



# THE MALAWI GOVERNMENT GAZETTE

(Published by Authority)

3,695: Vol. LIX No. 57]

Zomba, 9th December, 2022

Registered at the G.P.O. as a Newspaper

Price: K3,000.00

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GENERAL NOTICE NO. 161

Licence No. CLF/NSL/SIM/2022/6



## MALAWI COMMUNICATIONS REGULATORY AUTHORITY INDIVIDUAL NETWORK SERVICES LICENCE

Issued to

**Simbanet Malawi Limited**

Issued pursuant to section 39 of the Communications Act 2016

A licence is hereby granted to Simbanet Malawi Limited ("the Licensee") in respect of the ownership and provision of electronic communication network services with effect from the Effective Date.

This Licence shall be subject to the following terms and conditions and other conditions as may be declared by the Malawi Communications Regulatory Authority ("the Authority") from time to time. Failure to comply with any terms and conditions may lead to suspension or revocation of this Licence

Notice issued at Blantyre, this 9th day of December, 2022.

STANLEY C. KHAILA PhD

*Chairperson*

DAUD SULEMAN

*Director General*

## 1. Definitions and Interpretation

### 1.1. In this Licence:

**“Act”** means the Communications Act, No. 34 of 2016 as currently in force and as the same may hereafter be amended, re-enacted or superseded from time to time;

**“Authority”** means the Malawi Communications Regulatory Authority, as established and subsisting under section 4 of the Act, and any successor authority(ies) or agency(ies) performing the same or similar functions from time to time;

**“Drop-Off Points”** means a predetermined, designated site for the adding or inserting of customer traffic either connected directly to the customer’s equipment or through the network of the licensee;

**“Effective Date”** means the date when this Licence is published in the *Gazette*;

**“Electronic Communications Operator”** means any person providing electronic communications services to the public in or outside the Republic, including, without limitation, any person providing transport of communications between points inside, and those outside, the territorial boundaries of the Republic;

**“Foreign Approvals”** has the meaning ascribed to such term in clause 3.2;

**“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;

**“ITU”** means the International Telecommunication Union;

**“Licence”** means the licence issued to the Licensee upon and subject to these terms and conditions;

**“Licensee”** means Simbanet Malawi Limited, a company duly registered and incorporated under the company laws of the Republic with Company Registration No. 13423.

**“Mandated Services”** has the meaning ascribed to such term in clause 6.1.;

**“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;

**“Northern Route”** means the primary route consisting of telecommunication network, related lines, equipment, systems and facilities for the conveyance of international electronic communications traffic between the virtual landing point in Lilongwe and a termination point at the Tanzania border;

**“Old Licence”** means the licence with reference number TEL-2014-001-FOTN/VLP issued to the Licensee before introduction by the Authority of a new licensing framework under the Act and the Communications (Telecommunications and Broadcasting) Regulations 2016;

**“Ready-for-Service Date”** means 5th April 2016, the date on which the Licensee completed installation, testing and commissioning of the Northern Route and certified in writing to the Authority that it was capable of providing the services required under this Licence; **“Regulations”** means any and all regulations, rules, procedures, guidelines, directives, orders, decisions, rulings, determinations and other administrative acts of the Authority, as the same may be in force from time to time;

**“Redundancy Route”** means an alternative route to the Northern Route consisting of electronic communications network, related lines, equipment, systems and facilities for the conveyance of international electronic communications traffic between the virtual landing point in Lilongwe and a termination point at border of any country neighbouring the Republic other than Tanzania;

**“Republic”** means the Republic of Malawi;

**“Submarine Cable Operator”** means an operator with a network of submarine and terrestrial high speed fibre optic cable that serving the coast of Africa including but not limited to Eassy, Seacom and Teams;



**"Virtual Landing Point"** means a designated network point within the territory of Malawi logically connected to a point or points outside Malawi for the purpose of providing a connection point for electronic communications operators and other customers to the said point or points outside Malawi.

1.2. In this Licence and its annexes:

Unless otherwise expressly defined herein, any term or expression used herein that has been defined in the Act or the Regulations shall have the meaning ascribed to such term or expression in the Act or the Regulations.

Unless otherwise expressly defined herein or in the Act or the Regulations, any technical term or expression used herein that has been defined by the ITU in its integrated database of terms and definitions shall have the meaning ascribed to such term or expression by the ITU.

2. **Commencement and Licence Period**

This Licence shall come into force on the Effective Date and, subject to earlier revocation in accordance with clause 30, shall be valid up to 4th April 2026.

3. **General Rights and Obligations**

- 3.1. This Licence is issued subject to the Act, and any other Regulations made thereunder as may be in force from time to time. To the extent that if this Licence may be inconsistent with the Act or the Regulations, the Act or the Regulations shall take precedence over this Licence. The Licensee shall also comply with any other applicable laws of the Republic and with all international obligations to which the Republic is bound and, unless expressly indicated to the contrary, nothing in this Licence shall relieve or exempt the Licensee from complying with any other applicable Laws or Regulations.
- 3.2. This Licence only confers upon the Licensee rights and privileges that may be exercised within the territorial boundaries of the Republic. Notwithstanding the undertakings by the Licensee in this Licence to provide the Mandated Services and any other undertakings that may require the Licensee to engage in activities outside the territorial boundaries of the Republic, this Licence does not confer any rights or privileges to do so, and the Licensee shall be solely responsible for obtaining from the relevant foreign government authority any licence, authorization or other permission necessary or advisable for the installation, maintenance or operation of any electronic communications network or facilities, for the provision of any electronic communications service or otherwise for the ownership of its assets and the conduct of its business outside the territorial boundaries of the Republic ("Foreign Approvals").
- 3.3. The Licensee is authorized to operate and maintain an electronic communication system for the purposes of providing network services in Malawi using any applicable technology;
- 3.4. For the purpose of providing the Network Services under this Licence, the Licensee is authorized:
  - (a) to install, operate and maintain an electronic communication network provided that this does not include such facilities that falls under a Network Facilities Licence;
  - (b) to provide network services to Network Services, Application and Content Service Licensees;
  - (c) to connect its electronic communications network to other licensees' networks in the Republic of Malawi;
  - (d) to procure, rent, and maintain Network Equipment for use in connection with its Network Services; and
  - (e) to do all other things necessary or requisite to the provision of the Network Services.
- 3.5. 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) any equivalent, similar or improved network services as approved by the Authority from time to time.
- 3.6. The Authority hereby designates the Licensee as a recognized operating agency under the ITU Convention. The Licensee shall therefore observe all applicable provisions of the ITU Convention, the ITU Constitution and the ITU Administrative Regulations, including, without limitation, those provided for under articles 6 and 33 through 43 of the ITU Constitution.



