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MACRA: Notice of Renewal of Courier Services Licence for

—WB Courier Limited 17-30

GENERAL NOTICE No. 16

Reference: POSTAL-2015-001-DCCL



Licence No. P/DCCL/2015/02/WB

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

MALAWI COMMUNICATIONS REGULATORY AUTHORITY

DOMESTIC COMMERCIAL (INTER-CITY) COURIER SERVICES LICENCE

This is to certify that

WB COURIER (MALAWI) LIMITED

of: P.O. Box 2066,
Blantyre

is licensed to provide DOMESTIC COMMERCIAL (INTER-CITY) COURIER SERVICES under Part VI of the Communications Act, 1998, for a period of FIVE(5) Years commencing on 1st February, 2015 and ending on 31st January, 2020 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 and every anniversary of the Licence.
- (b) A levy equal to one and half percent (1½ %) 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.

ANDREW KUMBATIRA
Director General

LISA MAKAWA
Chairperson

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

WB Courier (Malawi) Limited Licence

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TERMS AND CONDITIONS OF THE LICENCE**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 1998.
 - (b) Authority means the Malawi Communications Regulatory Authority (MACRA), established under Section 3 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 setup 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 (Inter-city) Courier Services, to convey, deliver; and perform all the incidental services of receiving, collecting, sending, despatching and delivering Commercial Courier articles for reward; and in respect of which an undertaking is given to deliver the article to a specified destination within a specified time.
- 4.2 The Licensee shall lodge with the Authority commercial courier label; registered trademark or logo, which will be prominently displayed on all correspondence and at all official premises of the Licensee.

5. Operating Environment

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

6. Agents, Sub-contractors and Service Providers

- 6.1 The Licensee may offer Commercial Courier Services under this licence through an agent, sub-contractor or service provider. Provided that before entering into an arrangement or contract with any agent, sub-contractor or service provider the Licensee shall seek the prior approval from the Authority.
- 6.2 The Authority may in giving its approval under Clause 6.1 above, impose such terms and conditions it deems appropriate. Such terms and conditions may be changed by the Authority any time with written notice to the Licensee.

- 6.3 The Licensee shall ensure that any arrangement or contract entered with an agent, sub-contractor or service provider does not affect the Licensee's ability to comply with the terms and conditions of this licence.
- 6.4 The Licensee shall ensure that its agent, sub-contractor or service provider complies with the terms and conditions of this licence.
- 6.5 The Licensee shall be responsible for the acts or omissions of its agent, sub-contractor or service provider provided that the liability of the licensee shall be limited to acts or omissions which constitute contravention of the terms and conditions of this licence;
- 6.6 The Licensee shall, upon becoming aware of an act or omission by its agent, sub-contractor or service provider amounting to a breach of any term or condition of this licence, the Licensee shall act as expeditiously as is reasonably possible to remedy the breach.
- 6.7 The Authority shall, upon becoming aware of any breach of any term or condition of this licence, by an agent, sub-contractor or service provider of the Licensee notify the Licensee in writing to correct such a breach.
- 6.8 The failure by the Authority to notify the Licensee of a breach by the Licensee's agents, sub-contractors or service provider contravention shall not in any way negate or limit the Authority's rights in respect of such contravention under this licence or otherwise.
- 7. Licence Fees**
- 7.1 The licence fees payable by the Licensee to the Authority shall be as follows—
- (a) A basic Licence Fee of the Malawi Kwacha equivalent of (US\$2,000.00) Two Thousand United States of America Dollars on or before the Effective Date and on each and every anniversary of the licence.
 - (b) An annual levy equal to one and half percent (1½ %) of the Licensee's net operating revenue for each year payable in four (4) equal instalments. Calculation of the first three (3) quarterly instalments shall be based on the management accounts of the Licensee for the financial year. A final quarterly payment shall be made based on net operating revenue within thirty (30) days of issue of audited accounts. Adjustments shall be made for the first three (3) quarterly payments if the net operating revenue in the budget differs from the one in the audited accounts.
- 7.2 The Authority may exempt the Licensee from paying the basic licence fee or annual levy or both in any particular year.
- 8. Universal Service Fund**
- 8.1 The Licensee shall from time to time consult with the Authority on the actions to be taken to achieve the objectives of the National Communications 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 Communications Policy and Universal Service Regulations provided that the Licensee shall not be required to contribute in any year in which no other Courier Operator providing Courier Services so contributes.
- 9. Service standards**
- 9.1 Customer service
- 9.1.1 The Licensee shall maintain adequate trained personnel to receive and respond promptly to complaints from customers.
 - 9.1.2 The Licensee shall take all commercially reasonable measures to promptly remedy and avoid the recurrence of the cause of all customer complaints that relate to the quality, availability or delivery of its service.
 - 9.1.3 The Licensee shall take all commercially reasonable actions and insurance necessary to guarantee that amounts due to customers are paid in full if this operating licence is revoked.
 - 9.1.4 The Licensee shall establish efficient procedures that take account of the predominant local languages so that customers can receive assistance from its personnel during normal business hours. These procedures shall be included in the Licensee's standard terms and conditions for the provision of Courier services.

