for viewers younger than 18
P	Prejudice or Negative Stereotyping	Not suitable for viewers younger than 10
B	Blasphemy	Not Suitable for viewers younger than 13 and parental guidance is advised

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