#### 4. Network Services

- 4.1. The Licensee shall install, maintain and operate the following electronic communications network and all related equipment and systems for the "Northern and Redundancy Route":
  - 4.1.1 a fibre optic line, which may be installed over or under land, comprising a fibre optic cable containing a minimum of 24 fibre pairs (enclosed in ducts where underground or inside a coaxial metal sheath where above ground), between (a) a termination point in Lilongwe where it is technically feasible to interconnect with one or more existing fibre optic electronic communications networks in Malawi and (b) a termination point at the Tanzania border or any other border connecting the "Redundancy Route" where it is technically feasible to interconnect with one or more existing fibre optic electronic communications networks in Tanzania or any other relevant country.
  - 4.1.2 an interconnection and co-location facility at the Lilongwe termination point;
  - 4.1.3 an interconnection and co-location facility at the borders for the "Northern and Redundancy Routes" termination point;
  - 4.1.4 a Virtual Landing Point at the Lilongwe termination point;
  - 4.1.5 interconnection and co-location facilities in or near the Drop-Off Points along the route traversed by the fibre optic line; and
  - 4.1.6 such other lines, equipment, systems and facilities as may be necessary or useful to enable the Northern Route to operate as an electronic communications network capable of providing the electronic communications services prescribed under clause 6.1 and otherwise of transmitting sounds, signs, signals, writing, images and intelligence of any nature between and among its termination and drop off points and interconnection facilities in accordance with the minimum technical and operational specifications set out in Schedule 1 to this Licence.
- 4.2. Notwithstanding Clause 4.1, the Licensee may install operate and maintain its electronic communication network throughout the Republic of Malawi.
- 4.3. In fulfilling its obligations under clause 4.1, the Licensee may use the electronic communication network capacity of other network service Operators.
- 4.4. The Licensee shall not, without the Authority's prior approval, decommission or discontinue operation of the Northern Route prior to the expiration of this Licence.
- 4.5. The Licensee shall introduce measures and shall at all times use its resources to ensure that any electronic communications equipment and systems installed, maintained or operated by the Licensee comply with the following as prescribed by the Authority or the ITU from time to time:
  - 4.4.1.all requirements for electromagnetic compatibility, including, without limitation, ensuring that its equipment and systems do not cause unlawful interference and are able to accept and withstand lawful interference caused by other persons without degradation of performance;
  - 4.4.2.all requirements for network interconnection, interoperability and co-location; and
  - 4.4.3.all applicable equipment type approval and certification requirements.
- 4.6. The Licensee shall use all reasonable endeavors to ensure that its employees, agents and contractors comply with the terms and conditions of this Licence in the exercise or performance of the Licensee's rights and obligations to install, maintain and operate an electronic communications network and shall be responsible for their acts or omissions in respect of the exercise or performance of such rights and obligations.
- 4.7. The Licensee shall submit annual reports to the Authority setting out all changes of the coverage area of its electronic communications network within two (2) months after each anniversary of the Ready-for-Service Date.
- 4.8. Upon reasonable notice as determined by the Authority, the Licensee shall provide access to its electronic communications network for inspection by the Authority.

#### 5. Interconnection

- 5.1. To enable the Licensee to provide the Mandated Services prescribed under clause 6.1 of this Licence, the Licensee shall, directly or indirectly, interconnect and enter into interconnection agreements with the following:
  - 5.1.1.At the Tanzania border termination point of the Northern Route and any border relevant for the "Redundancy Route", the Licensee shall interconnect with the fibre optic Electronic Communication network of one or more Electronic Communications Operators in Tanzania and any other relevant country offering the



"Redundancy Route" providing the capability of transmission between the Northern Route or the "Redundancy Route" and the cable landing stations in Dar es Salaam for the submarine Cable Operation.

5.1.2. At the cable landing station for any Submarine Cable Operator in Dar es Salaam, the Licensee shall directly or indirectly arrange for interconnection between the transit Electronic Communication Operator with which the Northern Route or the Redundancy Route is interconnected pursuant to clause 5.1.1 and the submarine Cable Operator.

5.1.3. At an Internet exchange point at which Internet traffic is exchanged among three or more Tier 1 ISPs (as such term is used by the European Internet Exchange Association), the Licensee shall directly or indirectly arrange for interconnection by the Submarine Cable Operator providing the capability of exchanging with such Tier 1 ISPs Internet traffic that originates or terminates from Electronic Communication Operators in Malawi who are served by the Northern and Redundancy Routes.

