



# THE MALAWI GOVERNMENT GAZETTE

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GENERAL NOTICE NO. 50

Reference: TEL-2019-002-TSP



Licence No. 002

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

## THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY

### INDIVIDUAL APPLICATION SERVICES IN MALAWI

Issued to

**TELEKOM NETWORKS MALAWI LIMITED**

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

A licence is hereby granted to **Telekom Networks Malawi Limited** in respect of the provision of application services with effect from the Effective Date and shall be valid up to 26th August 2024.

This Licence is issued subject to the terms and conditions hereto, and to any other terms and conditions and promises of performance that may from time to time be incorporated herein under the Communications Act and the Regulations thereto.

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

Notice issued at Blantyre, this 25th day of January, 2019.

Dated this 25th day of January, 2019.

GODFREY ITAYE

*Director General*

## 1. Definition

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

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Act Cap 68:01 of the laws of Malawi as currently in force and as the same may hereafter be amended, re-enacted or superseded from time to time;

“Application Services” means the provision of electronic communication services to end users using licensed network services but does not include content services;

“Authority” means the Malawi Communications Regulatory Authority

“Content Services” means broadcasting services consisting of electronic media including sound, data, text or images for general reception by the public;

“electronic communications” means telecommunications and broadcasting services consisting of transferring of signs, signals, writing, images, sounds, data or intelligence of any nature, transmitted in whole or in part by radio, electro-magnetic, photo electronic or photo optical system;

“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;

“Emergency Service” means any services to be offered by the Licensee in respect of any event or circumstances provided within any locality by the police, fire, ambulance and any other related authority as stipulated in the National Numbering Plan;

“Facility” means electronic communication infrastructure including towers, cables, ducts, VSats, Satellite hubs, satellite earth stations systems, radio-communication transmitters, fixed links, transmission poles, public payphone facilities, landing point, mobile communications systems;

“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 Application Services but shall not include revenue from the sale or rental of assets including terminal equipment;

“Licensee” means Telekom Networks Malawi Limited;

“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 Effective Date as published in the Gazette.

(b) The Licence shall be valid from the Effective Date up to 26th August 2024.

### 3. Scope of Licence

3.1. This Licence is issued subject to the Act and any Regulations made there-under.

3.2. The Licensee is authorized to resell to end users electronic communication services for the purposes of providing application services;

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

(a) to provide to Application Services to end users;

(b) to connect to network service operators in the Republic of Malawi;

(c) where necessary to operate and maintain terminal Equipment for use in connection with its Application Services; and

(d) to do all other things necessary or requisite to the provision of the Application Services.

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

3.5. The services that the Licensee is authorised to provide include:

(a) voice services including telephony, VoIP;

- (b) facsimile;
- (c) data communications, including Internet access;
- (d) International and National long-distance telecommunications services;
- (e) Public pay-telephone services;
- (f) Value added services, including -
  - (i) Short messaging services ("SMS");
  - (ii) Multimedia services ("MMS")
  - (iii) Voice mail;
  - (iv) Pre-paid calling card and electronic top-up services;
  - (v) Instant messaging services;
  - (vi) Video conferencing services;
  - (vii) Interactive voice mail and voice services;
  - (viii) Financial transactions including, account balance transfers, funds
  - (ix) transfers, bill payments and on-line auctions; or
  - (x) Any equivalent, similar or improved service as approved by the Authority from time to time.

#### 4. Rights and Obligations

- 4.1. The Licensee shall provide application services in terms of this licence and the Act.
- 4.2. Without prejudice to clause 4.1, the Licensee shall resell application services to end users subject to any terms and conditions that may from time to time be prescribed by the Authority and which are applicable to all application service providers.
- 4.3. 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 application service provider operator;
  - (e) the Authority shall, upon becoming aware of any breach of any condition of this Licence, by the Third party, or of any complaint lodged with the Authority in relation thereto, notify the applicant in writing to correct such breach;
  - (f) failure by the Authority to notify the Licensee of any contravention shall not in any way negate or limit the Authority's rights in respect of such contravention under this Licence.

#### 5. Licence Fees

- 5.1. The Licence fees payable by the Licensee to the Authority shall be as follows:
  - (a) An annual Licence fee of Ten Thousand US dollars (USD 10, 000.00) payable in advance on or before each anniversary of the Effective Date.
  - (b) A levy equal to three point five percent (3.5%) of Gross Annual Revenue for each year payable at the end of each quarter in four installments. Calculation of the first three (3) quarterly installments shall be based upon the management accounts for that particular period. A final quarterly payment shall be made based on Net 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.

- (c) All outstanding fees and levies shall be payable within three (3) months from their due dates, failing which they shall attract a five percent (5%) annual interest until full liquidation thereof.
- (d) If, in any year, any licence fees remain outstanding on the sixth (6th) month and ninth (9th) month the licensee shall be deemed to have been warned and given notice to pay within three (3) months thereof respectively. If any sum remains unpaid the licence shall stand automatically revoked on the twelve (12th) months from the anniversary from the effective date.

#### 6. International Call Termination Rate

- 6.1. The Licensee shall charge a minimum rate 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 not charge its customers a higher fee for its local voice traffic as a result of the introduction of the minimum rate for international incoming voice traffic.
- 6.3. 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.
- 6.4. 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.
- 6.5. All fees collected under clause 5.4 shall be payable to the Authority on or before the 15th 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.
- 6.6. The Authority may, from time to time, revise the minimum rate and the amount of the fee applicable to international incoming voice traffic under this clause.

#### 7. Accounting Requirements

- 7.1. The Licensee shall within three (3) months of the end of each financial year either:
  - (a) provide the Authority with annual financial statements audited in a manner consistent with internationally recognized standards and certified by a qualified independent auditor; or
  - (b) provide the Authority with a written statement of the reasons the audited financial statements cannot be provided within that period and agree with the Authority a date for their provision, which date shall not be more than six (6) months after the end of the financial year to which the accounts relate.
- 7.2. The Licensee shall maintain management accounts in a manner specified by the Authority.

#### 8. Performance Guarantee

- 8.1. The Licensee shall provide a guarantee acceptable to the Authority in the amount of Twenty Thousand United States Dollars (US\$20, 000) to secure the performance of the Licensee's obligations contained in this Licence.
- 8.2. The Licensee shall ensure that the guarantee is issued within thirty (30) days from the Effective Date or anniversary of the Effective Date, whichever applies. The Licensee shall renew the guarantee annually within twenty eight (28) days of the date of its expiry.
- 8.3. Failure to furnish the performance guarantee under this clause by the Licensee shall be deemed as a substantial breach of this Licence and the Authority may revoke the Licence in accordance with its terms and conditions.
- 8.4. In the event that the Authority imposes a penalty upon the Licensee for any breach of the Licence conditions, the Authority shall, without prejudice to any of its rights or remedies under the Licence or the Act, have the right to draw upon the performance guarantee to partly or fully satisfy the penalty so imposed upon giving seven (7) days notice to the Licensee, together with reasons for doing so.
- 8.5. The Authority may take any other action against the Licensee to satisfy the penalty imposed where the guarantee is inadequate to satisfy the penalty.

#### 9. Provision of Information

- 9.1. The Licensee shall establish and maintain adequate records to permit the effective supervision and enforcement by the Authority of the Licensee's obligations under this Licence.
- 9.2. The Licensee shall furnish the Authority records, audited financial statements, management accounts, ICT indicators, reports, returns, or any other information that may be reasonably required by the Authority for the purpose of monitoring and enforcing compliance by the Licensee with its obligations under this Licence.

- 9.3. The Licensee shall submit information requested by the Authority under this clause within reasonable time and in a manner and format as specified by the Authority.
- 9.4. The Authority may inspect files, records, accounts and any other data if necessary make copies of the documents inspected for the purpose of enabling the Authority to monitor and enforce compliance with this Licence.
- 9.5. The Licensee shall bear the cost of any expenses it incurs in ensuring compliance with record keeping and provision of information.

#### 10. Compliance

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

#### 11. Service Standards

- 11.1. The Licensee shall ensure that its application services conform to ITU, ETSI, and GSM MoU specifications and any other national and international standards as specified by the Authority.
- 11.2. The Licensee shall achieve the Service Standards as specified in Schedule 1 and any failure to meet the targets shall attract penalties set out in the Schedule.
- 11.3. Notwithstanding any regulatory sanctions under this licence, the Authority shall impose penalties in Schedule 1 for failure to meet Service Standards therein.
- 11.4. In addition to the penalties applicable under Schedule 1, where the Licensee fails to meet six (6) or more Service Standards 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 standards for the first time and if the Licensee fails to meet Service Standards a second time it shall be deemed to have been issued with a final warning and any subsequent failure to meet Service Standards shall be deemed substantial and continuing breach of this licence entitling the Authority to revoke the licence in accordance with clause 38 of this licence.
- 11.5. The Licensee shall adhere to the following service conditions:
  - (a) the provision of continuous services 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 application services.
- 11.6. The Authority may in consultation with the Licensee, vary, change, amend, modify or revise the Service Standards from time to time and the Licensee shall comply with the new set standards within the time periods stipulated by the Authority.
- 11.7. The Licensee shall submit to the Authority quarterly reports on its compliance with each of the Service Standards within 14 days after the end of each quarter, in such form and manner as stipulated by the Authority.
- 11.8. The Licensee shall maintain records regarding its compliance with this clause and the Authority may at any time request the submission of such records.
- 11.9. Without compromising the Service Standards the Licensee shall ensure efficient use of spectrum where applicable.
- 11.10. Subject to clause 10.10, 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.
- 11.11. The Authority may not impose any penalties for failure to meet Service Standards set out in Schedule 1 of this Licence as a result of *force majeure*, provided that the Licensee shall promptly notify the Authority within three (3) hours of the facts and circumstances giving rise to such inability to comply and the Licensee shall take any commercially reasonable action necessary to correct any fault or avoid any such circumstances so as to re-establish compliance with Service Standards.
- 11.12. In any circumstances under clause 10.12 above, the Licensee shall make public announcements of the service failure through radio, print media or any other reasonable means possible.
- 11.13. The Authority reserves the right to inspect and independently verify the cause and extent of the failure to comply with Service Standards.
- 11.14. The Licensee shall make all reasonable endeavors to comply with the applicable recommendations of the ITU and its associated organizations.

#### 12. Service Coverage

- 12.1. Unless otherwise approved by the Authority, the Licensee shall provide coverage for application services in the areas and by the dates specified in Schedule 2.

12.2. The Licensee shall submit to the Authority not later than thirty (30) days after the end of its financial year a report of its performance in relation to the service roll out targets stipulated in Schedule 2 in the preceding financial year.

12.3. Service Roll out Targets set in Schedule 2 shall be reviewed by the parties after five (5) years.

### 13. Service Development

13.1. The Licensee shall submit for notification to the Authority a Development Plan setting out targets for on-going development of its services and shall outline the achievement measurements for the targets of the plan and the Authority shall reserve the right to require the Licensee to review any aspect of the plan that is inconsistent with the Act and any Regulation.

13.2. The Licensee shall submit to the Authority the Plan stipulated in clause 12.1 within thirty (30) days from the Effective Date.

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

### 14. Public Emergency Call Services

14.1. The Licensee shall provide twenty-four (24) hour access to emergency numbers to its customers free of charge.

14.2. Where necessary the Licensee shall provide twenty-four (24) hour access to emergency service providers to its customers free of charge.

14.3. The Licensee shall provide and use exclusively for emergency services, the short codes assigned to emergency services in the National Numbering Plan.

14.4. The Licensee shall facilitate and cooperate with all government bodies, departments and official agencies responsible for emergency services and national security.

14.5. The Licensee may enter into agreements with other service providers for the provision of emergency services through a centralised call centre designated by the Authority which shall be accessible to customers from different telecommunication networks.

14.6. The Authority reserves the right to declare emergency numbers or short codes that any person may call free of charge and the Licensee shall connect the Emergency numbers or short codes as directed by the Authority in line with National Numbering Plan.

14.7. Where interconnection for the provision of emergency numbers or short codes is required, the Licensee shall not claim or charge interconnection fees from other application service providers.

### 15. Directory Information

15.1. Where applicable and subject to any relevant Regulations, the Licensee shall provide its customers with access to any Directory Information Service offered by either itself, any application service provider, to this end the Licensee shall exchange relevant customer or subscriber data with other application service providers.

15.2. The Licensee shall maintain an integrated customer or subscriber data base for the purposes of providing directory information and inquiry services to its customers.

15.3. The Licensee shall inform the public through the media or any other means specified by the Authority of its intention to provide or update directory services to the public. Provided that the Licensee shall at all times inform and make available to its subscribers technical means to opt out from the directory services.

