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GENERAL NOTICE NO. 105

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Licence No. 0002

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

### THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY INDIVIDUAL NETWORK SERVICES LICENCE

OPEN CONNECT LIMITED

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

A licence is hereby granted to Open Connect Limited ("the Licensee") in respect of the ownership and provision of any electronic communications network services with effect from the 14 day of December 2018 and valid for a period of Ten (10) 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 –

Notice issued at Blantyre, this 14 day of December, 2018.

Dated this 14 day of December 2018.

GODFREY ITAYE  
Director General

This Licence is issued subject to the terms and conditions hereto, and to any other terms and conditions and promises of performance that may from time to time be incorporated herein under the Communications Act and the Regulations thereto. Failure to comply with any terms and conditions may lead to suspension or revocation of this Licence

*License for Open Connect Limited*

## 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—

- (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Act Cap 68:01 of the laws of Malawi as currently in force and as the same may hereafter be amended, re-enacted or superseded from time to time;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;

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

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

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

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

**“interconnection”** means the physical and logical connection of two or more electronic communications networks;

**“International Gateway Licensee”** means an electronic communications operator in the Republic of Malawi who is—

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

**“License”** means this document that grants rights to the Licensee to provide Network Service as per the terms and conditions defined in the Act and this document;

**“Licensee”** means Open Connect Limited;

**“Network Equipment”** means equipment including software and physical devices together with ancillary parts which are required for operating and maintaining an electronic communication network for providing Network

Services but shall exclude equipment and devices that fall under a Network Facilities Licence;

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

**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 ten (10) 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 to operate and maintain electronic communication system for the purposes of providing network services using any applicable technology;

3.3 For the purpose of providing the Network Services under this Licence, the Licensee is authorised:

(a) to provide network services to Network Services, Application and Content Service Licensees;

(b) to install, operate and maintain an electronic communication network provided that this does not include such facilities that falls under a Network Facilities Licence.

(c) to connect its electronic communications network to other licensees' networks 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 The Licensee shall provide international connectivity services to its Customers by means of any connection to an International Gateway Licensee.

3.6 Where the Licensee requires operation of its own international gateway, it shall apply for a separate international gateway licence authorizing such services.

3.7 This Licence is valid in the Republic of Malawi.

3.8 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) satellite services;

(f) any equivalent, similar or improved network services as approved by the Authority from time to time.

**4. Rights and Obligations to provide Telecommunication Services**

4.1 The Licensee shall install operate and maintain an electronic communication system 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 licensees.

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 Network 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 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 electronic communications licensees;
- (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 licence fee of US\$100, 000 (One Hundred Thousand United States Dollars) payable in advance on or before the Effective Date or as otherwise agreed by the parties.
- (b) An annual Licence fee of US\$100, 000 (One Hundred United States Dollars) payable in advance on or before each anniversary of the Effective Date.
- (c) A levy equal to three and a half percent (3.5%) 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 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. The levy referred to in this clause shall not include revenue generated from international incoming communication traffic.
- (d) Radio Licence in accordance with radio frequency spectrum fees set by the Authority under the Act.

5.2 During the first two years from the Effective Date, 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. After the second anniversary of the Licence, all fees and levies outstanding for a period of more than three (3) months from their due dates, shall attract interest at the 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 in accordance with Clause 34 of this Licence.

## 6. International Call Termination Rate

- 6.1 Where applicable, 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 seven (7) 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 on or before the 75th day of the month following 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 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.
- 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 US40, 000 (Forty Thousand United States Dollars) 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 Where the Licensee is unable to submit information in the manner and format specified under Clause 9.4, it shall inform the Authority in writing stating the reasons why the specified manner and format cannot be complied with.
- 9.5 Where the Authority is satisfied with the reasons stated by the Licensee, the information shall be submitted by the Licensee in a manner that is reasonable and practical to give effect to the purpose for which the Authority requires the information.
- 9.6 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.
- 9.7 The Licensee shall bear the cost of any expenses it incurs in ensuring compliance with record keeping and provision of information.