5.2. The Licensee shall allow any requesting Electronic Communication Operator to interconnect with its Electronic Communication network at any interconnection point required to be installed and maintained by the Licensee as part of the Northern and Redundancy Route pursuant to clause 4.1, at any other interconnection point that the Licensee may install and maintain on its Electronic Communication network from time to time, and, absent good cause shown, at any other technically feasible point requested by another Electronic Communication Operator. If the Licensee refuses to interconnect with any requesting Electronic Communication Operator, it must notify the requesting Electronic Communication Operator in writing of the basis for its refusal. Upon application by the requesting Electronic Communication Operator to the Authority, such refusal shall be subject to review by the Authority to determine whether it is justified under this Licence, the Act and the Regulations.

5.3. Without limiting the generality of the foregoing:

5.3.1. The Licensee shall interconnect with, and provide access for interconnection to, all requesting Electronic Communication Operators, whether or not they are customers of the Licensee.

5.3.2. The Licensee shall not employ any protocol, standard or device on its Electronic Communication network that hinders or impairs interconnection with other Electronic Communication networks or that is designed or has the effect of rendering the Licensee's Electronic Communication network and other Electronic Communication networks incapable of interconnection or interoperability.

5.3.3. The Licensee shall endeavor in good faith to establish reciprocal compensation arrangements with all interconnecting Electronic Communication Operators for the transport and termination of Electronic Communications.

5.4. The Licensee shall be permitted to request interconnection, and to interconnect, with any Electronic Communication Operator in the Republic at any technically feasible point.

5.5. The Licensee shall enter into an interconnection agreement, which shall be in writing and signed by the parties, with every Electronic Communication Operator with whom it interconnects its network or facilities. The Licensee shall notify the Authority in writing of each interconnection agreement entered into, and each amendment thereto, by filing copies of the same with the Authority within thirty (30) days after each such agreement or amendment has been signed.

5.6. The Authority shall keep such filed interconnection agreement and amendments thereto available for public inspection, subject to redacting, at the Licensee's request, any provisions containing legally protected confidential information or the disclosure of which may create a security risk.

5.7. The Licensee may seek the intervention and assistance of the Authority if it encounters any difficulty in exercising any of its rights under this Clause.

5.8. For the purposes of this Clause, interconnection shall not apply to interconnection at IP level at the landing point.

## 6. Licensed Services

6.1. From the Ready-for-Service Date and for the duration of the term of the Licence, the Licensee shall offer and provide the following domestic and international fixed public Electronic Communication services (the "Mandated Services") to Electronic Communication Operators on a non-discriminatory basis:

6.1.1. transmission of packet-switched Electronic Communications between the Virtual Landing Point in Lilongwe and termination point at the Tanzania border and any border of the country offering the Redundancy Route;

6.1.2. transmission of packet-switched Electronic Communications between the Virtual Landing Point in Lilongwe and an interconnection point at the cable landing station for Submarine Cable Operator in Dar es Salaam, Tanzania;



- 6.1.3.transmission of packet-switched Electronic Communications between the Virtual Landing Point in Lilongwe and an Internet exchange point where at least three Tier 1 ISPs exchange Internet traffic for the Northern and Redundancy Routes; and
- 6.1.4.transmission of packet-switched Electronic Communications between any Drop-Off Point along the Northern and Redundancy Routes and the Virtual Landing Point in Lilongwe.
- 6.2. The Licensee shall not discontinue offering or providing any Mandated Service prior to the expiration of the Initial term of this Licence without prior approval from the Authority.
- 6.3. Except as set forth in clause 6.10, in addition to the Mandated Services, upon compliance with any applicable requirements under the Act and the Regulations, the Licensee may from time to time provide any other domestic or international fixed public Electronic Communication service to Electronic Communication Operators switched or un-switched, using any transmission protocol, between and among any termination points on the Northern and Redundancy Routes or to any point inside or outside the territorial boundaries of the Republic, using any lawful facilities, whether operated by the Licensee or another Electronic Communication Operator, and whether between and among points solely within the territorial boundaries of the Republic or both within and outside the territorial boundaries of the Republic.
- 6.4. Except as expressly set forth herein, nothing in this Licence shall prohibit or restrict the Licensee from offering or providing any lawful service that is not subject to the Act or the Regulations, including, without limitation, installation, maintenance, repair and consulting services.
- 6.5. The Licensee shall provide to any requesting Electronic Communication Operator without discrimination, any Mandate Service or any other telecommunication service that it otherwise offers or provides to others from time to time.
- 6.6. Without limiting the generality of the foregoing, the Licensee shall not discriminate in the provision of service based on a customer's selection of onward transit carrier or onward transit route.
- 6.7. The Licensee shall not make the provision of any Electronic Communication service prescribed in clause 6.1 conditional on the purchase of any other Electronic Communication service.
- 6.8. The Licensee shall not enter into any transaction designed to avoid its obligation to provide the services prescribed in clause 6.1. Without limiting the generality of the preceding sentence, the Licensee shall not lease or sell all or a substantial portion of the capacity on the Northern and Redundancy Routes to an affiliate or third party with the intention or effect of rendering the Licensee unable to meet demand for prescribed services under this licence.
- 6.9. As part of its services provided to Electronic Communication Operators, the Licensee may transmit any type of Electronic Communication on behalf of those Electronic Communication Operators, regardless of whether the Licensee is authorized to provide such Electronic Communication services to Commercial Subscribers or individual consumers, including, without limitation, voice telephony and cable television services.
- 6.10. Nothing in this Licence shall authorize the Licensee to offer or provide any Electronic Communication service to consumers, provided that the Licensee may offer to the Government of the Republic and its ministries, national and local authorities, agencies and other subdivisions any Electronic Communication service over the Northern Route without restriction.

