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MACRA—Notice of Television Licence awarded to Star Times Media

(Mw) Limited 253–262

GENERAL NOTICE No. 43

Reference: B-PRV-DDT 60



Licence No. 00060

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

MALAWI COMMUNICATIONS REGULATORY AUTHORITY

PRIVATE (COMMERCIAL) TELEVISION BROADCASTING SERVICE LICENCE

Issued to

STAR TIMES MEDIA (MW) LIMITED

This is to certify that

STAR TIMES MEDIA (MW) LIMITED

P.O. Box 3353

Lilongwe

Company Registration No 13395 under the Companies Act (Cap 46:03) (the Licensee) is licensed to provide PRIVATE (COMMERCIAL) TELEVISION BROADCASTING SERVICES in accordance with section 47 of the Communications Act, Cap 68:01 of the Laws of Malawi for a period of seven(7) years commencing on 1st June 2015 (the effective date) and ending on 30th May 2022 subject to the Licensee's compliance with all terms and conditions of the Licence and Communication Act.

The Licence fees payable to the Authority shall be as follows—

- (i) Broadcasting Licence fee as stipulated in section 51(1)(a) of the Act, in the amount of Malawian Kwacha equivalent of US\$40,000 in respect of the First Licence year (Where US\$20,000 is Licence issuance fee and US\$20,000 is annual Licence fee for the first year);
- (ii) Broadcasting Licence fee in the amount of Malawian Kwacha equivalent of US\$ 20,000 annually;
- (iii) Where applicable, Radio Licence (frequency) assignment fee of Malawian Kwacha equivalent of US\$1780 per assigned broadcasting frequency for the first Licence year and Malawian Kwacha equivalent of US\$890 the second year and thereafter.

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

Broadcasting Licence for Star Times Media Malawi Limited

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TERMS AND CONDITIONS

1. Definitions

In this Licence unless the context otherwise requires, the terms used will have the same meaning as set out in the Communications Act, Cap 68:01 and—

- “Act” means the Communications Act, (Cap 68:01 of the Laws of Malawi) as currently in force and as the same may hereafter be amended, re enacted or superseded from time to time;
- “Authority” means the Malawi Communications Regulatory Authority established under section 3 of the Act;
- “Code of conduct” means the code of conduct contained in the Third Schedule to the Act;
- “Conditions” means these terms and conditions, as read with Schedules 1 and 2 of this Licence;
- “Constitution” means the Constitution of the Republic of Malawi;
- “Digital terrestrial television broadcasting” means the transmission of digital television signal using conventional means entirely over earth bound transmitters and receivers;
- “Effective Date” means the date on which this Licence comes in to effect that is the 1st May 2015 ;
- “Licensee” means Star Times Media (MW) Limited ;
- “Private (Commercial) Digital Terrestrial Television Broadcasting Services” means provide signal transmission and diffusion service; provide Pay TV bouquet to subscribers and collection subscription fees from subscribers.
- “Republic” means the Republic of Malawi as constituted under Chapter 1 of the Constitution of Malawi;
- “Service” means the Private (Commercial) Digital Terrestrial Television Broadcasting Service provided by the Licensee;
- “Subscriber” means a person who is authorised by the Licensee to receive access to the Service.

2. Principles

This Licence is issued subject to and in accordance with the following principles—

- 2.1 The protection of the best interests of the community, consumers and other users of Private Television Broadcasting services;
- 2.2 Promotion of open access to information by means of the private television broadcasting service;
- 2.3 Promotion of efficiency within the Private Television Broadcasting Service of the Licensee;
- 2.4 Encouraging the introduction of new and innovative television services to enhance the needs, aspirations and best interests of the people of Malawi;
- 2.5 Fostering the development of a Private Television Broadcasting Service in accordance with recognised national and international standards;
- 2.6 Informing and educating the masses on religious, development, political, social and economic issues; and
- 2.7 Entertaining the public in accordance with the national and cultural values.

3. Scope of Licence

- 3.1 The Licensee is hereby authorised to provide Private (Commercial) Digital Terrestrial Television Broadcasting Services in the Republic of Malawi.
- 3.2 The services that the Licensee is authorised to provide are subscription digital terrestrial television broadcasting services.
- 3.3 The Licence shall be valid for a period of seven (7) years from the Effective Date.

4. Name of service

- 4.1 The name of the Service is Star Times.
- 4.2 The Licensee may not alter the name of the Service without notification to the Authority in accordance with procedures as may be determined by the Authority from time to time.

