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Kwesé Support Service Limited 221-231

GENERAL NOTICE No. 79

Reference: DTH/3/17/KSS-79



Licence No. 00079

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

MALAWI COMMUNICATIONS REGULATORY AUTHORITY

DIGITAL SATELLITE TELEVISION BROADCASTING SUBSCRIPTION MANAGEMENT SERVICES LICENCE

This is to certify that

KWESÉ SUPPORT SERVICE LIMITED

Issued pursuant to section 98 of the Communications Act and section 6 of the Communications (Telecommunications and Broadcasting Licensing) Regulations 2016.

A license is hereby granted to KWESÉ SUPPORT SERVICES LIMITED under Company Registration number MBRS1008480 of the Companies Act, Cap. 46:03, (the Licensee) to provide DIGITAL SATELLITE TELEVISION BROADCASTING SUBSCRIPTION MANAGEMENT SERVICES for a period of seven (7) years commencing on 28th July, 2017 and ending on 27th July, 2024, subject to the Licensee's compliance with all Terms and Conditions of the Licence and Communications Act.

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

GODFREY ITAYE
Director General

MERVIS MANGULENJE
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

Digital Satellite Television Broadcasting Subscriber Management Licence for Kwesé Support Service Limited

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LICENCE**To provide SUBSCRIPTION MANAGEMENT SERVICES****KWESÉ SUPPORT SERVICES LIMITED (KSS)
TERMS AND CONDITIONS****1. Definitions**

In this Licence unless the context otherwise requires, the terms used will have the same meaning of set out in the Communications Act, Cap 48:01 and—

- “Act” means the Communications Act, Cap 48:01 the Laws of Malawi as currently in force and as the same may hereafter be amended, re-enacted or superseded from time to time;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;
- “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;
- “Effective Date” means the date when this Licence is published in the Gazette;
- “Gross Annual Revenue” means the total invoiced revenue derived by the Licensee from the provision of the services;
- “Indigenous Malawian” means any native Malawian belonging to any ethnic tribe of the Republic;
- “Licensee” means KWESÉ SUPPORT SERVICES LIMITED.
- “Republic” means the Republic of Malawi as constituted under Chapter 1 of the Constitution of Malawi;
- “Subscriber” means a person who has subscribed to receive access to a subscription broadcasting service;
- “Subscription broadcasting service” means broadcasting service provided to subscribers upon the payment of a fee;
- “Subscription management services” mean management or support services, as set out in clause 2.4, provided by the Licensee in relation to a subscription broadcasting service in terms of this Licence.

2. Scope of the Licence

- 2.1 The Licensee is hereby authorized to provide Subscription Management Services in the Republic.
- 2.2 This Licence is valid for the whole of the Republic.
- 2.3 The Licensee may carry out any activity authorized by this Licence in association with another person or persons. The terms and conditions of this Licence shall apply to any such person or persons while engaged in such activity as well as to the Licensee.
- 2.4 The services that the Licensee is authorized to provide include—
 - (a) facilitating the collection of subscription fees;
 - (b) subscriber support services;
 - (c) sale of associated equipment;
 - (d) provision of technical support services to subscribers; or
 - (e) any other activity associated with the support of subscribers of subscription broadcasting services.
- 2.5 This Licence is valid for a period of seven (7) years from the Effective Date.

3. Rights and Obligations

- 3.1 The Licensee shall provide Subscription Management Services in the Republic, in accordance with the Act, any Regulations made thereunder, the terms and conditions of this Licence.
- 3.2 The Licensee shall exercise all or any of its rights granted pursuant to this Licence, by itself or in co-operation with the its Subscription broadcasting provider or any other party provided that—
 - (a) the Licensee shall enter into an agreement with any other Parties which contains such terms as to ensure that the Licensee is, at all times, in compliance with the terms of this Licence and any applicable laws and regulations then in force; and

(b) 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;