## **7. Tariffs and Billing**

- 7.1. The Licensee shall set monthly/annual/other rates for the following Electronic Communication services that are no higher, but may be less, than the price caps set forth below. The class of service shall be, continuously available (24 hours/day, 7 days/week, 365 days/year) bandwidth over a single line between the specified origination and termination points without path redundancy at the specified bandwidth level. The first year for which the price caps are effective shall begin on the Ready-for-Service Date and each subsequent year shall begin on the anniversary thereof.



All Prices in US Dollars exclusive of any taxes and as per Terms and Conditions stated in the bid submission

Capacity	Route/Type	1-Year term	3-Year term	5-Year term	10-Year term
10 Mbps	Standard Availability: VLP to Coastal POP	\$69.00	\$62.10	\$58.65	\$55.20
		\$92.00	\$82.80	\$78.20	\$73.60
	Standard Availability: VLP to IXP	\$138.00	\$124.20	\$117.30	\$110.40
	High Availability: VLP to IXP				
STM-1 (155Mbps)	Standard Availability: VLP to Coastal POP	\$66.00	\$59.40	\$56.10	\$52.80
		\$88.00	\$79.20	\$74.80	\$70.40
	Standard Availability: VLP to IXP	\$132.00	\$118.80	\$112.20	\$105.60
	High Availability: VLP to IXP				
STM-4 (620Mbps)	Standard Availability: VLP to Coastal POP	\$60.00	\$54.00	\$51.00	\$48.00
		\$80.00	\$72.00	\$68.00	\$64.00
	Standard Availability: VLP to IXP	\$120.00	\$108.00	\$102.00	\$96.00
	High Availability: VLP to IXP				
Fast Ethernet (100Mbps)	Standard Availability: VLP to Coastal POP	\$66.00	\$59.40	\$56.10	\$52.80
		\$88.00	\$79.20	\$74.80	\$70.40
	Standard Availability: VLP to IXP	\$132.00	\$118.80	\$112.20	\$105.60
	High Availability: VLP to IXP				
Gigabit Ethernet (1000 Mbps)	Standard Availability: VLP to Coastal POP	\$45.00	\$40.50	\$38.25	\$36.00
		\$60.00	\$54.00	\$51.00	\$48.00
	Standard Availability: VLP to IXP	\$90.00	\$81.00	\$76.50	\$72.00
	High Availability: VLP to IXP				

- 7.2. Nothing in this Licence shall prevent the Licensee from establishing, offering and providing, in a manner otherwise in accordance with the Act and the Regulations, just and reasonable classes of service other than those set forth in the table in clause 7.1, and charging rates that are different from the rates set forth in such table due to such factors as duration of purchase commitment, the provision of back-up protection, off-peak capacity utilization, (etc.). However, the Licensee shall justify any higher rate for any class of service that is similar to one listed in the table in clause 7.1 based on actual cost differentials between the class of service in the table and the other class of service.
- 7.3. The Licensee's initial rates, tariffs, billing procedures and payment terms for the Mandated Services shall be those submitted with its application for this Licence. The Licensee's rates, tariffs, billing procedures and payment terms for any other Electronic Communication services shall be filed with the Authority prior to the offering of such services, and are subject to review and approval by the Authority.
- 7.4. Subject to compliance with clause 7.1 of this Licence and with the Act and the Regulations, the Licensee may revise its rates, tariffs, billing procedures and payment terms from time to time, and, on each such revision, shall file the same with the Authority.
- 7.5. The Licensee shall publish in locally published and distributed daily newspapers with wide circulation and on its web site, and shall continuously maintain for public access on its web site, all rates, tariffs, billing procedures and payment terms as may be in effect from time to time, including those applicable to contract purchases concluded before any revision to the currently offered rates, tariffs, billing procedures and payment terms.
- 7.6. The Licensee shall also publish in locally published and distributed daily newspapers with wide circulation and on its web site, and shall continuously maintain for public access on its web site, a list of all classes of service currently offered, a description of the services in each class and the rates, tariffs, billing procedures and payment terms applicable to such class of service, and any other commercial or technical information necessary for potential customers to understand its complete service offerings.
- 7.7. The Licensee shall file a copy of such published information, and of each modification thereto, with the Authority within seven (7) days after such information or modification is first published.
- 7.8. The Licensee shall not provide any class of service to any person on terms and conditions other than those in its published rates, tariffs, billing procedures and payment terms for such class of service.

## 8. Licence Fees

- 8.1. During the Term of this Licence, the Licensee shall pay the following Licence fees to the Authority:
- (a) An annual Licence fee payable in advance on or before each anniversary of the Effective Date payable as follows:
    - (i) 1st anniversary—US\$35, 000.00 (Thirty Five Thousand United States Dollars);
    - (ii) 3rd anniversary—US\$70, 000.00 (Seventy Thousand United States Dollars);
    - (iii) 5th Anniversary and for the remainder of the period of the licence—US\$100, 000.00 (One Hundred Thousand United States Dollars).
  - (b) An annual levy equal to three and a half percent (3.5%) of audited Gross Annual Revenue 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 accounts differs from the one in the audited accounts.
  - (c) If the Licensee has been assigned any radio frequencies, the Licensee shall pay annual radio licence fees set by the Authority under the Act.
- 8.2. The Licensee shall pay and settle all Licence fees, including estimated payments under clause 8.1 no later than the dates specified therein. Any late payments shall bear simple interest from the date due until through the date paid at an annual rate equal to (the prevailing bank rate) plus five (5) percentage points.



8.3. If any Licence fees with respect to any year remain unpaid more than twelve (12) months after the applicable anniversary of the Effective Date, then the Authority may revoke this Licence and any subordinate radio frequency assignments.

8.4. Nothing herein shall limit the right of the Authority to engage all legally acceptable means, including, without limitation, institution of legal proceedings, to collect any unpaid and past due Licence fees from the Licensee.