15.4. The Licensee shall upon request of or consent from a customer make necessary arrangements to have the number of the customer published in a directory service offered by either itself, other application service providers.

15.5. The Licensee shall make directory services accessible to its customers in hard copy or any other accessible format.

15.6. The Licensee shall not use any information or data obtained from a customer under this clause for any purpose other than the Directory Service and shall comply with any data protection laws applicable to the processing of such data.

15.7. The Licensee shall correct its records for purposes of providing directory services where a mistake in the customer information is brought to its attention and shall correct such information in the next publication of the directory, or if it is an electronic directory, immediately.

### 16. Consumer Protection

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

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

- 16.3. The Licensee shall provide clear and understandable information to customers or potential customers which information shall include;
- (a) the name of the service provider,
  - (b) applicable short codes for consumer services,
  - (c) activation fee or initiation fee including deposit requirements if applicable,
  - (d) access fees or base charges, tariff provisions for calculating charges per call including minimum charges,
  - (e) peak and off peak times and rates, night, weekend, holiday, national and international rates; and
  - (f) Any other information specified by the Authority.
- 16.4. The licensee shall notify customers about the availability of consumer complaint procedures and have in place systems for registering and handling complaints.
- 16.5. The Licensee shall submit to the Authority for approval Master Customer Contract with Service Level Agreements (SLA) containing the standard terms and conditions for the provision of services under this Licence.
- 16.6. The Master Customer Contract stipulated in clause 15.5 shall include:
- (a) the customer /consumer rights
  - (b) the supply time for initial connection;
  - (c) the services offered and covered by the terms of the agreement;
  - (d) the conditions referring to suspension or interruption of the service in case of non-payment by the customer;
  - (e) the compensation or refund arrangements for the customers which apply if the agreed service levels are not met and, if none are applicable, a statement to that effect;
  - (f) information on service quality levels offered;
  - (g) procedure for settling disputes with customers as approved by the Authority; and
  - (h) any other reasonable condition deemed necessary by the Authority.
- 16.7. In exercising its powers under clause 15.5 the Authority may direct the Licensee to amend or alter any term or condition of the Master Customer Contract to ensure compliance with the Act or any Regulations made there under.
- 16.8. The licensee shall honour all terms and conditions under its Master Customer Contract.
- 16.9. Where a dispute arises between a Customer and the Licensee on the interpretation of a service agreement that had not been submitted to the Authority for approval prior to the dispute or complaint and the dispute is submitted to the Authority for resolution, the decision of the Authority shall prevail over the provisions in the service agreement.
- 16.10. The Licensee shall make available to the public any approved Master Customer Contract in any of the following ways: -
- (a) filing a copy with the Authority;
  - (b) making copies available during regular business hours at its principal offices and any branch offices open to the public;
  - (c) by posting a copy on its website; or
  - (d) Any other mode specified by the Authority.
- 16.11. The Licensee shall retain a copy of each post paid subscriber contract for at least one (1) year following termination of the contract.
- 16.12. The licensee shall establish and maintain a call centre at all times and Customer Care Centre during working hours.
- 16.13. The Licensee shall submit to the Authority every quarter or as directed by the Authority a report summarising the number of complaints received from its customers, the nature of the complaint and the steps taken by the Licensee to address those complaints. The report shall be in a manner and format as specified by the Authority.
- 16.14. The Licensee shall not by act or omission engage in unfair commercial practices when selling or promoting its services to customers.
- 16.15. Unfair commercial practices stipulated under clause 15.14 shall include:
- (a) providing customers with misleading, inadequate or unclear details on tariff or services; or

(b) any act or omission that puts the customer on an unfair disadvantage.

For the purposes of this clause,-

“Misleading” includes false information that is untruthful in any way or deceptive and may cause or likely to cause for the customer to make a transactional decision that he may not have taken otherwise.

“Misleading by omission” means when a commercial practice with all its limitations taken into consideration omits, hides or provides in an unclear, unintelligible, ambiguous or untimely manner the information with relation to the said services that may cause or likely to cause for the consumer to make a transactional decision that he may not have taken otherwise.

16.16. Conducting in unfair commercial practice shall be deemed as a substantial breach of this Licence and the Authority may revoke the Licence in accordance clause 38 of this licence.

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

16.18. The Licensee shall ensure that it offers affordable basic packages for its services to the average local Malawian.

16.19. The Licensee shall in so far as is practicable extend basic services and introduce new and advanced services.

#### 17. Settling Disputes with Customers

17.1. The Licensee shall submit for approval its customer complaint handling procedures.

17.2. The licensee shall notify customers about the availability of customer complaint procedures and have in place systems for registering and handling complaints.

17.3. The Authority shall make determinations on any complaint or disputes between the Licensee and any customer in any of the following circumstances:

(a) where the complaint remains unresolved after fourteen (14) days from the date when the complaint was made;

(b) where the customer is dissatisfied with the decision of the Licensee; or

(c) any other ground specified in applicable Regulations.

#### 18. Billing Arrangements

18.1. The Licensee shall provide to its customers a clear and concise statement of charges on a timely and regular basis.

18.2. In relation to post-paid customers, the statement referred to in clause 17.1 shall reflect –

(a) the tariffs;

(c) due date of payment before late charges are incurred;

(d) any other condition deemed necessary by the Authority.

18.3. In relation to pre-paid customers, the statement referred to in clause 17.1 shall be in form of a notification which shall include –

(a) cost of application service

(b) duration of application service;

(c) airtime balance; and

(d) any other condition deemed necessary by the Authority.

18.4. The Licensee shall not bill its customer for any charges which it has not disclosed to the customer in its published tariff or terms and conditions or for services that have not been sought for by the customer.

18.5. The Licensee shall establish appropriate procedures to ensure that customer bills are accurate and the amount due after deducting any credits, discounts or similar adjustments is not higher than an amount which represents the true extent of the services actually provided by the Licensee to the customer.

18.6. Without prejudice to the generality of the foregoing clauses, the Licensee shall at all times maintain in operation such a Billing Process that facilitates compliance with this Licence.

18.7. The Licensee shall keep billing records as may be necessary or as may be determined by the Authority for the purpose of satisfying the requirements of this clause, provided that nothing in this clause shall require the Licensee to retain any records for not less than two (2) years from the date on which they were generated.

18.8. The Authority shall have the right to inspect and independently verify the Licensee's billing process for purposes of ensuring compliance with this clause.

18.9. Where the Authority provides written notice to the Licensee that it is exercising its right under this clause, the Licensee shall cooperate with the Authority by making available, for a reasonable period, appropriate personnel with knowledge of the billing process and provide all back up and support documentation and other information that the Authority may deem necessary.

**19. Itemized Billing**

19.1. The Licensee shall within seven (7) days from date of request provide any post paid or pre-paid customer an itemized bill in such a manner that is self explanatory and where necessary with appropriate explanation to clearly show the call details of the customer for the billing period to verify the billed amount.

18.2. The Licensee shall ensure that application services which are free of charge to its Customers, including calls to emergency lines, shall be identified in its Customers' itemized bills.

**20. Notifications to Customers**

20.1. Subject to applicable Regulations, the Licensee shall give its customers three (3) days notice prior to effecting any changes in its tariffs and seven (7) days notice prior to carrying out planned service outages.

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

20.3. The licensee shall communicate to customers pursuant to this clause via sms, media or any other mode specified by the Authority.

**21. Application of International Telecommunication Regulations**

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

21.2. The Licensee shall have the status of a Recognized Operating Agency within the meaning of the International Telecommunication Regulations (ITRs).

21.3. The Licensee may negotiate and conclude commercial and operating agreements with any Authorized Foreign Operator, subject to any Code of Practice as may be published by the Authority.

21.4. The Licensee shall not enter into any agreement with an Authorized Foreign Operator which unfairly precludes or restricts the provision of international services by another application service provider. Provided that the Authority shall ensure that all application service providers shall equally comply with this requirement.

21.6. Where it acts as signatory to an international agreement the Licensee shall provide access to services governed by that agreement to other application service providers licensed to provide international services on a commercially agreed and non-discriminatory basis. Provided that all such agreements entered into by other application service providers shall be made available to the Authority, and shall further ensure that this provision equally applies to all other application service providers operators.

21.7. Where any international organization to which an application service providers in the Republic of Malawi wishes to belong requires that there should be a single signatory per country, the Licensee may be that signatory upon liaising with other interested application service providers. Provided that the Licensee shall protect and promote the interests of all application service providers in Malawi.

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

**22. Spectrum Obligations**

22.1. Where applicable, the Licensee shall not use any frequency without prior assignment by the Authority.

22.2. To this end, the Licensee shall apply for radio licences for individual base 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.

22.3. The Licensee shall only use an assigned frequency after the grant of a valid radio Licence covering that frequency and in accordance with the terms of the radio Licence.

22.4. The Licensee shall pay for radio frequencies in accordance with the Spectrum Licence Fee Schedule published by the Authority under the Communications Act.

22.5. The Licensee shall submit to the Authority its spectrum usage plan for its assigned frequencies within thirty (30) days from the effective date.

22.6. The Authority may assign or re-farm frequencies assigned to the Licensee as required to meet the growth in demand for the Service in accordance with the National Frequency Band Plan and any applicable Regulations.

- 22.7. 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.
- 22.8. The Authority will make rearrangement stipulated under clause 21.7 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 thereunder; or
  - (c) to comply with international best practices.
- 22.9. The Authority shall at any time inspect and analyze the spectrum efficiency of any assigned frequencies to ensure proper utilization of the frequencies.
- 22.10. 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.
- 22.11. 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 other ground specified by the Authority.
- 22.12. Without prejudice to any other appropriate regulatory sanctions under the Act or applicable Regulations, the Licensee shall be liable to a penalty of 300% of the normal annual applicable fees per frequency unit for use of any frequency without authorisation from the Authority.
- 23. Type Approval**
- 23.1. Subject to applicable Regulations, the Licensee shall submit to the Authority for type approval prior to use any application service terminal equipment to be used for the provision of the service. The Licensee shall make the submissions in a form and manner as specified by the Authority.
- 23.2. The Licensee shall permit any Customer to connect any type approved Terminal Equipment
- 23.3. The Licensee shall accept as conclusive evidence that terminal equipment is type approved by the Authority based on a written statement of compliance issued by the Authority in line with applicable Regulations.
- 23.4. The Licensee shall consult with the Authority from time to time regarding the arrangements for testing and type approval of Terminal Equipment
- 24. Numbering**
- 24.1. The Licensee shall comply with the National Numbering Plan stipulating the allocation and assignment of numbers issued by the Authority.
- 24.2. The Licensee shall not use any short codes or any other services listed in the National Numbering Plan without prior approval by the Authority.
- 24.3. The Authority may assign additional blocks of contiguous numbers in accordance with the applicable Regulations and National Numbering Plan in sufficient time to enable the Licensee as required to meet the demand for its Services.
- 24.4. The Licensee shall have the right to make individual number assignments to its Customers at its sole discretion.
- 24.5. The Authority shall from time to time consult the Licensee in respect of
- (a) the arrangements for the allocation and re-allocation of Numbers within the National Numbering Plan, as may be amended from time to time and including any developments of, additions to, or replacements of the National Numbering Plan; and
  - (b) the public announcements, by the Authority, regarding newly assigned block numbers for the Licensee.
- 24.6. The Licensee shall register its subscribers in accordance with any applicable Regulations.
- 25. Tariff**
- 25.1. The Licensee shall before providing any basic service, submit to the Authority for approval its proposed tariff structure for the service.

25.2. The tariff structure proposal under Clause 24.1 above shall include:

- (a) a description of the service;
- (b) terms and conditions on which the services are offered;
- (c) the methodology adopted for determining the charges and the justification for any changes in the methodology;
- (d) any relevant information that it proposes to publish to its customers. Information to be published shall be in a form which is readily available, current and easy to understand;
- (e) the term or period for which the tariff structure shall be in force; and
- (f) any other information as stipulated by the Authority.

25.3. The Licensee shall ensure that charges for its services are based on the approved tariff structure.

25.4. The Licensee shall not provide any new service before obtaining a written approval of the Authority for its tariff structure and shall comply with any condition imposed by the Authority.

25.5. The Licensee shall not impose any charges for the provision of any specified application service until the Authority has agreed to such charges.

25.6. For the avoidance of doubt, the Licensee shall provide the specified service at the charges, terms and conditions so approved by the Authority and shall not depart or change the tariff structure without prior approval of the Authority.

25.7. 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.