- 9.1.5 These procedures shall include without limitation;
- (a) Procedures for dealing with customer complaints
 - (b) Customers' right of appeal to the Authority.
- 9.1.6 The Licensee shall submit to the Authority for approval a Master Customer Contract containing Service Level Agreements and standard terms and conditions for the provision of Courier Services within one month from the Gazetting of this licence.
- 9.1.7 The Licensee may amend the Master Customer Contract with the prior approval of the Authority.
- 9.1.8 An application for approval of an amendment to a Master Customer Contract shall be made by the Licensee to the Authority in writing. If the Authority fails to respond in writing to the Licensee's application for the amendment of the Master Customer Contract within thirty (30) days from the date of receipt of the application, the amendment shall be deemed to have been approved.
- 9.1.9 The Licensee shall display a copy of the approved Master Customer Contract at its principal offices and any branch offices open to the public.
- 9.1.10 The Licensee shall make available a copy of the Master Customer Contract to any interested party upon request.

9.2 Customer privacy

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

9.3 Services for Physically Challenged Persons

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

9.4 Quality of service targets

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

10. Tariffs

- 10.1 All tariffs set by the Licensee shall be just and reasonable and shall be cost based.
- 10.2 The Licensee shall notify the Authority of proposed new tariff rates at least fourteen (14) days before the proposed tariffs become effective.
- 10.3 The proposal submitted by the Licensee to the Authority shall set out—
- (a) details of the nature and amount of charges payable for the licensed Services
 - (b) the method of determining the charges.

- 10.4 The format of tariff proposals shall be as per Tariff Guidelines or any official communication provided by the Authority.
- 10.5 The Licensee shall publish any new tariff adjustments in the press at least seven (7) days before they come into effect.
- 10.6 The Authority shall have the power to order the discontinuance of any tariff which it determines to be unjust and unreasonable and not cost based.
- 10.7 The Licensee shall make available to its customers the tariffs for Commercial Courier articles and services offered to various destinations and at various weight steps for the benefit of the public, at all business premises.

11. Roll out

- 11.1 The Licensee shall begin to offer commercial courier services not later than three (3) months from the effective date of this 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 designated places as agreed with the Authority. The Licensee shall maintain continuously a physical presence in the four (4) main cities of Malawi namely, Blantyre, Zomba, Lilongwe and Mzuzu.
- 11.3 The Licensee shall within 3 months from the effective date submit to the Authority a roll out plan for approval by the Authority which when approved shall be set in schedule 2 of this Licence.

12 Provision of information

12.1 Confidentiality

- 12.1.1 All information furnished by the Licensee to Authority and marked "confidential" shall be held in confidence by the Authority. Such information may be released by the Authority to the extent that its release is required by the law.
- 12.1.2 This requirement of confidentiality shall continue after the termination or expiry of this licence or revocation of the licence.

12.2 Regulatory Reporting

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

12.3 Preparation of accounts

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

13. Inspections

13.1 Access to inspection

- 13.1.1 The Licensee shall grant unhindered access to all its facilities, installations, office records, any equipment associated with its Commercial Courier service in Malawi to all authorized inspectors or Monitors of the Authority during normal working hours or, following prior written notice, for access after working hours, for purposes of verifying the performance by the Licensee of its obligations under this licence.
- 13.1.2 The Licensee may provide a representative to be present at any such inspection.
- 13.1.3 The mere fact that the Licensee has not provided a representative as provided in clause 13.1.2 above will not invalidate any findings of the Authority's inspectors or monitors.

13.2 Monitoring of service provision

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

14. General conditions

14.1 Ownership

- 14.1.1 The Licensee must be incorporated in Malawi. The Licensee shall ensure that foreign ownership in the Licensee is in accordance to the Laws of Malawi.
- 14.1.2 The Licensee shall seek approval from the Authority before effecting any change in its shareholding structure.

14.2 Transfer of licence

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

14.3 Amendment

- 14.3.1 Any amendment to the licence shall be in accordance with section 62 of 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.

(b) In the case of the Licensee, to—

Managing Director

WB Courier (Malawi) Limited

P.O. Box 2066

Blantyre

18. Arbitration

18.1 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 1st day of February, 2015.

LISA MAKAWA

Chairperson

Malawi Communications Regulatory Authority (MACRA)

ANDREW KUMBATIRA

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	90%	95%	98%
Overnight Service Inter city (24 Hours)	90%	95%	98%

Service Requirements

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

GLOSSARY OF TERMS:

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

SCHEDULE 2: ROLL-OUT PLAN

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

SCHEDULE 3: PENALTIES AND FINES

1. International 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

Wb Courier (Malawi) Limited Licence