#### 9. Universal Service Contributions

9.1. The Licensee shall contribute to the Universal Service Fund (USF) through levies payable under Clause 8 and in accordance with the provisions of the Universal Service (US) Rules.

9.2. 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 8.

#### 10. Performance Bond

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

10.2. The Licensee shall ensure that the guarantee is issued within ninety (90) 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.

10.3. 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.

10.4. 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.

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

#### 11. Provision of Information

11.1. 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.

11.2. 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.

11.3. 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.

11.4. Where the Licensee is unable to submit information in the manner and format specified under Clause 11.3, it shall inform the Authority in writing stating the reasons why the specified manner and format cannot be complied with.

11.5. Where the Authority is satisfied with the reasons stated by the Licensee, the information shall be submitted by the Licensee in a manner that is reasonable and practical to give effect to the purpose for which the Authority requires the information.

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

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

#### 12. Compliance

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



**13. Quality of Service Requirements**

- 13.1. The Licensee, while providing the Licensed Service, shall make reasonable efforts to maintain at the minimum the Quality of Service (QoS) parameters as per the prevailing ITU recommendations pertaining to Quality of Service for the Licensed Services.
- 13.2. The Licensee shall take all reasonable steps to ensure that its network performs in accordance with Schedule 2.
- 13.3. The Licensee shall ensure that it maintains records relating to the QoS requirements, which shall be readily available to the Authority for the purposes of satisfying the Authority that the Licensee is meeting the QoS Requirements.
- 13.4. The licensee shall ensure that it provides the Licensed Services under QoS terms and conditions mutually agreed with the Clients through Service Level Agreements (SLA) which shall be kept in force by such compensations to Clients as shall be mutually agreed through the SLA.
- 13.5. The Licensee shall present to the Authority annual report on QoS offered and shall be liable to pay penalties if it doesn't meet the minimum set QoS requirements in accordance with the Act.

**14. Customer Service Contracts**

- 14.1. The licensee shall submit to the Authority for approval, a Master Customer Contract containing Service Level Agreements (SLA) and standard terms and conditions for the provision of the services before the Ready for Service date.
- 14.2. The Service Level Agreements stipulated under clause 14.1 shall:
- (a) Define the scope of the service;
  - (b) State the QoS parameters that could be used to determine level of performance;
  - (c) List the Key Performance Indicators (KPI) or service metrics
  - (d) Scope of faults, reporting and management of faults
  - (e) Levels of customer care
  - (f) Management of non fault operations i.e billing, maintenance etc.
  - (g) System of service credit or outage credits; and
  - (h) Complaint handling process and procedures
  - (i) Any other relevant information specified by the Authority from time to time
- 14.3. The licensee shall make available a copy of the Master Customer Contract at each point of sale or office.

**15. Financial Reporting Obligations**

- 15.1. The Licensee shall record, keep and maintain accurate and proper books and accounting records in form and substance sufficient to show and explain its transactions for all purposes relevant to this Licence, including, without limitation, to support the Authority's ability to investigate and verify the basis for the Licensee's fees and charges for electronic communications services, the basis for the Licensee's fees, rates and charges for interconnection and co-location, and the amount of the Licensee's Net Operating Revenue and, if necessary, any apportionment of Gross Annual Revenue between services provided under this Licence and other services for purposes of calculating the annual variable Licence fee.
- 15.2. Within three (3) months after the end of each financial year of the Licensee, the Licensee shall file with the Authority audited annual financial statements prepared in accordance with International Financial Reporting Standards. Such financial statements shall be treated as confidential by the Authority unless otherwise required by law. Without limiting the foregoing, the Licensee shall also prepare and file with the Authority such other financial information and reports, at such other times, in accordance with International best practices.
- 15.3. The Authority shall also be entitled, on request, to audit the financial and other books and records of the Licensee to verify any information supplied or required to be supplied by the Licensee to the Authority.



**16. General Reporting Obligations**

- 16.1. The Licensee shall prepare and submit to the Authority such information and reports as the Authority may require or request from time to time for its monitoring purposes.
- 16.2. The Licensee shall submit to the Authority any information pursuant to clause 16.1 in any of the following manner:
- (a) in real time electronic submission;
  - (b) offer the Authority electronic access to databases required to be maintained by the Licensee; or
  - (c) any other manner as specified by the Authority.

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

- 17.1. 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.
- 17.2. Acts of anti-competitive conduct envisaged in clause 17.1 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 network 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 network services.
- 17.3. 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.
- 17.4. 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.
- 17.5. 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.
- 17.6. The Licensee shall comply with any other laws and Regulations which relate to fair trading or competitive behaviour.
- 17.7. 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.
- 17.8. In making a determination on anti-competitive practices under clause 17.7, the Authority may consult the Competition and Fair Trading Commission.



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

- 18.1. Where the Authority determines that the Licensee has Significant Market Power (SMP) in accordance with the Act or any applicable Regulations, it may impose additional obligations relating to anti-competitive practices in its licence to prohibit the Licensee from abusing its dominant position through anti-competitive conducts.
- 18.2. 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.

**19. Monitoring**

The Authority shall have the right to monitor the services of the Licensee using any applicable means.

**20. Health and Environmental Concerns**

- 20.1. The Licensee shall ensure the use of energy efficient, environmental friendly network 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 electronic communication network shall ensure that the network is environmental friendly.
- 20.3. The Licensee shall ensure that deployment of its network 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. Emergency Crisis Management**

- 21.1. The Licensee shall, within 90 days from the Effective Date, 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.
- 21.2. 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.
- 21.3. The Licensee shall as soon as possible provide information for the restoration of its network service.
- 21.4. The Authority may from time to time cause to be carried out by the Licensee Practical Tests on the Licensees network service to assess the effectiveness or functionality.