25.8. The Licensee shall notify the Authority on any increase in tariffs and shall cause the same to be widely published in at least two local daily newspapers and the licensee's website within seven (7) days of their coming into operation.

## 26. Interconnection Obligations

26.1. The Licensee shall enter into an interconnection agreement with any application services provider and such interconnection agreement shall include:

- (a) the handing over of traffic in either direction between the Licensee and the other Application service providers;
- (b) the provision of related services requested by the Licensee;
- (c) any other services as specified by the Authority from time to time

26.2. If the initial interconnection agreement with an application services providers is not concluded within three (3) months, the provisions of clause 25.8 shall apply.

26.3. 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 application services provider;
- (d) conform with the standards referred to in clause 10 of this Licence;
- (e) 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.

26.4. The Licensee has the right to enter into an interconnection agreement with any other application services providers, provided that arrangements for interconnection do not adversely affect the rights and obligations of any other application services providers or its customers including such customers' right to privacy and to confidentiality of any communications.

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

- (a) the type of services to be offered;
- (b) the method to establish and maintain the connection to the Licensee's application services and vice-versa;
- (c) the capacity required to ensure a reasonable grade of service on agreed commercial terms between the parties;
- (d) a requirement that any traffic is received with a specifically defined minimum quality of service;
- (e) the billing and collection arrangement between the parties for traffic to third parties by virtue of Interconnection, within or outside of Malawi;

- (f) that the Licensee shall ensure that interconnection services to the requesting other application service provider is on cost based principles in accordance with applicable Regulations;
- (g) 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 terminal equipment and other networks shall also ensure that there are regular exchange of technical information and network management data;
- (h) that future requirements for interconnection are facilitated in accordance with the conditions of this Licence and in consultation with other application services providers within three (3) months of a notice of such requirements being given; and
- (i) arrangements for communication with other application services providers for the provision of access to Emergency Services through a centralized call centre as designated by the Authority;
- 26.6. The Licensee shall file proposed terms and conditions of any interconnection agreement, including any proposed changes or amendments thereto.
- 26.7. The Authority may within twenty- eight (28) days of the filing of the agreement under clause 25.8 declare void any term of the agreement considered to be inconsistent with the Act or any regulation.
- 26.8. Where the Licensee is unable to conclude an interconnection agreement with any application services providers 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 Operator.
- 26.9. In making its determination pursuant to clause 25.8 above, the Authority shall consider such factors that it considers necessary including terms and conditions that are:
- (a) consistent with the objectives of national ICT related policies;
- (b) not less favourable than those for any similarly licensed operator providing application services in the Republic of Malawi; and
- (c) based on commercial terms.
- 26.10. When requested to make its determination under clause 25.8, the Authority shall determine the terms and conditions of interconnection within thirty (30) days of receipt of the written request from the Licensee.
- 26.11. 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.
- 26.12. 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.
- 26.13. The Licensee may refuse to interconnect with other application services providers if it is technically or economically not feasible to do so.
- 26.14. Where the Licensee refuses to interconnect with any other application services providers 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.
- 27. International and Domestic Roaming**
- 27.1. The Licensee may provide domestic and international roaming services.
- 27.2. Where the Licensee elects to provide international roaming services pursuant to clause 26.1, the Licensee shall use its best endeavors to enter into International Roaming Agreements with any relevant operator in other countries.
- 27.3. The Licensee may negotiate and enter into Domestic Roaming Agreements with other application services provider.
- 27.4. Where the Licensee provides domestic roaming services to other application services providers, it shall:
- (a) not unnecessarily or unreasonably refuse to provide domestic roaming services;
- (b) provide domestic roaming services at cost based pricing; and
- (c) provide services on a non-discriminatory basis.
- 27.5. The Licensee shall\_\_
- (a) provide domestic roaming Services in accordance with the applicable standards of the ITU, ETSI and other international recognized bodies; and
- (b) Conclude any agreement to provide domestic roaming services with any other operator within ninety days (90) days of receipt of a request for such service.

27.6. Where the Licensee is unable to conclude domestic roaming agreement with any application services providers within ninety days (90) days from the written request for domestic roaming agreement it shall refer the matter to the Authority for determination with a copy to the other Operator.

27.7 The Licensee shall file with the Authority any Domestic Roaming Agreements it enters into with other application services providers, at least thirty (30) days prior to its implementation.

**28. Anti-Competitive Conduct, Unfair Competition and Discrimination**

28.1. 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.

28.2. Acts of anti-competitive conduct envisaged in clause 27.1 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;
- (e) engaging in unfair pricing such as to reduce or eliminate competition including fixing prices for services at a level which cannot be re-sold with a profit margin to customers.
- (f) entering into exclusive arrangements which deny competitors access to services.

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

28.4. The Licensee shall provide the services to any individual in Malawi including customers located in the rural and under-served areas without discrimination.

28.5. In the provision of the Services, the Licensee shall not discriminate against or show any preference to any other application services providers and shall provide application services to Service Providers that are equal in quality, subject to the same conditions and provided within the same provisioning time intervals that the licensee provides to others including its end users.

28.6. Unless otherwise expressly provided for in this Licence, the Licensee shall not prohibit, prevent or frustrate the provision of application service, or the supply of terminal equipment, by any person lawfully able to provide such a service or supply such equipment.

28.7. The Licensee shall not make it a condition of providing any application service or supplying any terminal equipment that the Customer should also acquire from the Licensee any other service or equipment.

28.8. 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 application services.

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

28.10. Where the Authority is satisfied that there are reasonable grounds to believe that the Licensee is, alone or in concert with others, engaged in anti-competitive practices to the disadvantage of users of the Services contrary to the Act and any applicable law, it shall make a determination and impose any applicable regulatory sanctions under this licence.

28.11. In making a determination on anti-competitive practices under clause 27.10, the Authority shall consult the Competition and Fair Trading Commission.

**29. Significant Market Power (SMP)**

29.1. 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.

29.2. The additional obligations stipulated in clause 28.1 above shall include:

- (a) producing a Reference Interconnection Offer (RIO)
- (b) providing mandatory interconnection on non-discriminatory and cost oriented charges
- (c) transparency obligations on the services and tariffs provided to other operators
- (d) separate accounting;
- (e) prohibition against cross subsidisation
- (f) mandatory provision of domestic roaming services subject to technical capabilities;
- (g) any other condition imposed by the Authority in accordance with applicable laws or Regulations.

29.3. 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.

**30. Universal Service (US) Obligations**

30.i. 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.

30.2. 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 4.

**31. Customer Confidentiality**

31.1 The Licensee shall maintain confidentiality in respect of all information provided by the customer or contents of communication conveyed on its network except in the following instances:

- (a) where the disclosure of the information is necessary for the purposes of detecting, preventing or investigating crimes in which the disclosure is requested by a person authorized by law or under an order of the court; or
- (b) where the disclosure is made to the Authority pursuant to its monitoring powers under the Act.

31.2. The Licensee may only use any information under clause 30.1 above, for the following purposes:

- (a) internal planning, provisioning and billing for services;
- (b) facilitating interconnection and inter-operability between application service providers; or
- (c) any other purposes approved by the Authority

31.3. 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 application services providers.

**32. Monitoring**

32.1. Subject to any applicable Regulations, the Authority shall electronically monitor the service of the Licensee using any applicable technology for the purposes of ensuring compliance by the Licensee with the Act, Regulations and terms and conditions of this Licence.

32.2. 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 application services that is necessary for the electronic monitoring system, in the manner and format specified by the Authority.

32.3. The Licensee shall facilitate monitoring of its services by the Authority and shall to this end adhere to directions issued by the Authority.

**33. Shared Platform for Value Added Services (VAS) Providers**

32.1 The Licensee may collaborate on installing a shared platform with other application services providers to facilitate One Stop Shop (OSS) services for all VAS providers so as to enhance easy interconnectivity.

32.2 The licensee shall provide VAS or promotions subject to maintaining and guaranteeing that basic service standards under this Licence.

**34. Health and Environmental Concerns**

- 34.1. The Licensee shall ensure the use of energy efficient, environmental friendly terminal equipment.
- 34.2 The Licensee shall as much as possible use green technology in its applications.
- 34.3 The Licensee shall ensure that deployment of its terminal equipment 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.

**35. Ownership**

- 35.1. The holder of this Licence must be incorporated in Malawi.
- 35.2. The Licensee shall within two (2) years from the effective date ensure it has at least twenty (20%) local Malawian shareholding which shall be maintained throughout the period of the Licence.
- 35.3. The Authority may revoke the Licence in accordance with clause 38 of this Licence where the licensee effects change of shareholding that effectively affect the control of the licence without prior approval of the Authority or fails to comply with local ownership requirements under clause 34.2.
- 35.4. The Licensee shall notify the Authority of any changes that affects more than 10% of its shareholding.
- 35.5. 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.

**36. Local Empowerment**

- 36.1. 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.
- 36.2. The Licensee shall, during the term of licence, take measures to ensure participation in its management structure by local indigenous Malawians.

**37. Transfer of Licence**

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

**38. Licence Amendment**

- 38.1. The Authority may modify or amend any term or condition of this license if it is in the public interest to do so or if it is necessary to take into account developments in the industry or for any other reason deemed necessary by the Authority.
- 38.2. 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.
- 38.3. The Licensee may submit a response to the proposed amendment within thirty (30) days of the notice.
- 38.4. If the Licensee does not respond within the thirty (30) day period under clause 37.3 the amendment shall take effect on the thirtieth (30th) day after the date of notice.
- 38.5. 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.
- 38.6. The Licensee shall comply with all new terms and conditions issued by the Authority.

**39. Revocation of Licence**

- 39.1. 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 service roll-out targets;

- (ii) failure to achieve specified Service Standards;
- (iii) failure to provide performance guarantee;
- (iv) hiding or 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 behaviour 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 substantial breach of the licence.

- (a) if the Licensee has been declared insolvent; or
- (b) if the Licensee agrees in writing to cancel the Licence.

39.2. 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.

39.3. 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.

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

#### 40. Regulatory Sanctions

40.1. 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.

#### 41. Emergency Crisis Management

41.1. 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 services in the event of a disaster or national emergency.

41.2. 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.

41.3 The Licensee shall as soon as possible provide information for the restoration of its application service.

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

#### 42. Exercise of Powers

42.1. 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.

**43. Force Majeure**

43.1. 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.

43.2. 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.

43.3. 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.

**44. Corporate Social Responsibility (CSR)**

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

**45. Liability**

45.1. The licensee shall indemnify the Authority against any losses, claims, charges or expenses, actions, damages or demands which may be made against the Authority by third parties as a result of or in relation to the activities of the Licensee, its service providers, servants, or agents in connection with the provision of the application services.

**46. Performance Assessment**

46.1. The Authority shall in the third (3rd) and sixth (6th) years of this Licence review the performance of the Licensee against the terms and conditions of the Licence

**47. Renewal of the Licence**

47.1. 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.

47.2. In deciding whether to renew the licence the Authority shall take into account the following;

(a) the satisfactory performance by the Licensee of its obligations under the Licence

(b) customers' satisfaction with the performance of the Licensee during the term of the licence

(c) any other factor deemed necessary by the Authority

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

47.4. 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.

**48. Dispute Resolution**

48.1. 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.

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

**49. Miscellaneous**

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

49.2. 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.

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

48.4. 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.

48.5. 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.

- 48.6 Nothing in the provisions of this License shall be deemed to have been waived by any act of or acquiescence on the part of the Authority, unless the same is issued in writing by the Authority.
- 48.7 A waiver of any provision of this licence shall not be construed as a waiver of any other provision or the same provision on another occasion.

Signed on this 25th day of January, 2019.