- 3.3 The Licensee shall commence the provision its services under this Licence within three (3) months from the effective date. Provided that the Authority may extend this period upon the Licensee furnishing it with reasonable grounds for such extension.
- 3.4 The licensee shall provide services in the whole of the geographical territory of Malawi
- 3.5 The Licensee shall ensure compliance with the quality of service targets specified in Schedule 1. Provided that any failure to meet the targets may attract penalties set out in Schedule 1. Before imposing any penalty against the Licensee, the Authority shall follow the procedure set out at clause 12.3.
- 3.6 The Licensee shall, within 30 days from the effective date, submit to the Authority for approval a service level agreement containing the standard terms and conditions for the provision of the services including any forms and amendments thereto.
- 3.7 The Licensee shall ensure that any equipment it sells for accessing subscription broadcasting services are capable of applying a mechanism that enables parents or guardians to control access to broadcast content or channels that are accessible on the broadcasting service but may be inappropriate for certain viewers, including children.
- 3.8 The Licensee shall ensure that any adjustment in subscription fees or any other applicable tariffs will not be implemented without the prior approval of the Authority.
- 3.9 Provided that any adjustment in the subscription fees or tariffs shall be published in, at least, two highly circulated newspapers not less than thirty (30) days before effecting the price changes..
- 3.10 The Authority reserves the right to review the subscription fees if the Authority considers that the new tariff is excessive or does not accord with the provisions of the Act.
- 3.11 The Licensee must endeavor to facilitate the carriage of public broadcasting services by the subscription broadcasting service provider for whom it provides subscriber management services.
- 3.12 The Licensee shall maintain a customer care center where customer can lodge complaints and queries. Any breach of any condition under this part constitutes a breach of this Licence and the Licensee shall be liable to penalties under this Licence.

4. Availability of Services

- 4.1 The Licensee shall, to the best of its ability, endeavor to 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.
- 4.2 Notwithstanding sub clause 4.1, 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.
- 4.3 Notwithstanding the provisions of sub-clauses 4.1 and 4. 2, the Licensee may, on good cause shown and subject to prior written authorization from the Authority, temporarily suspend provision of its services subject to such terms and conditions as the Authority may reasonably impose.

5. Contracts

- 5.1 The Licensee shall furnish the Authority with a Master copy of contract entered into with any subscription broadcasting service provider.

6. Staff Development

- 6.1 The licensee shall ensure as far as practicable, that indigenous Malawians are given priority in terms of employment and shall ensure that 90 percent of its employees are indigenous Malawian citizens within 12 months from the effective date .
- 6.2 The licensee shall from time to time conduct relevant skill developments for its employees through appropriate training within or outside Malawi.

6.3 The Licensee shall submit to the Authority a report of training conducted pursuant to sub-clause 6.2 within 4 months after the end of each financial year of the Licensee.

6.4 The Report envisaged in sub-clause 6.3 shall include the following details—

- (i) Name and designation of personnel trained;
- (ii) Training details and provider of the training; and
- (iii) Any other information on staff development as specified by the Authority from time to time

7. Fees

7.1 During the term of this Licence, the Licensee shall pay fees in accordance with Schedule 2.

7.2 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 above the prevailing official bank rate till the date they are paid.

7.3 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 outstanding fees within three (3) months from the date thereof.

7.4 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 that the Licensee must pay up all Licence fees within three (3) months from the said 9th month failure of which may result in the Authority exercising its powers in terms of clause 12.

7.5 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.

8. Accounts and Auditing

8.1 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.

8.2 Within Four (4) months after the end of each financial year of the Licensee, the Licensee shall file with the Authority audited annual financial statements prepared in accordance with International Financial Reporting Standards. Such financial statements shall be treated as confidential by the Authority unless otherwise required by law. Without limiting the foregoing, the Licensee shall also prepare and file with the Authority such other financial information and reports, at such other times, as are specified by the Authority from time to time.

9. Shareholding Structure

9.1 The Licensee shall not transfer or effect any change in its shareholding structure without prior approval from the Authority.

9.2 The Licensee shall, during the term of the licence, comply with minimum local shareholding requirements under the Communications Act.

9.3 The Licensee shall submit to the Authority the names of the initial shareholders and directors of the Licensee and any subsequent change thereafter or when requested by the Authority.

9.4 This Licence may be revoked in accordance with the procedures herein where the Licensee effects any change of shareholding contrary to this clause.

9.5 The Licensee shall, during the term of licence, take measures approved by the Authority to ensure ownership and participation in its management and shareholding structure by indigenous Malawian entities.

10. Renewal

10.1 The Licence shall be renewed for a further period of 7 years provided that—

- (i) the Licensee has performed in accordance with the obligations of the Licence during its validity period;
- (ii) the Licensee continues to meet the eligibility requirements under the Act;
- (iii) the Licensee continues to be financially and technically capable of meeting its obligations under the Act and any other related laws;
- (iv) the renewal of Licence is in the public interest; and

- (v) the Licensee has not, during the validity period of its licence, materially contravened the provisions of the Act, the conditions of the Licence, the rules issued by the Authority or any other relevant laws.