**10. Compliance**

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

**11. Performance of Network**

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

**12. Network Coverage**

- 12.1 Unless otherwise approved by the Authority, the Licensee shall provide network services in the areas and by the dates specified in Schedule 2.
- 12.2 The Licensee shall submit to the Authority not later than ninety (90) days after the end of its financial year a report of its performance in relation to the network service targets stipulated in Schedule 2 in the preceding financial year.
- 12.3 Network Service Targets set in Schedule 2 shall be reviewed by the parties after five (5) years.

**13. Public Emergency Services**

- 13.1 Where applicable-
- (a) the Licensee shall provide connectivity to Application Service Operators for emergency services twenty- four (24) hour free of charge;
  - (b) 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;
  - (c) the Licensee may facilitate connectivity to emergency services through a centralised call centre designated by the Authority;
  - (d) the Licensee shall not claim or charge interconnection fees from any other network service operator where interconnection for the connectivity to emergency numbers or short codes is required.

**14. Network Service Development**

- 14.1 The Licensee shall submit for notification to the Authority a Development Plan setting out targets for ongoing 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.
- 14.2 The Licensee shall submit to the Authority the Plan stipulated in clause 14.1 within thirty (30) days from the Effective Date.
- 14.3 The Licensee may from time to time review its Development Plan to accommodate technological changes in the industry.

**15. Quality of Service Standards**

- 15.1 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.
- 15.2 The Licensee shall ensure that voice and data traffic passes through its network with minimal interference, degradation or loss.
- 15.3 Notwithstanding any regulatory sanctions under this licence, the Authority shall impose penalties in Schedule 1 for failure to meet QoS targets under the schedule.
- 15.4 In addition to the penalties applicable under Schedule 1, where the Licensee fails to meet six (6) or more QoS targets with margin failure of 10% or more, the Licensee shall be deemed to have been issued with a first warning for failure to meet such targets for the first time and if the Licensee fails to meet six or more QoS targets a second time it shall be deemed to have been issued with a final warning and any subsequent failure to meet four or more QoS target shall be deemed substantial and continuing breach of this licence entitling the Authority to revoke the licence in accordance with clause 34 of this licence.
- 15.5 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.

- 15.6 The Authority may in consultation with the Licensee, vary, change, amend, modify or revise the QoS targets from time to time and the Licensee shall comply with the new set targets within the time periods stipulated by the Authority.
- 15.7 The Licensee shall submit to the Authority quarterly reports on its compliance with each of the QoS target within 14 days after the end of each quarter, in such form and manner as stipulated by the Authority.
- 15.8 The Licensee shall maintain records regarding its compliance with this clause and the Authority may at any time request the submission of such records.
- 15.9 Without compromising the QoS standards the Licensee shall ensure efficient use of spectrum.
- 15.10 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.
- 15.11 The Licensee shall without undue delay, and in any case not later than 1 hour, notify the Authority of any significant failure of its network.
- 15.12 The Authority may not impose any penalties for failure to meet QoS Targets set out in Schedule 1 of this Licence as a result of force majeure, provided that the Licensee shall promptly notify the Authority within twelve (12) hours of the facts and circumstances giving rise to such inability to comply and the Licensee shall take any commercially reasonable action necessary to correct any fault or avoid any such circumstances so as to re-establish compliance with QoS targets.
- 15.13 In any circumstances under clause 15.12 above, the Licensee shall notify its customers of the network failure through any other reasonable means possible.
- 15.14 The Authority reserves the right to inspect and independently verify the cause and extent of the failure to comply with the QoS targets.
- 15.15 The Licensee shall make all reasonable endeavors to comply with the applicable recommendations of the ITU and its associated organizations.

#### **16. Application of International Telecommunication Regulations**

- 16.1 The Licensee shall comply with any international agreements that have been ratified by the Government of Malawi.
- 16.2 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.
- 16.3 The Licensee shall comply with any Regulations issued by the Authority on traffic routing, accounting rates and settlement procedures for international Voice Telephony Services.