DIRECTOR GENERAL

*Malawi Communications Regulatory Authority*

## SCHEDULE 1: SERVICE STANDARDS

TABLE S1A – SERVICE QUALITY							
PHASE	IMPLEMENTATION  TARGET	COVERAGE TARGETS					PENALTY
		(Received Signal Strength (RxLev))			Received signal Quality (RxQual)	QoS Targets	
		URBAN	PERI-URBAN	RURAL			
<b>PHASE ONE</b> 27th August 2014 + 12 months	Blantyre, Lilongwe, Mzuzu & Zomba, plus designated feeder roads up to 25 Km from each city centre	≥-82 dBm	≥- 87 dBm	≥-92 dBm	0≤5	90% of the coverage area	\$100000 or proportion thereof in relation to number of places unserved
<b>PHASE TWO</b> 27th August 2014 + 24 Months	Mulanje, Thyolo, Chikhwawa, Balaka, Mwanza, Mangochi, Ntcheu, Dedza, Kasungu, Salima, Rumphu, Karonga, Mzimba, Nchalo, Makwasa, Chitakale, Luchenza, Namadzi, Liwonde, Ntaja, Ulongwe, Nkopola, Monkey Bay, Kamphata, Nathenje, Mvera	≥-82 dBm	≥-87 dBm	≥- 92 dBm	0≤5	90% of the coverage area	\$100000 or proportion thereof in relation to number of places unserved
<b>PHASE THREE</b> 27th August 2014 + 36 Months	Nsanje, Chiradzulu, Machinga, Phalombe, Mchinji, Nkhotakota, Dowa, Ntchisi, Chitipa, Nkhata-Bay Ngabu, Muloza, Chimwala, Makanjila, Zalewa/Mwanza T/O, Manjawila, Lizulu, Linthipe, Namitete, Mponela, Dwangwa, Chintheche, Vizara, Likoma Island, Mzokoto, Livingstonia, Chiweta, Nyungwe	≥-82 dBm	≥-87 dBm	≥-92 dBm	0≤5	90% of the coverage area	\$100000 or proportion thereof in relation to number of places unserved
<b>PHASE FOUR</b> 27th August 2014 + 60 Months	A minimum of 10 Km either side of the M1 and M2 roads and up to 10 Km for M3, M5 and M12 trunk roads	≥-82 dBm	≥-87 dBm	≥-92 dBm	0≤5	90% of the coverage area	\$100000 or proportion thereof in relation to number of places unserved

**QUALITY OF SERVICE PARAMETERS FOR CELLULAR MOBILE TELEPHONE SERVICES**

The Licensee is required to meet the Quality of Service Targets set out in Table S3A and B of this Schedule. Performance relative to the Quality of Service Targets shall be measured for the final measurement period in the relevant financial year.

The Licensee shall notify MACRA whenever it is unable to comply with the quality of service standards specified in Table S3A giving reasons thereof.

In this Schedule, the following terms shall mean:

**“Call Set up Success Rate (CSSR)”.**

Call Setup Success Rate is defined as the ratio of established calls to call attempts. Established Calls means the following events have happened in call setup:

- (i) Attempt is made;
- (ii) The Traffic Channel (TCH) is allocated; and
- (iii) The call is routed to the outwards path of the concerned Mobile Switching Centre (MSC).

**“Blocked Call Rate”**

Blocked call means a call that is not connected because there is no free channel to serve a call attempt. Numbers of blocked calls are those times where there is no free channel to serve a call attempt. Hence this parameter represents congestion in the network. The congestion may be at Stand-alone Dedicated Control Channel (SDCCH) level or Traffic Channel (TCH) level.

**“Service Coverage”**

This parameter will be measured through drive test and indoor measurement on a sample basis for assessing the network coverage in areas where the service of the operator is available.

**“Voice Quality”**

The quality of voice in cellular mobile telecommunication services (GSM) is measured on a scale from 0 to 7. As the quality deteriorates, this value increases. The quality of the voice is considered to be good, if this value remains between 0 and 4. However, this value may be between 0 and 5 for the network where frequency hopping phenomenon is used.

**“Call Drop Rate”**

It is defined as ratio of calls lost after establishment to all established calls. This shall include calls dropped due to failure of handover, radio loss and network congestion.

For each financial year, starting with the financial year which commences after the Effective Date, a monetary penalty shall be payable for each Quality of Service Target missed. The amount payable shall be calculated as given in Table S3D.

**TABLE 12B – VOICE / DATA QOS PARAMETERS**

No.	QoS Parameter Name	Measurement Method	Target Value			Average period to be reported
			2G	CDMA	3G	
<b>Service Provisioning</b>						
1	Order Completion Time	Maximum waiting time for connection of service (Days)	2	2	2	Monthly
<b>Service Support</b>						
1	Call Centre Answer Time	Percentage of calls answered electronically within 5 seconds	95	95	95	Monthly
		Percentage of calls answered by attendant (voice to voice) within 30 seconds	80	80	80	Monthly
		Percentage of calls answered by attendant (voice to voice) within 60 seconds	90	90	95	Monthly

		Availability	24/7	24/7	24/7	Monthly
		Time taken to be attended to by customer care agent after answer (sec)	30	30	30	Monthly
2	Complaint Resolution Time	Percentage of complaints resolved within 1 week	98	98	98	Monthly
<b>Connection Establishment</b>						
1	Call Set up time	Mean value (in seconds) for all calls setup	10	10	N/A	Monthly
2	Successful Call Ratio (CSSR) - Urban	Percentage of all successful calls	97	97	N/A	Monthly
3	Successful Call Ratio (CSSR) - Rural	Percentage of all successful calls	95	95	N/A	Monthly
4	Dropped Call Ratio	Percentage of all calls dropped	2	2	N/A	Monthly
<b>Information Transfer</b>						
1	SMS Delivery Time	Time in seconds within which SMS is delivered end to end;	10	10	10	Monthly
2	MMS Delivery Time	MMS delivery time (seconds)	N/A	N/A	25	Monthly
3	Successful SMS Ratio	Percentage of SMS (Mobile Originating) successfully delivered	95	95	95	Monthly
4	Successful SMS Ratio	Percentage of SMS (Mobile Terminating) successfully delivered	90	90	90	Monthly
5	Successful MMS Ratio	Percentage of MMS successfully delivered	>50	>50	>50	Monthly
6	Listening Voice Quality	Mean Opinion Score (MOS)	0-5	0-5	0-5	Network Audits (benchmark drive test)
<b>Billing</b>						
1	Billing Complaint Rate	Percentage of Billing complaints per 100 bills issued	<10	<10	<10	Monthly
		Billing Frequency (Days)	30	30	30	Monthly
<b>Network Service</b>						
1	Network availability of Switching (MSC)	Time MSC Network is available to the consumer per reporting period (percentage)	99.99	99.99	99.99	Monthly
2	Network availability of Radio Access (Urban)	Time Radio subsystem/Access network is available to the consumer per reporting period (percentage)	99	99	99	Monthly
3	Network availability of Radio Access (Rural)	Time Radio subsystem/Access network is available to the consumer per reporting period (percentage)	98	98	98	Monthly
4	Radio Coverage	Received Signal Strength (RxLv) Urban $\geq -82$ dBm Peri urban $\geq -87$ dBm Rural $\geq -92$ dBm Percentage of samples collected	90	90	90	Audits
5	Radio Quality	Received Signal Quality (RxQual) (Good RxQual Range: $0 \leq 5$ )	90	90	90	Audits
6	Call Block Rate	TCH Congestion (percentage)	<2	<2	N/A	Monthly
		SDCCH Congestion (percentage) - Urban	<0.5	<0.5	N/A	Monthly

		SDCCH Congestion (percentage) - Rural	<1	<1	N/A	Monthly
7	IN Platform Availability	Time IN platform is available to the consumers per reporting period (percentage)	99.99	99.99	99.99	Monthly
8	Handover Success Rate (Urban)	measures the ability of a customer to talk on the cell phone for a long distance without getting disconnected (percentage)	95	95	N/A	Monthly
9	Handover Success Rate (Rural)	measures the ability of a customer to talk on the cell phone for a long distance without getting disconnected (Percentage)	85	85	N/A	Monthly
10	GPRS Context Activation Rate	measure of data related services that were successfully accessed by customers	95	95	N/A	Monthly
11	Trunk Congestion	measure of traffic congestion between Mobile Switching Center (MSC) and the various routes like interconnection to other network operators	2	2	N/A	Monthly
10	EVDO Context Activation Success Rate	Measures EVDO Context Activation failure beyond which the grade of service declines (percentage).	N/A	95	N/A	Monthly
11	1X Packet Call Set Up success Rate	Measure Success Rate for data calls (percentage).	N/A	95	N/A	Monthly
<b>3G Network Service</b>						
<b>Call Drop Ratio</b>						
1	HSDPA and HSUPA Service Drop Rate	HSDPA and HSUPA service drop rate (percentage)	N/A	N/A	<1	Monthly
2	Packet Switched (PS) Service Drop Rate	PS service drop rate (percentage)	N/A	N/A	<2	Monthly
3	Video Call Drop Rate	Percentage of dropped video calls	N/A	N/A	<2	Monthly
4	Voice Call Drop Rate	Percentage of dropped voice calls	N/A	N/A	<2	Monthly
<b>Access</b>						
1	RRC Connection Set-up Success Rate (Urban)	RRC Connection Set-up Success Rate (percentage)	N/A	N/A	>98	Monthly
2	RRC Connection Set-up Success Rate (Rural)	RRC Connection Set-up Success Rate (percentage)	N/A	N/A	>95	Monthly
3	Video Call RAB assignment Success Rate (Urban)	Video Call RAB assignment Success Rate (percentage)	N/A	N/A	>98	Monthly
4	Video Call RAB assignment Success Rate (Rural)	Video Call RAB assignment Success Rate (percentage)	N/A	N/A	>95	Monthly
5	PS RAB Assignment Success Rate (Urban)	PS RAB Assignment Success Rate (percentage)	N/A	N/A	>98	Monthly
6	PS RAB Assignment Success Rate (Rural)	PS RAB Assignment Success Rate (percentage)	N/A	N/A	>95	Monthly
7	HSDPA and HSUPA RAB Set-up Success Rate (Urban)	HSDPA and HSUPA RAB Set-up Success Rate (percentage)	N/A	N/A	>98	Monthly
8	HSDPA and HSUPA RAB Set-up Success Rate (Rural)	HSDPA and HSUPA RAB Set-up Success Rate (percentage)	N/A	N/A	>95	Monthly

Handover						
1	Soft Handover Failure Rate	Soft Handover Failure Rate (percentage)	N/A	N/A	<2	Monthly
2	HSDPA Serving Cell Change Success Rate	HSDPA Serving Cell Change Success Rate (percentage)	N/A	N/A	>99	Monthly
3	Inter-frequency Hard Handover Success Rate	Inter-frequency Hard Handover Success Rate (percentage)	N/A	N/A	>95	Monthly
4	3G to 2G (from UTRAN to GSM) Inter-RAT Handover Success Rate (Urban)	3G to 2G (from UTRAN to GSM) Inter-RAT Handover Success Rate (percentage)	N/A	N/A	>92	Monthly
5	3G to 2G (from UTRAN to GSM) Inter-RAT Handover Success Rate (Rural)	3G to 2G (from UTRAN to GSM) Inter-RAT Handover Success Rate (percentage)	N/A	N/A	>85	Monthly
Availability						
1	RAN Availability (Urban)	Time RAN is available (percentage)	N/A	N/A	>99	Monthly
2	RAN Availability (Rural)	Time RAN is available (percentage)	N/A	N/A	>98	Monthly

TABLE SIC—INTERNET SERVICES PARAMETERS

No.	QoS Parameter Name	Measurement Method	Target Value	Average period to be reported
<b>Service Provisioning</b>				
1	Order Completion Time	Time elapsed (Days) after application and before activation of service for		
		Dial up/ Wired services	5	Monthly
		Fixed Wireless	2	Monthly
		Percentage installations completed by the date agreed with the customer;	99	Monthly
		Time elapsed after application for service alteration involving software	1	Monthly
		Time elapsed after application for service alteration involving Hardware	5	Monthly
<b>Service Support</b>				
1	Complaint Resolution	Percentage of complaints resolved within 1 week	98	Monthly
<b>Fault Repair</b>				
1	Fault Repair Time	Time taken to repair 80% of faults (Hrs)	24	Monthly
		Mean Time to Repair (Hrs)	12	Monthly
<b>Billing</b>				
1	Billing Complaint Rate	Billing Complaints per 100 bills issued	<2%	Monthly
2	Billing Complaint Resolution	Percentage of Billing complaints resolved	100% within 4 weeks	Monthly
<b>Connection Establishment</b>				
1	Successful Log-ins	Percentage of successful log-ins to access the internet when both the access network and the	Dial up users >90% Other users >98%	Monthly

	Internet Access point (IAP) network are available in full working order.		
<b>Information Transfer</b>			
1	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) (ETSI EG 202 057-4) For international network latency, the measurement is carried by sending a PING packet from the test point to the first international point of presence. (ITU-T Rec. Y.1541).	National 100ms International 300ms  Monthly
2	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)	≥80% of that advertised by the service provider.  Monthly
2	Unsuccessful Data Transmission Ratio	The ratio of unsuccessful data transmissions to the total number of data transmission attempts in a specified time period. A data transmission is successful if a test file is transmitted completely and with no errors. (ETSI EG 202 057-4)	<1% or $10^{-3}$  Monthly
<b>Packet Loss</b>			
1	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).	<1% or $10^{-3}$  Monthly
<b>Network Service Management</b>			
1	Service Availability	Percentage Uptime of the network	99  Monthly

**SCHEDULE 2—SERVICE COVERAGE****TABLE S2A—SERVICES COVERAGE**

PHASE	IMPLEMENTATION TARGET	PENALTY
<b>PHASE ONE</b> 27th August 2014 + 12 Months	Ligowe Thunga Mzedi Phokera Kameme Kanowa Kabwazi Matutu Dzaleka	\$100000 or proportion thereof in relation to number of places unserved
<b>PHASE TWO</b> 27th August 2014 + 24 Months	Khonjeni Berewu Nambazu Suza	\$100000 or proportion thereof in relation to number of places unserved

	Lifuwu Msakambewa Bowe	
<b>PHASE THREE</b> 27th August 2014 + 36 Months	Sukasanje Idrusi Chiwamba Chitala Chonde Fort Maguire Nमितुतु	\$100000 or proportion thereof in relation to number of places unserved
<b>PHASE FOUR</b> 27th August 2014 + 60 Months	Phaloni Namphungo Chiendausiku Simulemba Minimini Menyani Matapira	\$100000 or proportion thereof in relation to number of places unserved

GENERAL NOTICE NO. 51

Reference: TEL-2019-002-TSP



Licence No. 002A

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

**THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY****NETWORK SERVICES LICENCE**

issued to

**TELEKOM NETWORKS MALAWI LIMITED****ISSUED PURSUANT TO SECTION 39 OF THE COMMUNICATIONS ACT 2016**

A licence is hereby granted to Telekom Networks Malawi Limited ("the Licensee") in respect of the ownership and provision of any electronic communications NETWORK SERVICES with effect from the Effective Date and valid up to 26th August 2024.