5. Rights and obligations

- 5.1 The Licensee shall provide the Service in accordance with the Act, any Regulations made thereunder, and the Conditions of this Licence.
- 5.2 The Licensee may carry out any activity authorised by this Licence in association with another person or persons, provided that the Licensee shall remain responsible to the Authority for the performance of its obligations under the Licence irrespective of any act or omission of any other party.
- 5.3 Where the provision of the Service under this Licence requires the use of frequencies, the Licensee shall apply for a separate frequency licence in accordance with the Act.
- 5.4 The Licensee may not enter into any contracts with any person or entity, involving the assignment, allocation or change to the assignment or allocation of broadcasting frequencies.
- 5.5 The Licensee shall carry and make available on its bouquet, on a free-to-view basis, any channels of a public broadcasting Service provider or any other broadcaster that the Authority has approved, provided that the number of such free-to-view channels are limited to 5, and the public broadcasting service provider or other operator will be responsible for delivering, at its own cost, its programme channels to the Licensee's point of transmission.
- 5.6 The Licensee's obligation under clause 5.5 shall be deemed discharged where such public broadcasting service provider or other broadcaster disagrees or prohibits the Licensee to carry or make their channels available on the Licensee's bouquet.
- 5.7 The Licensee may carry, subject to commercially negotiable terms, any other broadcasting channels provided by a duly authorised or licensed broadcasting service provider in Malawi.
- 5.8 The Licensee shall submit to the Authority the standard terms and conditions for the provision of the services, including any forms and amendments thereto upon the Authority's written request.

6. Hours of broadcast

- 6.1 The Licensee shall ensure that the Service is available for twenty four (24) hours a day.
- 6.2 Should the Service be interrupted due to reasons beyond the Licensee's control, the Licensee shall notify the Authority within twenty-four (24) hours of becoming aware of such occurrence and shall take reasonable steps to ensure resumption of the Service within the shortest time possible.
- 6.3 Notwithstanding the provisions of sub-clauses 6.1 and 6.2, the Licensee may, on good cause shown, for example for the purposes of carrying out maintenance, and subject to the prior written authorization from the Authority, temporarily suspend the provision of the Service subject to such terms and conditions as the Authority may reasonably impose.

7. Programming

- 7.1 The Licensee shall provide the Authority with a list of television programme channels that will comprise the Service.
- 7.2 The Licensee shall not make amendments to the list of programme channels without prior written notification to the Authority.
- 7.3 The Licensee shall adhere to the code of conduct for broadcasting services set out in the Third Schedule of the Act, provided that application of the Third Schedule by the Authority shall take cognizance of the peculiarities of the nature of the service provided by the Licensee.

8. Fees

- 8.1 The licensee shall pay licence fees in accordance with Schedule 1 of this Licence.
- 8.2 The Licensee shall pay and settle all licence fees and levies under this Licence, no later than the specified times. Any late payments shall bear interest from the date due at five (5) percent per annum above the prevailing official bank lending rate till the date they are paid.
- 8.3 Where the said fees remain outstanding for over a period of six (6) months from the anniversary of the Effective Date, the Authority shall, by written notice, warn the Licensee to pay up all licence fees within three (3) months from the date thereof.

- 8.4 If the said fees remain outstanding for over nine (9) months from the anniversary of the Effective Date, the Authority shall notify the Licensee in writing to pay up all licence fees within three (3) months from the said ninth month, failure of which may result in the Authority exercising its powers in terms of clause 12.
- 8.5 Notwithstanding the foregoing clauses, the Authority may engage all legally acceptable means, including institution of legal proceedings, to collect outstanding licence fees from the Licensee.

9. Accounts and auditing

- 9.1 The Licensee shall record, keep and maintain accurate and proper books and accounting records in form and substance sufficient to show and explain its transactions for all purposes relevant to this Licence. The Licensee shall, upon request from the Authority, file with the Authority the audited financial statements prepared in accordance with International Financial Reporting Standards.

10. Renewal

- 10.1 The Licence shall be renewed on application by the Licensee upon expiry provided that the Licensee has complied with the provisions of this Licence prior to expiry;
- 10.2 Application for renewal shall be made in writing no later than six (6) calendar months before the expiry of the Licence.
- 10.3 On renewal, the Authority may, subject to clause 11, amend the provisions of this Licence as necessary to take into account any changes in the Service or other requirements before the grant of a new licence, provided that the new licence is granted on no less favourable terms.

11. Amendment of Licence

- 11.1 The Authority, in consultation with the Licensee, may amend the provisions of this Licence as determined by the Authority from time to time.
- 11.2 Before any amendment of the provisions of this Licence comes into effect, the Authority shall publish a notice in the *Gazette* stating the proposed amendment and the reasons for it, and shall give the Licensee or any person with an interest an opportunity to make representations concerning the proposed amendment.
- 11.3 The Authority shall give due consideration to any representation regarding any proposed amendment of this Licence made to it by the Licensee, prior to amending this Licence.

12. Revocation

- 12.1 The Authority may revoke the Licence on any of the following grounds—
- (i) if the Licensee is in substantial or continuous breach of any of the Conditions of this Licence, and the licensee refuse and /or negligence to remedy such default.
 - (ii) failure to roll out its services within Eighteen (18) months of the later of Effective Date or the date on which the licensee is awarded the requisite frequency spectrum licence;
 - (iii) failure to pay License fees in accordance with clause 8;
 - (iv) if the Licensee has been declared bankrupt or insolvent;
 - (v) if the Licensee agrees in writing to cancel the Licence; or
 - (vi) any other ground specified in the Act or any Regulations made thereunder.
- 12.2 The Authority may subject to clause 12.3 impose any of the following penalties for any breach of the Conditions—
- (i) directing the Licensee to take appropriate remedial steps;
 - (ii) directing the Licensee to desist from non-compliance;
 - (iii) imposing a fine proportional to the effects of the non compliance;
 - (iv) suspension of the Licence;
 - (v) revocation; or
 - (vi) any other penalties deemed necessary under the prevailing circumstances.