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 services or in the Regulations applicable to the Licensee.

11. Amendment of Licence

11.1 The Authority may, in consultation with the Licensee, amend the provisions of this Licence 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 agreed 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.

11.3 The Authority shall give due consideration to any representation regarding any proposed amendment of this Licence made to it by the Licensee.

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 terms and conditions of this Licence;
- (ii) failure to roll out its services within the specified period;
- (iii) failure to achieve the Quality of Service Standards as specified in Schedule 2;
- (iv) failure to pay outstanding License fees in accordance with clause 7;
- (v) Failure to provide information requested by the Authority as specified in Clause 6.4;
- (vi) if the Licensee has been declared insolvent or liquidated;
- (vii) if the Licensee agrees in writing to cancel the Licence; or
- (viii) Any other ground specified in the Act or any Regulations made thereunder.

12.2 Authority may impose any of the following penalties for any breach of Licence 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 revoking the Licence or imposing any penalty against the Licensee under this 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 fourteen (14) days from the date of notification in accordance with clause 12.1 (i) 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 which falls under clause 12.1 (i) above and such request shall not be unreasonably denied by Authority.
- (c) The Authority shall take into consideration the Licensee's representations prior to making its decision as to the appropriate punishment for the Licensee, which punishment shall be proportional to the breach committed by the Licensee.

13. Notices

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

In case of the Authority, to—

The Director General

MACRA House

Salmin Armour Road

Private Bag 261

Blantyre

Telephone number : (265) 883 611

Facsimile number : (265) 883 890

E-mail address : dg-macra@macra.org.mw

In case of the Licensee; to—

The Chief Executive Officer

Kwesé Support Services Limited

Ridgeview Court

Along Johnston Road (Opposite NBS Bank)

Ginnery Corner, Blantyre

Telephone number: (993) 831951

Facsimile number: (265)

E-mail address: wonder@econetmedia.com

13.2 Should any of these particulars change, the changing party shall inform the other party not later than seven (7) days prior to the change.

14. 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.

15. Social Responsibility

The Licensee may undertake various activities that promote the development of Information Communication Technologies (ICTs) in the Republic as part of its corporate social responsibility.

16. Force Majeure

16.1 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 but not limited to extreme weather conditions, fire, war or civil strife.

16.2 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.

16.3 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.

17. Dispute Resolution

- 17.1 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.
- 17.2 This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction.

18. Miscellaneous Provision

- 18.1 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.
- 18.2 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. 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 and binding, subject only to judicial review.

Signed on this day of 28th July, 2017.

GODFREY ITAYE
Director General

MERVIS MANGULENJE
Chairperson

SCHEDULE 1
QUALITY OF SERVICE (Clause 3)

No.	Parameter	Benchmarks	Assessment Period	Penalties as a result of not meeting Benchmarks
1.	Call Centre	<p>>99%</p> <p>The licensee should ensure that its service centre (Call centre) remains operational between 08h00 and 19h00 during weekdays. Licensee should ensure that its call centre is also operational between 08h00 and 15h00 during weekends and public holidays</p>	Every three (3) months	US\$ 10,000
2.	Subscriber Notification	<p>>99%</p> <p>The licensee should ensure that its subscribers are notified on any change in subscription fees by the subscription broadcasting service provider</p>	Every three (3) months	US\$ 15,000
3.	Subscriber Complaints	<p><2%</p> <p>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</p>	Every six (6) months	US\$ 5,000
5.	Parental control mechanisms	<p>>99.9%</p> <p>The Licensee shall ensure that the decoders it sells to subscribers is 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</p>	Every three (3) months	US\$ 10,000

SCHEDULE 2

LICENCE FEES (Clause 7)

1. The Licensee shall pay an initial Licence fee of the Malawian Kwacha equivalent of US\$ 20,000, which shall be due and payable in advance on or before the Effective Date.
2. An annual Licence fee in the amount of the Malawian Kwacha equivalent of US\$ 10,000 payable in advance on or before the anniversary of the Effective Date.
3. A License application fee of \$5,000.
4. A levy equal to onepercent (1%) of audited 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 operating Revenue within thirty (30) days of issue of the audited accounts. Adjustment shall be made for the first three (3) quarterly payments if the Net operating Revenue in the management's accounts differs from the one in the audited accounts.
5. Subject to the consultation process in clause 11 of this Licence, the Authority may review this Licence and all fees chargeable herein.

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