This Licence is issued subject to the terms and conditions hereto, and to any other terms and conditions and promises of performance that may from time to time be incorporated herein under the Communications Act and the Regulations thereto.

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

Notice issued at Blantyre, this 25th day of January, 2019.

Dated this 25th day of January, 2019.

GODFREY ITAYE

*Director General*

## 1. Definition

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

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

“Application Services” means the provision of electronic communication services to end users using licensed network services but does not include content services;

“Authority” means the Malawi Communications Regulatory Authority

“Content Services” means broadcasting services consisting of electronic media including sound, data, text or images for general reception by the public;

“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;

“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;

“Emergency Service” means any services offered by an Application Service Operator in respect of any event or circumstances provided within any locality by the police, fire, ambulance and any other related authority as stipulated in the National Numbering Plan;

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

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

- (a) authorized to connect directly to networks in other countries authorized to provide electronic communication services; and
- (b) authorized to provide transportation of any communications originating-
  - (i) in an electronic communication network in Malawi and terminating outside of Malawi; and
  - (ii) outside Malawi and terminating in any electronic communications network in Malawi;

“Licensee” means Telekom Networks Malawi 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;

“Radio Station” means any equipment, facility or system used or intended to be used for radiocommunication;

## 2. Commencement and Licence Period

### 1.1. Period of Licence

- (a) The commencement date of the Licence shall be the effective date as published in the Gazette.
- (b) The Licence shall be valid from the Effective Date up to 26th August 2024.

## 3. Scope of Licence

- 3.1. This Licence is issued subject to the Act and any Regulations made there-under.
- 3.2. The Licensee is authorized to 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 Services under this Licence, the Licensee is authorised:
  - (a) to provide network services to Application and Content Service Licensees
  - (b) to operate and maintain an electronic communication network;
  - (c) to connect to other network service operators in the Republic of Malawi;

- (d) to procure, rent, and maintain Network Equipment for use in connection with its Network Services; and
- (e) to do all other things necessary or requisite to the provision of the Network Services.

- 3.4. The Licensee may use electronic communication network capacity of other network service Operators.
- 3.5. 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) space segment 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 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 operators.
- 4.4. Subject to clause 4.5, the Licensee shall be entitled by virtue of this Licence to operate the electronic communication system and to provide all of the Services together with all other rights granted hereunder.
- 4.5. The Licensee is authorized to exercise any of its rights granted under this Licence, by itself or in co-operation with any agent, contractor or Service Provider ("Third Party"), provided that, where the Licensee elects to exercise any of its rights under this Licence in co-operation with any Third Party it shall be on the basis that :
  - (a) the Licensee shall be liable for any acts or omissions of any Third Party in relation to the exercise of the rights granted under this Licence and such liability shall be limited to acts or omissions which constitute contraventions of this Licence;
  - (b) the Licensee shall enter into a written agreement with any such Third Party with terms that ensure compliance with the terms and conditions of this Licence at all times ;
  - (c) the Licensee shall notify the Authority of any agreement entered into with any third party pursuant to this clause at least thirty (30) days prior to the commencement of such agreement;
  - (d) the Authority, acting reasonably and having due regard to the commercial considerations applying to the Licensee at any material time, may require the Licensee to modify the proposed agreement thereof within fifteen (15) days of receipt of the aforesaid notice, provided that the Authority shall not require any modification to be made which would, as a result, render the Licensee to be in a less favorable commercial or legal position than any other telecommunication operator;
  - (e) the Authority shall, upon becoming aware of any breach of any condition of this Licence, by the Third party, or of any complaint lodged with the Authority in relation thereto, notify the applicant in writing to correct such breach;
  - (f) failure by the Authority to notify the Licensee of any contravention shall not in any way negate or limit the Authority's rights in respect of such contravention under this Licence.

## 5. Licence Fees

5.1. The Licence fees payable by the Licensee to the Authority shall be as follows:

(a) An annual Licence fee of One Hundred Thousand US dollars (USD 100, 000.00) payable in advance on or before each anniversary of the Effective Date.

(b) A levy equal to three point five percent (3.5%) of Gross Annual Revenue for each year payable at the end of each quarter in four installments. Calculation of the first three (3) quarterly installments shall be based upon the management accounts for that particular period. A final quarterly payment shall be made based on Gross Annual Revenue within thirty (30) days of issue of the audited accounts. Adjustment shall be made for the first three (3) quarterly payments if the Gross Annual Revenue in the management's accounts differs from the one in the audited accounts.

The levy referred to in this clause shall not include revenue generated from international incoming communication traffic.

(c) Radio Licence fees in accordance with Spectrum Licence Fee Schedule published by the Authority under the Act.

5.2. All fees and levies outstanding for a period of more than six (6) months from their due dates shall attract interest at the base lending rate until full liquidation thereof.

5.3. 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 The Licensee shall charge a minimum of USD0.20 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 15th 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 three (3) months of the end of each financial year either:

(a) provide the Authority with annual financial statements audited in a manner consistent with internationally recognized standards and certified by a qualified independent auditor; or

(b) provide the Authority with a written statement of the reasons the audited financial statements cannot be provided within that period and agree with the Authority a date for their provision, which date shall not be more than six (6) months after the end of the financial year to which the accounts relate.

7.2. The Licensee shall maintain management accounts in a manner specified by the Authority.

## 8. Performance Guarantee

8.1. The Licensee shall provide a guarantee acceptable to the Authority in the amount of Forty Thousand United States Dollars (USD 40, 000) to secure the performance of the Licensee's obligations contained in this Licence.

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

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

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

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

**9. Provision of Information**

9.1. The Licensee shall establish and maintain adequate records to permit the effective supervision and enforcement by the Authority of the Licensee's obligations under this Licence.

9.2. The Licensee shall furnish the Authority records, audited financial statements, management accounts, raw technical data, ICT indicators, reports, returns, or any other information that may be reasonably required by the Authority for the purpose of monitoring and enforcing compliance by the Licensee with its obligations under this Licence.

9.3. The Licensee shall submit information requested by the Authority under this clause within reasonable time and in a manner and format as specified by the Authority.

9.4. The Authority may inspect files, records, accounts and any other data if necessary make copies of the documents inspected for the purpose of enabling the Authority to monitor and enforce compliance with this Licence.

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

**10. Compliance**

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

**11. Performance of Network**

11.1. 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 thirty (30) days after the end of its financial year a report of its performance in relation to the network service targets stipulated in Schedule 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. The Licensee shall provide connectivity to Application Service Operators for emergency services twenty- four (24) hour free of charge.

13.2. The Licensee shall facilitate and cooperate with all government bodies, departments and official agencies responsible for emergency services and national security in line with the National Numbering Plan.

13.3. The Licensee may facilitate connectivity to emergency services through a centralised call centre designated by the Authority.

13.4. Where interconnection for the connectivity to emergency numbers or short codes is required, the Licensee shall not claim or charge interconnection fees from any other network service operator.

**14. Network Service Development**

14.1. The Licensee shall submit for notification to the Authority a Development Plan setting out targets for on-going development of its network services and shall outline the achievement measurements for the targets of the plan and the Authority reserves the right to require the Licensee to review any aspect of the plan that is inconsistent with the Act and any Regulation.

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 achieve the Quality of Service (QoS) standards as specified in Schedule 1 and any failure to meet the targets shall attract penalties set out in the Schedule.

- 15.3. The Licensee shall ensure that voice and data traffic passes through its network with minimal interference, degradation or loss.
- 15.4. Notwithstanding any regulatory sanctions under this licence, the Authority shall impose penalties in Schedule 1 for failure to meet QoS targets under the schedule.
- 15.5. 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 QoS targets a second time it shall be deemed to have been issued with a final warning and any subsequent failure to meet QoS target shall be deemed substantial and continuing breach of this licence entitling the Authority to revoke the licence in accordance with clause [on Revocation] of this licence.
- 15.6. 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.
- 15.7. 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.
- 15.8. 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.
- 15.9. The Licensee shall maintain records regarding its compliance with this clause and the Authority may at any time request the submission of such records.
- 15.10. Without compromising the QoS standards the Licensee shall ensure efficient use of spectrum.
- 15.11. 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.
- 15.12. 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 three (3) hours of the facts and circumstances giving rise to such inability to comply and the Licensee shall take any commercially reasonable action necessary to correct any fault or avoid any such circumstances so as to re-establish compliance with QoS targets.
- 15.13. In any circumstances under clause 15.12 above, the Licensee shall make public announcements of the network failure through radio, print media or 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. The Licensee shall provide other network service operators with the International Connection Services that they reasonably require on a non-discriminatory basis within thirty (30) days of receipt of a request for such a service.
- 16.3. 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.
- 16.4. 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 without prior assignment by the Authority.
- 17.2. The Licensee shall apply for radio licences for individual radio 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 the Spectrum Fee Schedule published by the Authority under the Act.

- 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 assign or re-farm frequencies assigned to the Licensee as required to meet the growth in demand for the Service, in accordance with the National Frequency Band Plan and any applicable Regulations.
- 17.7. The Authority reserves the right to make any re-arrangement in the assignment within the frequency 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 other ground specified by the Authority.
- 17.12. Without prejudice to any other appropriate regulatory sanctions under the Act or applicable Regulations, the Licensee shall be liable to a penalty of 300% of the normal annual applicable fees per frequency unit for use of any frequency without authorisation from the Authority.
- 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. 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.
- 18.4. 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.
- 18.5. The Licensee shall consult with the Authority from time to time regarding the arrangements for testing and type approval of network equipment.
- 19. Numbering**
- 19.1. 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 before providing any network service, submit to the Authority for approval its proposed tariff structure for the network 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 charges and the justification for any changes in the methodology;
  - (d) any relevant information that it proposes to publish to Network Service operators. Information to be published shall be in a form which is readily available, current and easy to understand; and
  - (e) any other information as stipulated by the Authority.

- 20.3. The Licensee shall ensure that charges for its network service are based on the approved tariff structure.
- 20.4. The Licensee shall not impose any charges for the provision of any specified network service until the Authority has agreed to such charges.
- 20.5. For the avoidance of doubt, the Licensee shall provide the specified service at the charges, terms and conditions so approved by the Authority and shall not depart or change the tariff structure without prior approval of the Authority.
- 20.6. In approving the tariff structure under this clause the Authority shall be guided by the need to ensure that such charges are transparently derived from relevant costs with a rate of return considered reasonable.
- 20.7. The Licensee shall notify the Authority on any increase in tariffs and shall cause the same to be published in the licensee's website within seven (7) days of their coming into operation.