**22. Confidentiality**

- 22.1. The Licensee shall not disclose the content of any signal or communication transmitted or intended to be transmitted over its Electronic Communication network, unless required to do so by a court order or under any law of the Republic.
- 22.2. The Licensee shall not use or disclose any information regarding its past, current or potential customers or any Electronic Communication Operator for purposes other than those for which the information was obtained, unless the customer or Electronic Communication Operator gives prior written consent to such other use.

**23. Ownership**

- 23.1. The Licensee shall be incorporated in Malawi.
- 23.2. The Licensee shall not effect any changes to its shareholding unless with the prior written approval of the Authority.
- 23.3. The Licensee shall ensure it has at least twenty (20%) local Malawian shareholding by 13th March 2023, which shall be maintained throughout the period of the Licence.
- 23.4. The Authority may revoke the Licence in accordance with Clause 30 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 23.3.



23.5. Any change in composition of one quarter (1/4) or more of the Licensee's board of directors as a result of a change in the ownership of the issued share capital of the Licensee, shall require prior written approval of the Authority, unless such transfer is through any public stock exchange.

23.6. 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.

#### **24. Transfer of Licence or Change of Control**

24.1. This Licence is personal to the Licensee, and the Licensee shall not transfer, assign, pledge or hypothecate this Licence without the prior written consent of the Authority.

24.2. Any transaction, agreement or undertaking entered into by the Licensee with any other party that could have the effect of transferring or assigning or changing the control of the Licensee, including, without limitation, any option to purchase or any pledge of assets or shares to a lender or other creditor, shall require prior written approval by the Authority.

#### **25. Corporate Social Responsibility (CSR)**

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

#### **26. Liability**

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

#### **27. Performance Assessment**

The Authority shall in the third (3rd), sixth (6th) and ninth (9th) years of this Licence review the performance of the Licensee against the terms and conditions of the Licence

#### **28. Renewal**

28.1. Unless cancelled or revoked, and provided the Licensee has remained fully in compliance and in good standing during the Initial Term, this Licence shall be renewed upon the expiry of the Initial Term and remain valid for a further period of ten (10) years, with such changes in its terms and conditions as may be required to bring it in line with similar licences issued by the Authority subsequent to the Effective Date or as otherwise agreed between the Licensee and the Authority, unless the Licensee has given written notice to the Authority, at least twelve (12) months before the expiry date hereof, of its intention not to renew the Licence.

28.2. Notwithstanding clause 28.1, the automatic renewal of the Licence shall be subject to the payment, at least six (6) months before the expiry date of the Licence, of such Licence fees as the Authority shall specify and the fulfillment of all the terms and conditions of this Licence, the Act and the Regulations.

#### **29. Licence Amendment**

29.1. The Authority may modify or amend any term or condition of this Licence 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.

29.2. 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.

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

29.4. If the Licensee does not respond within the thirty (30) day period under clause 29.3 the amendment shall take effect on the thirtieth (30th) day after the date of notice.



29.5. 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.

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

### 30. Revocation of Licence

30.1. 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 comply with its geographical roll out obligations specified in this Licence;
  - (ii) to the extent applicable, failure to achieve specified technical standards;
  - (iii) failure to provide performance guarantee;
  - (iv) providing false information regarding the information necessary for renewal or any other information requested by the Authority pursuant to this Licence;
  - (v) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;
  - (vi) conducting in unfair commercial trade practices;
  - (vii) failure to pay outstanding Licence 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 30.2;
- (b) if the Licensee has been declared insolvent;
- (c) if the Licensee has ceased to carry on its business and to provide the services for which this Licence was granted; or
- (d) if the Licensee agrees in writing to cancel the Licence.

30.2. Without prejudice to Clause 30.1, 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.

30.3. 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.



30.4. 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.

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

### 31. Regulatory Sanctions

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.

### 32. Force Majeure

32.1. 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.

32.2. 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.

32.3. 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.

### 33. Notices

33.1. All notices to the Licensee may be sent to its main or registered office and such telephone, fax and email addresses as it shall notify the Authority from time to time.

33.2. Any notice addressed to the Licensee at its physical address shall be delivered by hand or by registered post, and notice sent by email or fax shall be confirmed.

33.3. Any notice shall be deemed to have been given:

- (a) on delivery, if sent by hand during business hours on a business day;
- (b) Seven (7) days after mailing if sent by registered post mailed from Malawi to an address within Malawi; or
- (c) on receipt, if sent by confirmed fax or email.

33.4. All written notices to the Authority shall be marked for the attention of the Director General and shall be hand delivered or otherwise sent to the official addresses for notices published by the Authority from time to time.

33.5. Any notice given pursuant to this Licence shall be deemed to be appropriately served if the same is done in accordance with the laws currently in force in Malawi.

### 34. Revocation of the Old Licensee

This Licensee supersedes the Old Licence. Accordingly the Old Licence and the terms and conditions thereof are hereby revoked.

### 35. Miscellaneous

35.1. If any provision of this Licence is found to be invalid and unenforceable for any reason, the remaining provisions shall nevertheless remain of full force and effect.

35.2. The Licensee shall participate in the development of the Electronic Communication industry by supporting independent contractors and supporting industry development initiatives.