12.3 Before imposing any penalty against the Licensee under this Licence, the Authority shall follow the procedure set out below—

- (i) The Authority shall notify the Licensee of the alleged breach in writing;
- (ii) The Authority shall allow the Licensee not less than fourteen(14) days from the date of notification 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 twenty-one (21) days, to remedy the breach and such request shall not be unreasonably denied by Authority

13. Applicable law

This Licence and its performance shall be governed by and construed in accordance with the Constitution, the Act or any other relevant Laws and policies in force in the Republic.

14. Social responsibility

The Licensee shall undertake various activities in the Republic including those that promote the development of ICTs as part of its corporate social responsibility. The Authority shall be advised of such activities from time to time

15. Miscellaneous provisions

- 15.1 Should any provision of these Conditions be invalid or unenforceable, same shall be severed from these Conditions and the remaining provisions shall remain valid and enforceable.
- 15.2 Should any provisions of these Conditions conflict with the Act or the Constitution, the provisions of the Act or the Constitution, as the case may be, shall take precedence.
- 15.3 In the event of a difference of opinion in regard to the interpretation of these Conditions or any provisions thereof, the Authority's interpretation shall take precedence and shall be final, subject only to judicial review, provided that such interpretation should follow equity and justice principle and legislation of Malawi.

16. Notices

16.1 All Notices and other communication under this Licence shall be in writing, and shall be sent or transmitted to the following addresses—

In case of the Authority, to—

The Director General
MACRA House
Salmin Armour Road
Private Bag 261
Blantyre
Telephone number: (+265) 01 883 611
Facsimile number: (+265) 01 883 890
E-mail address: dg-macra@macra.org.mw

In case of the Licensee; to—

The General Manager
Plot No. 4/279
NICO CENTER
Lilongwe.
Telephone number: (+265) 0992 541 899
Facsimile number: (+265)0995 777 555
E-mail address: wangxq@startimes.com.cn

16.2 Any Notice or other communication under this Licence shall be deemed duly given—

- (a) on the date of delivery if delivered personally;
- (b) on the date sent by facsimile (with confirmation of transmission) or electronic mail if sent before 17:00 hours on a working day and otherwise the next working day if sent after 17:00 hours. Provided that in the case of electronic mail each notice or other communication shall be confirmed within one working day by dispatch of a copy of such notice pursuant to one of the other methods described herein;
- (c) on the seventh (7) day from the date of postage if sent by first class, registered or certified mail with postage prepaid.

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

17. *Force Majeure*

17.1 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.

17.2 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.

17.3 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.

18. **Dispute Resolution**

18.1 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.

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

19. **Roll- out obligation**

19.1 The Licensee shall roll out its broadcasting services in Malawi within eighteen (18) months of the Effective Date or the date on which the licensee is awarded the requisite frequency spectrum licence.

19.2 The Licensee shall meet the roll out targets specified in schedule 2 of this licence.

19.3 The Licence shall be revoked if the Licensee fails to roll out within the period specified in clause 19.1.

SCHEDULE 1

LICENCE FEES

1. The licence fees payable by the Licensee to the Authority shall be as follows—
 - (i) Broadcasting License fee as stipulated in Section 51 (1) (a) of the Act, of US\$40,000 which shall be due and payable in advance on or before the Effective Date;
 - (ii) Broadcasting Licence fee in the amount of US\$20,000 annually, which shall be due and payable on or before the anniversary of the Effective Date;
 - (iii) Where applicable, Radio Licence (frequency) assignment fee of Malawian Kwacha equivalent of US\$1780 per assigned broadcasting frequency for the first Licence year and Malawian Kwacha equivalent of US\$890 the second year and thereafter;
2. The licence fees shall be due and payable in advance on or before the Effective Date and on or before each anniversary of the Effective Date.
3. The Authority may review the Licence fees from time to time. This notwithstanding, the Authority may increase the Licence fees by not more than 10% annually.

SCHEDULE 2
GEOGRAPHICAL COVERAGE

Phase	Implementation Target
Phase One Effective Date + 18	Blantyre, Lilongwe, Mzuzu and Zomba,
Phase Two Effective date + 30 months	Mulanje, Thyolo, Chikhwawa, Balaka, Mwanza, Mangochi, Ntcheu, Dedza, Kasungu, Salima, Rumphu, Karonga, Mzimba, Machinga,
Phase Three Effective date + 40 months	Nsanje, Chiradzulu, Machinga, Phalombe, Mchinji, Nkhotakota, Dowa, Ntchisi, Chitipa, Nkhata-Bay, Likoma Island, Neno

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