## 21. Interconnection Obligations

- 21.1. The Licensee shall enter into an interconnection agreement with any network service Operator and such interconnection agreement shall include:
- (a) the connection of the Licensee's network to any other licensed network service operator in accordance with Section 60 of the Act and any applicable Regulations made there-under;
  - (b) the handing over of traffic in either direction between the Licensee and other network service operators;
  - (c) the provision of related services requested by other network service operators; and
  - (d) any other services as specified 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 21.8 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 15 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 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 for traffic to third parties by virtue of Interconnection, within or outside of Malawi;
  - (g) that the Licensee shall provide Interconnection services to the requesting network service operator on cost based principles in accordance with applicable Regulations;
  - (h) 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 call routing, carried traffic, call 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) arrangements for communication with other network service operators for the provision of access to Emergency Services through a centralized call centre as designated by the Authority;

- 21.6. The Licensee shall, after negotiating an interconnection agreement, submit to the Authority an application for approval of the 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 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 Operator.
- 21.11. In making its determination pursuant to clause 21.10 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 21.10, 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 if it is technically or economically not feasible to do so.
- 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 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 Operators from the Licensee under the network access agreement.
- 22.4. The Licensee shall offer any of its network services to any Application and Content Service provider 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 if it is technically or economically not feasible to do so.
- 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. International and Domestic Roaming

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

## 24. Anti-Competitive Conduct, Unfair Competition and Discrimination

- 24.1. 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.
- 24.2. Acts of anti-competitive conduct envisaged in clause 24.1 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.

24.3. 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.

24.4. The Licensee shall provide the services under this licence in accordance with Schedule 2

24.5. 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.

24.6. 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.

24.7. 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.

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

24.9. Where the Authority is satisfied that there are reasonable grounds to believe that the Licensee is, alone or in concert with others, engaged in anti-competitive practices to the disadvantage of users of the Services contrary to the Act and any applicable law, it shall make a determination and impose any applicable regulatory sanctions under this licence.

24.10. In making a determination on anti-competitive practices under clause 24.9, the Authority may consult the Competition and Fair Trading Commission.

## 25. Significant Market Power (SMP)

25.1. 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.

25.2. 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.

## 26. Universal Service (US) Obligations

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

26.2. 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.

## 27. Customer Confidentiality

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

27.2. 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.

## 28. Monitoring

28.1. 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.

28.2. 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.

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

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

#### 29. Resource Sharing

29.1. 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.

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

#### 30. Health and Environmental Concerns

30.1. 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.

30.2. The Licensee shall as much as possible use green technology in its systems, and shall ensure that the technology constitutes at least 20% of its off-grid network equipment including transceivers within five (5) years from the effective date.

30.3. 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.

#### 31. Ownership

31.1. The Licensee must be incorporated in Malawi.

31.2. The Licensee shall within two (2) years from the effective date ensure it has at least twenty (20%) local Malawian shareholding which shall be maintained throughout the period of the Licence.

31.3. The Authority may revoke the Licence in accordance with clause 33 of this Licence where the licensee effects change of shareholding that effectively affect the control of the licence without prior approval of the Authority or fails to comply with local ownership requirements under clause 31.2.

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

31.5. 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.

#### 32. Local Empowerment

32.1. 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.

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

#### 33. Transfer of Licence

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

#### 34. Licence Amendment

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

34.2. 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.

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

34.4. If the Licensee does not respond within the thirty (30) day period under clause 34.3 the amendment shall take effect on the thirtieth (30th) day after the date of notice.

34.5. 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.

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

### 35. Revocation of Licence

35.1. 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) hiding or 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 35.2;
- (b) if the Licensee has been declared insolvent; or
- (c) if the Licensee agrees in writing to cancel the Licence.

35.2. Without prejudice to Clause 35.1, 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.

35.3. 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.

35.4. 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.

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

### 36. Regulatory Sanctions

36.1. 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.

### 37. Emergency Crisis Management

37.1. 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.

- 37.2. 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.
- 37.3. The Licensee shall as soon as possible provide information for the restoration of its networks service.
- 37.4. 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.

#### 38. Exercise of Powers

- 38.1. 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.

#### 39. Force Majeure

- 39.1. 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.
- 39.2. 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.
- 39.3. 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.

#### 40. Corporate Social Responsibility (CSR)

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

#### 41. Liability

- 41.1. The licensee shall indemnify the Authority against any losses, claims, charges or expenses, actions, damages or demands which may be made against the Authority by third parties as a result of or in relation to the activities of the Licensee, its service providers, servants, or agents in connection with the provision of the networks service.

#### 42. Performance Assessment

- 42.1. The Authority shall in the third (3rd) and sixth (6th) years of this Licence review the performance of the Licensee against the terms and conditions of the Licence

#### 43. Renewal of the Licence

- 43.1. 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.
- 43.2. In deciding whether to renew the licence the Authority shall take into account the following;
- (a) the satisfactory performance by the Licensee of its obligations under the Licence
  - (b) customers' satisfaction with the performance of the Licensee during the term of the licence
  - (c) any other factor deemed necessary by the Authority
- 43.3. The Licensee shall apply for renewal in writing not later than twelve (12) calendar months before the expiration of the term of its Licence.
- 43.4. 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.

#### 44. Dispute Resolution

- 44.1. 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.
- 44.2. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction.

#### 45. Miscellaneous

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

- 45.2. 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.
- 45.3. The Authority or any Government department shall not be liable for any loss, damage, claim, charge or expense which may be incurred as a result of or in relation to the activities of the Licensee, its employees, agents, or authorized representatives.
- 45.4. 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.
- 45.5. 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.
- 45.6. 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.
- 45.7. Notwithstanding clause 45.6, the Authority may disclose information that it has been notified should be kept confidential if such disclosure is essential in order to fulfil its functions under the Act or if so directed under an order of a court.
- 45.8. Nothing in the provisions of this License shall be deemed to have been waived by any act of or acquiescence on the part of the Authority, unless the same is issued in writing by the Authority.
- 45.9. 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 25th day of January, 2019.

DIRECTOR GENERAL  
*Malawi Communications Regulatory Authority*

## SCHEDULE 1

## QUALITY OF SERVICE PARAMETERS FOR CELLULAR MOBILE TELEPHONE SERVICES

1. The Licensee is required to meet the Quality of Service Targets set out in Table S1A, Table S1B and Table 1AC of this Schedule. Performance relative to the Quality of Service Targets shall be measured for the final measurement period in the relevant financial year.
2. The Licensee shall notify MACRA whenever it is unable to comply with the quality of service standards specified in Table S1A, S1B and Table giving reasons thereof.
3. In this Schedule, the following terms shall mean:

**“Call Set up Success Rate (CSSR)”**

Call Setup Success Rate is defined as the ratio of established calls to call attempts. Established Calls means the following events have happened in call setup:

- (i) Attempt is made;
- (ii) The Traffic Channel (TCH) is allocated; and
- (iii) The call is routed to the outwards path of the concerned Mobile Switching Centre (MSC).

**“Blocked Call Rate”**

Blocked call means a call that is not connected because there is no free channel to serve a call attempt. Numbers of blocked calls are those times where there is no free channel to serve a call attempt. Hence this parameter represents congestion in the network. The congestion may be at Stand-alone Dedicated Control Channel (SDCCH) level or Traffic Channel (TCH) level.

**“Service Coverage”**

This parameter will be measured through drive test and indoor measurement on a sample basis for assessing the network coverage in areas where the service of the operator is available.

**“Voice Quality”**

The quality of voice in cellular mobile telecommunication services (GSM) is measured on a scale from 0 to 7. As the quality deteriorates, this value increases. The quality of the voice is considered to be good, if this value remains between 0 and 4. However, this value may be between 0 and 5 for the network where frequency hopping phenomenon is used.

**“Call Drop Rate”**

It is defined as ratio of calls lost after establishment to all established calls. This shall include calls dropped due to failure of handover, radio loss and network congestion.

For each financial year, starting with the financial year which commences after the Effective Date, a monetary penalty shall be payable for each Quality of Service Target missed. The amount payable shall be calculated as given in this Schedule

## NETWORK QUALITY OF SERVICE STANDARDS

TABLE S1A—SERVICE QUALITY							
PHASE	IMPLEMENTATION TARGET	COVERAGE TARGETS				QoS Targets	PENALTY
		(Received Signal Strength (RxLev))	Received signal Quality (RxQual)	URBAN	PERI-URBAN		
<b>PHASE ONE</b> 27th August 2014 + 12 months	Blantyre, Lilongwe, Mzuzu & Zomba, plus designated feeder roads up to 25 Km from each city centre	≥-82 dBm	≥- 87 dBm	≥-92 dBm	0≤5	90% of the coverage area	\$100000 or proportion thereof in relation to number of places unserved
<b>PHASE TWO</b> 27th August 2014 + 24 Months	Mulanje, Thyolo, Chikhwawa, Balaka, Mwanza, Mangochi, Ntcheu, Dedza, Kasungu, Salima, Rumphu, Karonga,	≥-82 dBm	≥-87 dBm	≥- 92 dBm	0≤5	90% of the coverage area	\$100000 or proportion thereof in relation to number of places unserved

	Mzimba Nchalo, Makwasa, Chitakale, Luchenza, Namadzi, Liwonde, Ntaja, Ulongwe, Nkopola, Monkey Bay, Kamphata, Nathenje, Mvera						
PHASE THREE 27th August 2014 + 36 Months	Nsanje, Chiradzulu, Machinga, Phalombe, Mchinji, Nkhotakota, Dowa, Ntchisi, Chitipa, Nkhata-Bay Ngabu, Muloza, Chimwala, Makarjila, Zalewa/Mwanza T/O, Manjawila, Lizulu, Linthipe, Namitete, Mponela, Dwangwa, Chintheche, Vizara, Likoma Island, Mzokoto, Livingstonia, Chiweta, Nyungwe	≥-82 dBm	≥-87 dBm	≥-92 dBm	0≤5	90% of the coverage area	\$100000 or proportion thereof in relation to number of places unserved
PHASE FOUR 27th August 2014 + 60 Months	A minimum of 10 Km either side of the M1 and M2 roads and up to 10 Km for M3, M5 and M12 trunk roads	≥-82 dBm	≥-87 dBm	≥-92 dBm	0≤5	90% of the coverage area	\$100000 or proportion thereof in relation to number of places unserved

TABLE S1B—VOICE / DATA QOS PARAMETERS

No.	QoS Parameter Name	Measurement Method	Target Value			Average period to be reported
			2G	CDMA	3G	
<b>Service Provisioning</b>						
1	Order Completion Time	Maximum waiting time for connection of service (Days)	2	2	2	Monthly
<b>Service Support</b>						
1	Call Centre Answer Time	Percentage of calls answered electronically within 5 seconds	95	95	95	Monthly
		Percentage of calls answered by attendant (voice to voice) within 30 seconds	80	80	80	Monthly
		Percentage of calls answered by attendant (voice to voice) within 60 seconds	90	90	95	Monthly
		Availability	24/7	24/7	24/7	Monthly
		Time taken to be attended to by customer care agent after answer (sec)	30	30	30	Monthly
2	Complaint Resolution Time	Percentage of complaints resolved within 1 week	98	98	98	Monthly

Connection Establishment						
1	Call Set up time	Mean value (in seconds) for all calls setup	10	10	N/A	Monthly
2	Successful Call Ratio (CSSR) - Urban	Percentage of all successful calls	97	97	N/A	Monthly
3	Successful Call Ratio (CSSR) - Rural	Percentage of all successful calls	95	95	N/A	Monthly
4	Dropped Call Ratio	Percentage of all calls dropped	2	2	N/A	Monthly
Information Transfer						
1	SMS Delivery Time	Time in seconds within which SMS is delivered end to end;	10	10	10	Monthly
2	MMS Delivery Time	MMS delivery time (seconds)	N/A	N/A	25	Monthly
3	Successful SMS Ratio	Percentage of SMS (Mobile Originating) successfully delivered	95	95	95	Monthly
4	Successful SMS Ratio	Percentage of SMS (Mobile Terminating) successfully delivered	90	90	90	Monthly
5	Successful MMS Ratio	Percentage of MMS successfully delivered	>50	>50	>50	Monthly
6	Listening Voice Quality	Mean Opinion Score (MOS)	0-5	0-5	0-5	Network Audits (benchmark drive test)
Billing						
	Billing Complaint Rate	Percentage of Billing complaints per 100 bills issued	<10	<10	<10	Monthly
		Billing Frequency (Days)	30	30	30	Monthly
Network Service						
1	Network availability of Switching (MSC)	Time MSC Network is available to the consumer per reporting period (percentage)	99.99	99.99	99.99	Monthly
2	Network availability of Radio Access (Urban)	Time Radio subsystem/Access network is available to the consumer per reporting period (percentage)	99	99	99	Monthly
3	Network availability of Radio Access (Rural)	Time Radio subsystem/Access network is available to the consumer per reporting period (percentage)	98	98	98	Monthly
4	Radio Coverage	Received Signal Strength (RxLv) Urban $\geq$ -82 dBm Peri urban $\geq$ -87 dBm Rural $\geq$ -92 dBm Percentage of samples collected	90	90	90	Audits
5	Radio Quality	Received Signal Quality (RxQual) (Good RxQual Range: $0 \leq 5$ )	90	90	90	Audits