- 35.3. The Licensee shall comply with the applicable standards and requirements of the ITU or other international organisations as accepted or adopted by the Republic.
- 35.4. This Licence shall confer benefit on and be binding upon the parties hereto and their respective successors and assignees.
- 35.5. Except as may otherwise be provided by law or this License, nothing in this Licence shall impose any liability on any member or staff of the Authority or the Licensee in their personal capacity.
- 35.6. The Licensee shall be responsible for any discrepancies, errors or omissions in any information technical or otherwise, supplied by it as part of this License, whether the same have been approved by the Authority or not, unless such discrepancies, errors or omissions are solely due to inaccurate information furnished to the Licensee by the Authority.
- 35.7. 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.
- 35.8. 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.
- 35.9. 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.
- 35.10. Notwithstanding clause 35.6, the Authority may disclose information that it has been notified should be kept confidential if such disclosure is essential in order to fulfill its functions under the Act or if so directed under an order of a court.
- 35.11. 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.
- 35.12. 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.

Issued at Blantyre, this 9th day of December, 2022

STANLEY C. KHAILA PhD

*Chairperson*

DAUD SULEMAN

*Director General*

SCHEDULE 1

Clause 4.1.6

Technical Specifications for the Northern Route



## SCHEDULE 2

## Clause 13.2

TABLE S1- QUALITY OF SERVICE PARAMETERS

Q o S Parameter Name	Measurement Method	Additional Comments	Target Value	Average period to be reported
Supply Time	Supply Time for Connection		90% completed on agreed day	Monthly
Installation time	Average time from order received and accepted until the service is installed and ready to use		4 weeks	Monthly
Fault Repair	Mean Time to Repair (Hrs)  a. Equipment related faults  b. Backbone Link fault impacting traffic  c. Access Link	This will be calculated as follows:  In a day: Total number of hours for each fault divided by total number of faults in that day.  The monthly average will be calculated from daily average by summing up the averages divided total number of days the faults occurred.	Within 4 hours  Within 8 hours  Within 4 hours	Monthly
Fault rate	A fault report describes a disrupted or degraded service and is submitted by the Wholesale customer to the point of contact of the Service Provider.	This number of faults reported per 100 customers	<5%	Monthly
Service availability	The percentage of time the services are available		99%	Monthly
Network availability	The percentage of time the circuits are available for service		99%	Monthly



Unsuccessful Data Transmission Ratio	<p>The ratio of unsuccessful data transmissions to the total number of data transmission attempts in a specified time period.</p> <p>Data transmission is successful if a test file is transmitted completely and with no errors.</p> <p>(ETSI EG 202 057-4)</p>	The measurement file size should be twice the speed of the link.	<1% or $10^{-3}$	Monthly
Loss Ratio	<p>Ratio of packets lost to the total packets transmitted between two designated points for each class of service</p> <p>(ITU-T Rec. Y.1541).</p>	For the IP packet loss ratio (IPLR) (from UNI – UNI) End to End testing using ping.	<5%	Monthly
Network Latency	<p>Time in milliseconds that is needed for an ICMP Echo Request/ Reply (Ping) to a valid IP address.</p> <p>Measurement provided as the mean value of the delay in (ms)</p>	For National the Operator should ping nodes within their own network.	<p>National 100ms</p> <p>International 300ms</p>	Monthly
Congestion level per Traffic ROUTE During busy hours.			$\leq 2\%$	Monthly
Data Transmission Speed Achieved (Data transmission rate achieved for downloading and uploading specified test files between service provider's network and customer premises)	<p>Maximum data transmission rate in Kbit/s achieved;</p> <p>Minimum data transmission rate in Kbit/s achieved;</p> <p>-mean value and standard deviation of the transmission rate in Kbit/s achieved;</p> <p>(ETSI EG 202 057-4)</p>	Operator can use any tools available	$\geq 80\%$ of that advertised by the service provider	Monthly



GENERAL NOTICE No. 162

Licence No. CLF/FSL/SIM/2022/5



**MALAWI COMMUNICATIONS REGULATORY AUTHORITY**  
**INDIVIDUAL NETWORK FACILITIES LICENCE**

Issued to

**Simbanet Malawi Limited****Issued pursuant to section 39 of the Communications Act 2016**

A licence is hereby granted to Simbanet Malawi Limited ("the Licensee") in respect of the ownership and provision of electronic communications network facilities with effect from the Effective Date.

This Licence shall be subject to the following terms and conditions and other conditions as may be declared by the Malawi Communications Regulatory Authority ("the Authority") from time to time. Failure to comply with any terms and conditions may lead to suspension or revocation of this Licence

Notice issued at Blantyre, this 9th day of December, 2022.

STANLEY C. KHAILA PhD

*Chairperson*

DAUD SULEMAN

*Director General*



## 1. Definitions and Interpretation

In this Licence:

**“Act”** means the Malawi Communications Act, 2016 as currently in force and as the same may hereafter be amended, re-enacted or superseded from time to time;

**“Authority”** means the Malawi Communications Regulatory Authority, as established and subsisting under section 4 of the Act, and any successor authority(ies) or agency(ies) performing the same or similar functions from time to time;

**“Electronic Communications Operator”** means any person licenced to provide electronic communication services in the Republic of Malawi Electronic Communication or any other person providing electronic communication Electronic Communication services outside the Republic, including, without limitation, any person providing transport of communications between points inside, and those outside, the territorial boundaries of the Republic.