#### **17. Spectrum Obligations**

- 17.1 The Licensee shall not use any frequency that requires a license without prior assignment by the Authority
- 17.2 The Licensee shall apply for radio licences for individual transceiver stations within its network in the manner and form as specified by the Authority and the Authority shall respond within 14 days from the application date.
- 17.3 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.
- 17.4 The Licensee shall pay for radio frequencies in accordance with a Spectrum Fee Schedule published by the Authority from time to time.
- 17.5 The Licensee shall submit to the Authority its spectrum usage plan for its assigned frequencies within thirty (30) days from the effective date.
- 17.6 The Authority may in consultation with the Licensee re-farm frequencies assigned to the Licensee as required to meet the growth in demand for the Service in accordance with the National Frequency Band Plan and any applicable Regulations.
- 17.7 The Authority reserves the right to make any re-arrangement in the assignment within the band for

maintaining the continuity of spectrum allocated or assigned if required in the future and the Licensee shall ensure that its equipment shall have provision to readjust according to such re-arrangement.

- 17.8 The Authority will make re-arrangement stipulated under clause 17.7 for any of the following reasons:
- (a) to create a level – playing field for all operators;
  - (b) to achieve overall objectives of the Authority under the Act and any other relevant Regulations made there-under; or
  - (c) to comply with international best practices.
- 17.9 The Authority shall at any time inspect and analyze the spectrum efficiency of any assigned frequencies to ensure proper utilization of the frequencies.
- 17.10 The Licensee shall ensure that transmission is restricted as per ITU Radio Regulations and any applicable Regulations to avoid harmful interference within its assigned frequency band.
- 17.11 The Authority shall revoke a radio licence assigned to any licensee for any of the following reasons:
- (a) frequency hoarding;
  - (b) failure to pay frequency fees;
  - (c) use of frequencies contrary to terms and conditions of a radio licence;
  - (d) use of unassigned frequencies; or
  - (e) any substantial breach of terms and conditions of a radio licence .

## 18. Type Approval

- 18.1 Subject to applicable Regulations, the Licensee shall submit to the Authority for type approval of any network equipment acquired after the Effective Date, that will be used for its Network Services.
- 18.2 The Licensee shall make the submissions required under Clause 18.1 in a form and manner as specified by the Authority.
- 18.3 The Licensee shall within 30 days from the Effective Date submit to the Authority information regarding any network equipment used for network services acquired before the Effective Date.
- 18.4 Subject to Clause 22.7 of this Licence, the Licensee shall permit any licensed network service, application service, and content service operator to connect a type approved network equipment to its network.
- 18.5 The Licensee shall accept as conclusive evidence that network equipment is type approved by the Authority based on a written statement of compliance issued by the Authority in line with applicable Regulations.
- 18.6 The Licensee shall consult with the Authority from time to time regarding the arrangements for testing and type approval of network equipment. .

## 19. Numbering

Where applicable, 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.

## 20. Tariff

- 20.1 The Licensee shall within 30 days from the Effective Date, submit to the Authority for approval its proposed tariff structure for the facilities service.
- 20.2 The tariff structure proposal under Clause 20.1 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 tariffs 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.
- 20.1 The Licensee shall ensure that the tariffs for its facilities service are based on the approved tariff structure
- 20.2 For the avoidance of doubt, the Licensee shall provide any Facility Service at the tariffs, terms and conditions that are in accordance with the approved tariff structure so approved by the Authority and shall not depart or change the tariff structure without prior approval of the Authority.
- 20.3 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.



- 20.4 The Licensee shall not change its approved tariff structure without the prior written approval of the Authority.
- 20.5 Subject to any applicable Regulations or Rules, the Authority shall approve or refuse to approve a tariff structure within fourteen (14) days from the date of a submission made under Clause 20.6.
- 20.6 The Licensee shall cause to be published on its website, any approved tariff, within seven (7) days of the tariff coming into operation.

## 21. Interconnection Obligations

- 21.1 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 thereunder;
  - (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
- 21.2 If the initial interconnection agreement with a network service Operator is not concluded within three (3) months, the provisions of clause 21.10 shall apply.
- 21.3 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.
- 21.4 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.
- 21.5 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.

- 21.6 The Licensee shall, after negotiating an interconnection agreement, submit to the Authority an application for approval of the interconnection agreement.
- 21.7 The application made under Clause 21.6 shall be accompanied by a copy of the proposed interconnection agreement.
- 21.8 The Authority shall, within thirty days of receipt of the application, make a decision on the application.
- 21.9 The Authority may declare void any term of the proposed interconnection agreement considered to be inconsistent with the Act or any applicable Regulation.
- 21.10 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.
- 21.11 In making its determination pursuant to clause 19.8 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.
- 21.12 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.
- 21.13 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.
- 21.14 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.
- 21.15 The Licensee may refuse to interconnect with other operators on any of the grounds set out in section 62(4) of the Act.
- 21.16 Where the Licensee refuses to interconnect with any other operator it shall submit to the Authority the reasons for such refusal and the Authority shall reserve the right to make an assessment of the reasons given and either uphold or overrule the decision of the licensee.