6	Call Block Rate	TCH Congestion (percentage)	<2	<2	N/A	Monthly
		SDCCH Congestion (percentage) Urban	<0.5	<0.5	N/A	Monthly
		SDCCH Congestion (percentage) - Rural	<1	<1	N/A	Monthly
7	IN Platform Availability	Time IN platform is available to the consumers per reporting period (percentage)	99.99	99.99	99.99	Monthly
8	Handover Success Rate (Urban)	measures the ability of a customer to talk on the cell phone for a long distance without getting disconnected (percentage)	95	95	N/A	Monthly
9	Handover Success Rate (Rural)	measures the ability of a customer to talk on the cell phone for a long distance without getting disconnected (percentage)	85	85	N/A	Monthly
10	GPRS Context Activation Rate	measure of data related services that were successfully accessed by customers	95	95	N/A	Monthly
11	Trunk Congestion	measure of traffic congestion between Mobile Switching Center (MSC) and the various routes like interconnection to other network operators	2	2	N/A	Monthly
12	EVDO Context Activation Success Rate	Measures EVDO Context Activation failure beyond which the grade of service declines (percentage).	N/A	95	N/A	Monthly
13	1X Packet Call Set Up success Rate	Measure Success Rate for data calls (percentage).	N/A	95	N/A	Monthly
<b>3G Network Service</b>						
<b>Call Drop Ratio</b>						
1	HSDPA and HSUPA Service Drop Rate	HSDPA and HSUPA service drop rate (percentage)	N/A	N/A	<1	Monthly
2	Packet Switched (PS) Service Drop Rate	PS service drop rate (percentage)	N/A	N/A	<2	Monthly
3	Video Call Drop Rate	Percentage of dropped video calls	N/A	N/A	<2	Monthly
4	Voice Call Drop Rate	Percentage of dropped voice calls	N/A	N/A	<2	Monthly
<b>Access</b>						
1	RRC Connection Set-up Success Rate (Urban)	RRC Connection Set-up Success Rate (percentage)	N/A	N/A	>98	Monthly
2	RRC Connection Set-up Success Rate (Rural)	RRC Connection Set-up Success Rate (percentage)	N/A	N/A	>95	Monthly
3	Video Call RAB assignment Success Rate (Urban)	Video Call RAB assignment Success Rate (percentage)	N/A	N/A	>98	Monthly
4	Video Call RAB assignment Success Rate (Rural)	Video Call RAB assignment Success Rate (percentage)	N/A	N/A	>95	Monthly
5	PS RAB Assignment Success Rate (Urban)	PS RAB Assignment Success Rate (percentage)	N/A	N/A	>98	Monthly

6	PS RAB Assignment Success Rate (Rural)	PS RAB Assignment Success Rate (percentage)	N/A	N/A	>95	Monthly
7	HSDPA and HSUPA RAB Set-up Success Rate (Urban)	HSDPA and HSUPA RAB Set-up Success Rate (percentage)	N/A	N/A	>98	Monthly
8	HSDPA and HSUPA RAB Set-up Success Rate (Rural)	HSDPA and HSUPA RAB Set-up Success Rate (percentage)	N/A	N/A	>95	Monthly
<b>Handover</b>						
1	Soft Handover Failure Rate	Soft Handover Failure Rate (percentage)	N/A	N/A	<2	Monthly
2	HSDPA Serving Cell Change Success Rate	HSDPA Serving Cell Change Success Rate (percentage)	N/A	N/A	>99	Monthly
3	Inter-frequency Hard Handover Success Rate	Inter-frequency Hard Handover Success Rate (percentage)	N/A	N/A	>95	Monthly
4	3G to 2G (from UTRAN to GSM) Inter-RAT Handover Success Rate (Urban)	3G to 2G (from UTRAN to GSM) Inter-RAT Handover Success Rate (percentage)	N/A	N/A	>92	Monthly
5	3G to 2G (from UTRAN to GSM) Inter-RAT Handover Success Rate (Rural)	3G to 2G (from UTRAN to GSM) Inter-RAT Handover Success Rate (percentage)	N/A	N/A	>85	Monthly
<b>Availability</b>						
1	RAN Availability (Urban)	Time RAN is available (percentage)	N/A	N/A	>99	Monthly
2	RAN Availability (Rural)	Time RAN is available (percentage)	N/A	N/A	>98	Monthly

TABLE S1C—INTERNET SERVICES PARAMETERS

No.	QoS Parameter Name	Measurement Method	Target Value	Average period to be reported
<b>Service Provisioning</b>				
1	Order Completion Time	Time elapsed (Days) after application and before activation of service for		
		Dial up/ Wired services	5	Monthly
		Fixed Wireless	2	Monthly
		Percentage installations completed by the date agreed with the customer,	99	Monthly
		Time elapsed after application for service alteration involving software	1	Monthly
		Time elapsed after application for service alteration involving Hardware	5	Monthly
<b>Service Support</b>				
1	Complaint Resolution	Percentage of complaints resolved within 1 week	98	Monthly
<b>Fault Repair</b>				
1	Fault Repair Time	Time taken to repair 80% of faults (Hrs)	24	Monthly
		Mean Time to Repair (Hrs)	12	Monthly
<b>Billing</b>				
1	Billing Complaint Rate	Billing Complaints per 100 bills issued	<2%	Monthly
2	Billing Complaint Resolution	Percentage of Billing complaints resolved	100% within 4 weeks	Monthly
<b>Connection Establishment</b>				
1	Successful Log-ins	Percentage of successful log-ins to access the internet when both the access network and the Internet Access point (IAP) network are available in full working order.	Dial up users >90% Other users >98%	Monthly

Information Transfer				
1	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) (ETSI EG 202 057-4) For international network latency, the measurement is carried by sending a PING packet from the test point to the first international point of presence. (ITU-T Rec. Y.1541).	National 100ms International 300ms	Monthly
2	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)	≥80% of that advertised by the service provider.	Monthly
2	Unsuccessful Data Transmission Ratio	The ratio of unsuccessful data transmissions to the total number of data transmission attempts in a specified time period. A data transmission is successful if a test file is transmitted completely and with no errors. (ETSI EG 202 057-4)	<1% or $10^{-3}$	Monthly
Packet Loss				
1	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).	<1% or $10^{-3}$	Monthly
Network Service Management				
1	Service Availability	Percentage Uptime of the network 99	Monthly	

TABLE S1C—PENALTIES

#	Number of Service Targets Missed	Margin Failure ≤5% and <10%	Margin Failure >5%	Margin Failure Targets ≥10%
1	1	USD 2,500	USD 5,000	USD 10,000
2	2 to 3	USD 10,000	USD 15,000	USD 20,000
3	4 to 5	USD 20,000	USD 25,000	USD 30,000
4	≥ 6	USD 30,000	USD 35,000	USD 40,000

SCHEDULE 2—SERVICE COVERAGE

TABLE S3A—SERVICES COVERAGE

PHASE	IMPLEMENTATION TARGET	PENALTY
<b>PHASE ONE</b> 27th August 2014 + 12 Months	Ligowe Thunga Mzedi Phokera Kameme Kanowa Kabwazi Matutu Dzaleka	\$100000 or proportion thereof in relation to number of places unserved

<b>PHASE TWO</b> 27th August 2014 + 24 Months	Khonjeni Berewu Nambazu Suza Lifuwu Msakambewa Bowe	\$100000 or proportion thereof in relation to number of places unserved
<b>PHASE THREE</b> 27th August 2014 + 36 Months	Sukasanje Idrusi Chiwamba Chitala Chonde Fort Maguire Namtutu	\$100000 or proportion thereof in relation to number of places unserved
<b>PHASE FOUR</b> 27th August 2014 + 60 Months	Phaloni Namphungo Chiendausiku Simuiemba Minimini Menyani Matapira	\$100000 or proportion thereof in relation to number of places unserved

GENERAL NOTICE NO. 52

Reference: TEL-2019-002-TSP



Licence No. 002B

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

**THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY**

**INDIVIDUAL FACILITIES SERVICE LICENCE**

Issued to

**TELEKOM NETWORKS MALAWI LIMITED**

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

A licence is hereby granted to **Telekom Networks Malawi Limited** in respect of the ownership and provision of any electronic communications network facilities with effect from the Effective Date and valid up to the 26th August 2024

This Licence is issued subject to the terms and conditions hereto, and to any other terms and conditions and promises of performance that may from time to time be incorporated herein under the Communications Act and the Regulations thereto.

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

Notice issued at Blantyre, this 25th day of January, 2019.

Dated this 25th day of January, 2019.

GODFREY ITAYE  
*Director General*

## 1. Definition

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

“Act” means the Communications Act Cap 68:01 of the laws of Malawi.

“Application Services” means the provision of electronic communication services to end users using licensed network services but does not include content services;

“Authority” means the Malawi Communications Regulatory Authority

“Content Services” means broadcasting services consisting of electronic media including sound, data, text or images for general reception by the public;

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

“Facility” means electronic communication infrastructure including towers, cables, ducts, VSats, Satellite hubs, satellite earth stations systems, radio-communication transmitters, fixed links, transmission poles, public payphone facilities, landing point, mobile communications systems;

“Facility Services” means any element or combination of elements of physical electronic communication 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 revenue from the sale or rental of assets including terminal equipment;

“Licensee” means Telekom Networks Malawi Limited;

“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 Effective Date as published in the Gazette.

(b) The Licence shall be valid from the Effective Date up to 26th August 2024.

## 3. Scope of Licence

3.1. This Licence is issued subject to the Act and any Regulations made thereunder.

3.2. For the purpose of providing the Services under this Licence, the Licensee is authorized:

(a) to construct, own or maintain facilities;

(b) to make available facilities to other Licensed electronic communication providers in the Republic of Malawi;

(c) to do all other things necessary or requisite to the provision of facilities service; and

(d) to provide any other facilities as determined by the Authority from time to time.

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

## 4. Rights and Obligations to provide Facilities Service

4.1. The Licensee shall provide facilities service in accordance with the Act and applicable Regulations.

4.2. The Licensee shall provide the services under this licence in accordance with the Schedule.

4.3. Without prejudice to clause 3.1, the Licensee shall be entitled to:

(a) lease the use of; or

(b) install or maintain, any facility subject to any terms and conditions that may from time to time be prescribed by the Authority and which are applicable to the provision of facilities service.

4.4. The Licensee shall ensure that it develops and maintains Master Service Contracts which includes Service Level Agreements.

## 5. Licence Fees

5.1. The Licence fees payable by the Licensee to the Authority shall be as follows:

- (a) An annual Licence fee of One Hundred Thousand US dollars (USD 100, 000) payable in advance on or before each anniversary of the Effective Date;
- (b) A levy equal to three point five percent (3.5%) of Gross Annual Revenue for each year payable at the end of each quarter in four installments. Calculation of the first three (3) quarterly installments shall be based upon the management accounts for that particular period. A final quarterly payment shall be made based on Gross Annual Revenue within thirty (30) days of issue of the audited accounts. Adjustment shall be made for the first three (3) quarterly payments if the Gross Annual Revenue in the management's accounts differs from the one in the audited accounts;
- (c) All outstanding fees and levies shall be payable within three (3) months from their due dates, failing which they shall attract a five percent (5%) annual interest until full liquidation thereof;
- (d) If, in any year, any licence fees remain outstanding on the sixth (6th) month and ninth (9th) month the licensee shall be deemed to have been warned and given notice to pay within three (3) months thereof respectively. If any sum remains unpaid the licence shall stand automatically revoked on the twelve (12th) months from the anniversary from the effective date.

## 6. Accounting Requirements

6.1. The Licensee shall within three (3) months of the end of each financial year either:

- (a) provide the Authority with annual financial statements audited in a manner consistent with internationally recognized standards and certified by a qualified independent auditor; or
- (b) provide the Authority with a written statement of the reasons the audited financial statements cannot be provided within that period and agree with the Authority a date for their provision, which date shall not be more than six (6) months after the end of the financial year to which the accounts relate.

6.2. The Licensee shall maintain management accounts in a manner specified by the Authority.

## 7. Performance Guarantee

7.1. The Licensee shall provide a guarantee acceptable to the Authority in the amount of Forty Thousand United States Dollars (US\$40, 000) to secure the performance of the Licensee's obligations contained in this Licence.

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

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

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

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

## 8. Provision of Information

8.1. 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.

8.2. The Licensee shall furnish the Authority records, audited financial statements, management accounts, ICT indicators, reports, returns, or any other information that may be reasonably required by the Authority for the purpose of monitoring and enforcing compliance by the Licensee with its obligations under this Licence.

8.3. 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.

8.4. The Authority may inspect files, records, accounts and any other data if necessary make copies of the documents inspected for the purpose of enabling the Authority to monitor and enforce compliance with this Licence.

8.5. The Licensee shall bear the cost of any expenses it incurs in ensuring compliance with record keeping and provision of information.

**9. Compliance**

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

**10. Technical Standards**

10.1. The Licensee shall comply with all technical standards set by the Authority from time to time.

10.2. In the provision of its facilities service under this Licence, the Licensee shall provide its service in accordance with the International Telecommunication Union and other relevant International standardization bodies.

**11. Type Approval**

11.1. Subject to applicable Regulations, the Licensee shall submit to the Authority for type approval prior to installing any facilities to be used for connection or access to the licensee's facilities services. The Licensee shall make the submissions in a form and manner as specified by the Authority.

11.2. The Licensee shall permit any Network service operators to connect a type approved Network Equipment to its facilities..

11.3. 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.

11.4. The Licensee shall consult with the Authority from time to time regarding the arrangements for testing and type approval of Facilities.

**12. Tariff**

12.1. The Licensee shall before providing any facilities service, submit to the Authority for approval its proposed tariff structure for the facilities service.

12.2. The tariff structure proposal under Clause 12.1 above shall include:

(a) a description of the service;

(b) terms and conditions on which the services are offered;

(c) the methodology adopted for determining the charges and the justification for any changes in the methodology;

(d) any relevant information that it proposes to publish to Network Service operators. Information to be published shall be in a form which is readily available, current and easy to understand; and

(e) any other information as stipulated by the Authority.

12.3. The Licensee shall ensure that charges for its facilities service are based on the approved tariff structure.

12.4. The Licensee shall not impose any charges for the provision of any specified facilities service until the Authority has agreed to such charges.

12.5. For the avoidance of doubt, the Licensee shall provide the specified service at the charges, terms and conditions so approved by the Authority and shall not depart or change the tariff structure without prior approval of the Authority.

12.6. In approving the tariff structure under this clause the Authority shall be guided by the need to ensure that such charges are transparently derived from relevant costs with a rate of return considered reasonable.

12.7. The Licensee shall notify the Authority on any increase in tariffs and shall cause the same to be published in the licensee's website within seven (7) days of their coming into operation.

**13. Facilities Service Modification**

13.1. The Licensee shall not effect any modification affecting thirty (30) percent of its facilities service without obtaining an approval in writing from the Authority.

13.2. The Licensee shall bear costs of any modification in line with clause 12.1. Any change petitioned for and approved by the Authority shall be done at the Licensee's expense and shall not interfere with any other communications systems existing or formally planned in writing in Malawi.

**14. Facilities Service Access by Network Service Operators**

14.1. The Licensee shall enter into Facilities Service Access Agreement with licensed Network Service Operators for access to its facilities service as specified under the applicable Regulations.

14.2. The Facilities Service Access Agreement under Clause 14.1 shall be made on a non-discriminatory basis in accordance with access arrangements specified in this clause.

- 14.3. The Licensee shall offer any of its facilities service to any licensed service provider at wholesale rates.
- 14.4. The Licensee shall notify the Authority of any Facilities Services Access Agreement it has entered into and file a copy of the agreement with the Authority within fifteen (15) days from the signature date of the Agreement.
- 14.5. Where a dispute arises between any parties to the agreement under 14.4, either party may request the Authority to make a determination.
- 14.6. When making a determination, pursuant to 14.5 the Authority shall make such determination or resolution within sixty (60) days of receipt of the written request.
- 14.7. The Licensee may refuse to offer access of its facilities service to network service operators if it is technically or economically not feasible to do so.
- 14.8. Where the Licensee refuses to offer access of its facilities service to any network service operator, it shall provide reasons for the refusal in writing to the network service operator.
- 14.9. A network service operator who has been refused access to facilities by the Licensee may submit the refusal to the Authority and the Authority shall, upon assessment of the refusal, either uphold or overrule the decision of the Licensee.

**15. Anti-Competitive Conduct, Unfair Competition and Discrimination**

- 15.1. 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.
- 15.2. Acts of anti-competitive conduct envisaged in clause 15.1 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 facilities services;
  - (e) engaging in unfair pricing such as to reduce or eliminate competition including fixing prices for facilities services at a level which cannot be re-sold with a profit margin to customers.
  - (f) entering into exclusive arrangements which deny competitors access to facilities services.
- 15.3. 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 standards of its facilities service or competitors' facilities service;
  - (b) degrading standards of its facilities service or competitor's services or network or unfairly raising its business, operations or technical costs;
  - (c) unlawfully interfering with the suppliers or network service operators of its competitors; or
  - (d) providing false information to other facilities service competitors or to any other third party.
- 15.4. In the provision of the Services under this licence, the Licensee shall not discriminate against or show any preference to any other network service operators.
- 15.5. 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 facilities services.
- 15.6. The Licensee shall comply with any other laws and Regulations which relate to fair trading or competitive behaviour.
- 15.7. Where the Authority is satisfied that there are reasonable grounds to believe that the Licensee is, alone or in concert with others, engaged in anti-competitive practices to the disadvantage of users of the Services contrary to the Act and any applicable law, it shall make a determination and impose any applicable regulatory sanctions under this licence.
- 15.8. In making a determination on anti-competitive practices under clause 14.7, the Authority shall consult the Competition and Fair Trading Commission.

**16. Significant Market Power (SMP)**

- 16.1. 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.
- 16.2. 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.

**17. Universal Service (US) Obligations**

- 17.1. 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.
- 17.2. 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 4.

**18. Customer Confidentiality**

- 18.1. The Licensee shall maintain confidentiality in respect of all information provided by network service operators
- 18.2. 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 facilities service operators.

**19. Monitoring**

- 19.1. The Authority shall have the right to monitor the services of the licensee using any lawful means.

**20. Health and Environmental Concerns**

- 20.1. The Licensee shall ensure the use of energy efficient, environmental friendly facilities service equipment and also ensure proper safety and health hazard issues in the installation and location of their facilities.
- 20.2. The Licensee shall as much as possible use green technology in its infrastructure and shall ensure that its facilities are environmental friendly.
- 20.3. The Licensee shall ensure that deployment of its facilities 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.

**21. Ownership**

- 21.1. The holder of this Licence must be incorporated in Malawi.
- 21.2. The Licensee shall within two (2) years from the effective date ensure it has at least twenty (20%) local Malawian shareholding which shall be maintained throughout the period of the Licence.
- 21.3. The Authority may revoke the Licence in accordance with clause 24 of this Licence where the licensee effects change of shareholding that effectively affect the control of the licence without prior approval of the Authority or fails to comply with local ownership requirements under clause 20.2.
- 21.4. The Licensee shall notify the Authority of any changes that affects more than 10% of its shareholding.
- 21.5. 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 facilities service in Malawi not later than thirty (30) days before any such agreement takes effect, giving particulars of that agreement including a copy thereof.

**22. Local Empowerment**

- 22.1. The Licensee shall ensure that at least 50% of the executive management are Malawian nationals and that it shall not employ more than five percent (5%) of foreign nationals for the rest of its staff.
- 22.2. The Licensee shall, during the term of licence, take measures to ensure participation in its management structure by local indigenous Malawians.

**23. Transfer of Licence**

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

**24. Licence Amendment**

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

24.2. Before amending any provision of this Licence, the Authority shall –

- (a) give the Licensee not less than seven (7) days' notice and publish a notice in the *Gazette* stating the amendment that it proposes to make and the reasons for it, and shall give any Licensee or any person with an interest an opportunity to make representations concerning the proposed amendment; and
- (b) give due consideration to any representations made by the Licensee or any person.

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

24.4. If the Licensee does not respond within the thirty (30) day period under clause 23.3 the amendment shall take effect on the thirtieth (30th) day after the date of notice.

24.5. If the Authority receives a response from the Licensee, it shall consider the response and notify the Licensee within thirty (30) days of the reply of its decision to either;

- (a) rescind the amendment;
- (b) modify the amendment; or
- (c) proceed with the proposed amendment in which case the amendment shall take effect on the fifteenth (15th) day after the date of the Authority's second notice.

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

## 25. Revocation of Licence

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

- (a) if the Licensee is in substantial or continuing breach of any of the terms and conditions of this licence including:
  - (i) failure to achieve the facilities service roll-out targets;
  - (ii) failure to achieve specified Technical Standards;
  - (iii) failure to provide performance guarantee;
  - (iv) hiding or providing false information regarding the information necessary for renewal or any other information requested by the Authority pursuant to this Licence;
  - (v) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;
  - (vi) conducting in unfair commercial trade practices;
  - (vii) failure to pay outstanding License fees for over a period of twelve (12) months from the Effective Date or anniversary of the Effective Date; or
  - (viii) any other substantial breach of the licence.
- (b) if the Licensee has been declared insolvent; or
- (c) if the Licensee agrees in writing to cancel the Licence.

25.2. 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.

25.3. The revocation of the Licence for any reason shall not prejudice any other legal rights or remedies of the Authority conferred by the Act or any other law for the time being in force or by this licence.

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

## 26. Regulatory Sanctions

26.1. Notwithstanding any criminal sanctions under the Act, the Authority reserves the right to impose regulatory sanctions for breaches of licence conditions including:-

- (a) issuing of warnings;
- (b) directing the licensee to take appropriate remedial steps by issuing a compliance order;
- (c) directing the licensee to desist from non-compliance by issuing a cease and desist order;
- (d) imposing a fine proportional to the effects of the non-compliance;
- (e) revocation of the licence; or
- (f) other penalties deemed necessary by the Authority.

#### 27. Emergency Crisis Management

- 27.1. 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.
- 27.2. 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.
- 27.3. The Licensee shall as soon as possible provide information for the restoration of its facilities service.
- 27.4. The Authority may from time to time cause to be carried out by the licensee Practical Tests on the Licensees facilities service to assess the effectiveness or functionality.

#### 28. Exercise of Powers

- 28.1. 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.

#### 29. Force Majeure

- 29.1. 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.
- 29.2. 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.
- 29.3. 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.

#### 30. Corporate Social Responsibility (CSR)

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

#### 31. Liability

- 31.1. The licensee shall indemnify the Authority against any losses, claims, charges or expenses, actions, damages or demands which may be made against the Authority by third parties as a result of or in relation to the activities of the Licensee, its service providers, servants, or agents in connection with the provision of the facilities service.

#### 32. Performance Assessment

- 32.1. The Authority shall in the third (3rd), sixth and (6th) years of this Licence review the performance of the Licensee against the terms and conditions of the Licence

#### 33. Renewal of the Licence

- 33.1. 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.
- 33.2. In deciding whether to renew the licence the Authority shall take into account the following;
  - (a) the satisfactory performance by the Licensee of its obligations under the Licence
  - (b) customers' satisfaction with the performance of the Licensee during the term of the licence
  - (c) any other factor deemed necessary by the Authority

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

33.4. 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.

**34. Dispute Resolution**

34.1. 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.

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

**35. Miscellaneous**

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

35.2. 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.

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

35.4. 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.

35.5. 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.

35.6. 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.

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

Signed on this 25th day of January, 2019.

DIRECTOR GENERAL  
*Malawi Communications Regulatory Authority*

## SCHEDULE

## Roll Out Obligations—Geographical Coverage Targets

Clause 3.2

SERVICES COVERAGE		
PHASE	IMPLEMENTATION TARGET.	PENALTY
<b>PHASE ONE</b> 27th August 2014 + 12 Months	Ligowe Thunga Mzedi Phokera Kameme Kanowa Kabwazi Matutu Dzaleka	\$100000 or proportion thereof in relation to number of places unserved
<b>PHASE TWO</b> 27th August 2014 + 24 Months	Khonjeni Berewu Nambazu Suza Lifuwu Msakambewa Bowe	\$100000 or proportion thereof in relation to number of places unserved
<b>PHASE THREE</b> 27th August 2014 + 36 Months	Sukasanje Idrusi Chiwamba Chitala Chonde Fort Maguire Nमितुतु	\$100000 or proportion thereof in relation to number of places unserved
<b>PHASE FOUR</b> 27th August 2014 + 60 Months	Phaloni Namphungo Chiendausiku Simulemba Minimini Menyani Matapila	\$100000 or proportion thereof in relation to number of places unserved

THE OFFICIAL JOURNALS OF PATENTS, TRADE MARKS  
AND DESIGNS

for

MALAWI

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