## **22. Network Access by Application and Content Service Operators**

- 22.1 The Licensee may enter into Network Access Agreement with, Network, Application and Content Service operators for access to its electronic communication network as specified under the applicable Regulations.
- 22.2 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.
- 22.3 The Licensee shall not impose restrictions on usage of the services acquired by a Application and Content Service Licensees from the Licensee under the network access agreement.
- 22.4 The Licensee shall offer any of its network services to any Network, Application and Content Service Licencee at wholesale rates.
- 22.5 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.
- 22.6 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.
- 22.7 The Licensee may refuse to offer access of its network to Application and Content Service operators on any of the grounds set out in section 68(4) of the Act.
- 22.8 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.

**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 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 4 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 its customers.
- 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 Subject to any applicable Regulations, the Licensee shall facilitate, provide and maintain appropriate interface points and links that are supported by its equipment and systems 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 27.3 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 the provision of communication services and sharing of resources.

**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 Where applicable, the Licensee shall as much as possible use green technology in its systems, and shall ensure that the technology constitutes at least 20% of its off- grid network equipment including transceivers within five (5) years from the effective date.
- 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 in accordance with clause 34 of this Licence where the licensee effects change of shareholding that effectively affect the control of the licence without prior approval of the Authority which approval shall not be unreasonably withheld or fails to comply with local ownership requirements under clause 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 Subject to the section 41 of the Act, the Authority may modify or amend any term or condition of this license if it is in the public interest to do so or if it is necessary to take into account developments in the industry or for any other reason deemed necessary by the Authority.
- 33.2 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.
- 33.3 The Licensee may submit a response to the proposed amendment within thirty (30) days of the notice.
- 33.4 If the Licensee does not respond within the thirty (30) day period under clause 33.3 the amendment shall take effect on the thirtieth (30th) day after the date of notice.
- 33.5 If the Authority receives a response from the Licensee, it shall consider the response and notify the Licensee within thirty (30) days of the reply of its decision to either;
- (a) rescind the amendment;
  - (b) modify the amendment; or
  - (c) proceed with the proposed amendment
- in which case the amendment shall take effect on the fifteenth (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 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 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

35.1 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.

### 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 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.

36.3 The Licensee shall as soon as possible provide information for the restoration of its networks service.

36.4 The Authority may from time to time cause to be carried out by the licensee Practical Tests on the Licensees networks service to assess the effectiveness or functionality.

### 37. Exercise of Powers

37.1 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.

### 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 may carry out corporate social responsibility as part of its obligations under the Licence.

40. Liability

The Licensee shall indemnify the Authority against any injury, losses, claims, charges or expenses, or which may be made against the Authority by third parties as a direct consequence of the Licensee's actions.

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 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.

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 his licence, contravened the provisions of the Act, the terms and conditions of the licence, the rules issued by the Authority or any other relevant laws and regulations.

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

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 (Cap 603 of the Laws of Malawi) and the seat of arbitration shall be Blantyre, Malawi.

43.2 The number of arbitrators shall be one (1) appointed jointly by the Parties.

43.3 The language to be used in the arbitral proceedings shall be English.

43.4 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 shall not be liable for any loss, damage, claim, charge or expense which may be incurred by the Licensee as a result of or in relation to the activities of the Licensee, its employees, agents, or authorized representatives unless the same is occasioned by the acts or omissions of the Authority.

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 44.6, 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 Licence shall be deemed to have been waived by any act of or

- acquiescence on the part of the Authority, unless the same is issued in writing by the Authority.
- 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 14 Day of December 2018.

GODFREY ITAYE  
DIRECTOR GENERAL  
MALAWI COMMUNICATIONS REGULATORY AUTHORITY

#### SCHEDULE 1: NETWORK QUALITY OF SERVICE STANDARDS

1. The Authority shall, in interpreting the Quality of Service parameters in this Schedule, take into account and give due regard to any peculiar circumstances applicable to the Licensee.

TABLE S1C - QUALITY OF SERVICE SERVICES PARAMETERS

QoS Parameter Name	Measurement Method	Additional Comments	Target Value	Average period to be reported
Supply Time	Supply Time for o Connection		90% completed on agreed day	Monthly



Installation time	Average time from order received and accepted until the service is installed and ready to use.		4 weeks	Monthly
Fault Repair	<p>Mean Time to Repair (Hrs)</p> <p>a. Equipment related faults</p> <p>b. Backbone Link fault impacting traffic</p> <p>c. Access Link</p>	<p>This will be calculated as follows:</p> <p>In a day: Total number of hours for each fault divided by total number of faults in that day.</p> <p>The monthly average will be calculated from daily average by summing up the averages divided total number of days the faults occurred.</p>	<p>Within 4 hours</p> <p>Within 8 hours</p> <p>Within 4 hours</p>	Monthly
Fault rate	A fault report describes a disrupted or degraded service and is submitted by the Wholesale customer to the point of contact of the Service Provider.	This number of faults reported per 100 customers	<5%	Monthly
Service availability	The percentage of time the services are available		99%	Monthly
Network availability	The percentage of time the circuits are available for service		99%	Monthly
Unsuccessful Data Transmission Ratio	<p>The ratio of unsuccessful data transmissions to the total number of data transmission attempts in a specified time period.</p> <p>Data transmission is successful if a test file is transmitted completely and with no errors.</p> <p>(ETSI EG 202 057-4)</p>	<p>The measurement file size should be twice the speed of the link.</p>	<1% or $10^{-3}$	Monthly

Loss Ratio	Ratio of packets lost to the total packets transmitted between two designated points for each class of service (ITU-T Rec. Y.1541).	For the IP packet loss ratio (IPLR) (from UNI – UNI) End to End testing using ping.	<5%	Monthly
Network Latency	Time in milliseconds that is needed for an ICMP Echo Request/Reply (Ping) to a valid IP address. Measurement provided as the mean value of the delay in (ms)	For National the Operator should ping nodes within their own network.	National 100ms International 300ms	Monthly
Congestion level per Traffic ROUTE During busy hours			≤2%	Monthly
Data Transmission Speed Achieved (Data transmission rate achieved for downloading and uploading specified test files between service provider's network and customer premises)	Maximum data transmission rate in Kbit/s achieved; Minimum data transmission rate in Kbit/s achieved; -mean value and standard deviation of the transmission rate in Kbit/s achieved; (ETSI EG 202 057-4)	Operator can use any tools available	≥80 % of that advertised by the service provider.	Monthly

#### SCHEDULE 2 – SERVICE COVERAGE

1. In meeting the service coverage targets herein, the Licensee may access the Universal Service Fund (USF) which the Authority may set up from time to time in accordance with the terms and conditions set out in the USF
2. Where the Licensee fails to achieve any of the service coverage targets specified in Table S1.1 it shall inform the Authority in writing stating the reasons for the failure.
3. The Authority shall assess the reasons stated by the Licensee and if satisfied with the reasons so stated, revise the service coverage targets or, if not satisfied, shall provide reasons to the Licensee for its decision.

TABLE S2A – SERVICES COVERAGE

<i>PHASE</i>	<b>IMPLEMENTATION TARGET</b>	<b>PENALTY</b>
<i>PHASE ONE</i> Effective Date + 12 Months	Thyolo, Luchenza, Mulanje, Mangochi, Monkeybay, Nkhotakota, Dwangwa, Nkhata-bay, Rumphu, Karonga, Mzimba, Kasungu, Ntcheu, Balaka, Mwanza,	\$100000 or proportion thereof in relation to number of places unserved
<i>PHASE TWO</i> Effective Date + 24 Months	Namadzi, Ulongwe, Nkopola, Chintheche, Ekwendeni, Nkhamenya, Mponela, Chilumba, Raiply, Chinkhoma,	\$100000 or proportion thereof in relation to number of places unserved
<i>PHASE THREE</i> Effective Date + 36 Months	Ngabu, Phalombe, Dowa, Ntchisi, Chitipa, Neno, Chikwawa, Chiradzulu, Nchalo, Mchinji,	relation to number of places unserved