**“Effective Date”** means the date when this Licence has been published in the *Gazette*;

**“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;

**“Facilities 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;

**“Foreign Approvals”** has the meaning ascribed to such term in clause 3.3;

**“ITU”** means the International Telecommunications Union;

**“Licence”** means the licence issued to the Licensee upon and subject to these terms and conditions;

**“Licensee”** means Simbanet Malawi Limited, a company duly registered and incorporated under the company laws of the Republic with Company Registration No. 13423;

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

**“Northern Route”** means the primary route consisting of electronic communication network, related lines, equipment, systems and facilities for the conveyance of international Electronic Communication traffic between the virtual landing point in Lilongwe and a termination point at the Tanzania border

**“Ready-for-Service Date”** means 5th April 2016 on which the Licensee completed installation, testing and commissioning of the Northern Route and certified in writing to the Authority that it was capable of providing the services required under this Licence and otherwise in accordance with the minimum technical specifications set forth in Annex I to the Licence;

**“Regulations”** means any and all regulations, rules, procedures, guidelines, directives, orders, decisions, rulings, determinations and other administrative acts of the Authority, as the same may be in force from time to time;

**“Redundancy Route”** means an alternative route to the Northern Route consisting of equipment, systems and facilities for the conveyance of international electronic communication traffic between the virtual landing point in Lilongwe and a termination point at border of any country neighbouring the Republic other than Tanzania;

**“Republic”** means the Republic of Malawi;

**“Submarine Cable Operator”** means an operator with a network of submarine and terrestrial high speed fibre optic cable that is serving the coast of Africa including Eassy, Seacom and Teams;

**“Virtual Landing Point”** means a designated network point within the territory of Malawi logically connected to a point or points outside Malawi for the purpose of providing a connection point for Electronic Communications operators and other customers to the said point or points outside Malawi.



**2. Commencement and Licence Period**

This Licence shall come into force on the Effective Date and, subject to earlier revocation in accordance with clause 27, shall be valid up to 4th April 2026.

**3. General Rights and Obligations**

- 3.1. This Licence is issued subject to the Act, and any other Regulations made thereunder as may be in force from time to time. To the extent that if this Licence may be inconsistent with the Act or the Regulations, the Act or the regulations shall take precedence over this Licence.
- 3.2. The Licensee shall also comply with any other applicable laws of the Republic and with all international obligations to which the Republic is bound and, unless expressly indicated to the contrary, nothing in this Licence shall relieve or exempt the Licensee from complying with any other applicable Laws or Regulations.
- 3.3. This Licence only confers upon the Licensee rights and privileges that may be exercised within the territorial boundaries of the Republic. Notwithstanding the undertakings by the Licensee in this Licence to provide the services and any other undertakings that may require the Licensee to engage in activities outside the territorial boundaries of the Republic, this Licence does not confer any rights or privileges to do so, and the Licensee shall be solely responsible for obtaining from the relevant foreign government authority any licence, authorization or other permission necessary or advisable for the installation, maintenance or operation of any Electronic Communication network or facilities, for the provision of any Electronic Communication service or otherwise for the ownership of its assets and the conduct of its business outside the territorial boundaries of the Republic ("Foreign Approvals").
- 3.4. The Licence shall ensure that it (or its subcontractor(s)) has (have) all Foreign Approvals necessary for provision of the services.
- 3.5. The Licensee shall inform the Authority whenever it has any change in subcontractor(s) and provide updated evidence of the relevant Foreign Approvals.
- 3.6. The Authority hereby designates the Licensee as a recognized operating agency under the ITU Convention. The Licensee shall therefore observe all applicable provisions of the ITU Convention, the ITU Constitution and the ITU Administrative Regulations, including, without limitation, those provided for under articles 6 and 33 through 43 of the ITU Constitution.

**4. Scope of Licence**

- 4.1. This Licence is issued subject to the Act and any Regulations made thereunder.
- 4.2. 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 Service 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 approved by the Authority from time to time.

4.3 This Licence is valid in the Republic of Malawi.

**5. Licensed Facilities**

- 5.1. The Licensee shall install, maintain and operate the following Facilities for the "Northern and Redundancy Route":
  - 5.1.1. a fibre optic line, which may be installed over or under land, comprising a fibre optic cable containing a minimum of 24 fibre pairs (enclosed in ducts where underground or inside a coaxial metal sheath where above ground), between (a) a termination point in Lilongwe where it is technically feasible to interconnect with one or more existing fibre optic Electronic Communication networks in Malawi and (b) a termination point at the Tanzania border or any other border connecting the "Redundancy Route" where it is technically feasible to interconnect with one or more existing fibre optic Electronic Communication networks in Tanzania or any other relevant country;



- 5.1.2. an interconnection and co-location facility at the Lilongwe termination point;
- 5.1.3. an interconnection and co-location facility at the borders for the "Northern and Redundancy Routes" termination point;
- 5.1.4. a Virtual Landing Point at the Lilongwe termination point; and
- 5.1.5. interconnection and co-location facilities in or near the Drop-Off Points along the route traversed by the fibre optic line.
- 5.2. In fulfilling its obligations under clause 5.1, the Licensee shall be permitted to use of Facilities of other operators and shall not be required to own any or all of the same, but the Licensee shall be fully responsible for maintaining and operating such Facilities for the duration of the Initial Term of this Licence.
- 5.3. The Licensee shall not, without the Authority's prior approval, decommission or discontinue operation of the Northern Route prior to the expiration of this Licence.
- 5.4. Upon compliance with any applicable requirements under the Act or the Regulations, the Licensee may also from time to time during the period of this Licence:
  - 5.4.1. install; maintain and operate any additional fibre optic lines and related facilities;
  - 5.4.2. enter into any lawful arrangements with any Electronic Communications Electronic Communication Operator for the sharing of facilities and infrastructure and for the co-location of facilities and infrastructure.
- 5.5. The Licensee shall use all reasonable endeavours to ensure that its employees, agents and contractors comply with the terms and conditions of this Licence in the exercise or performance of the Licensee's rights and obligations under the Licence and shall be responsible for their acts or omissions in respect of the exercise or performance of such rights and obligations.
- 5.6. The Licensee shall submit annual reports to the Authority setting out all changes in the Facilities within two (2) months after each anniversary of the Ready-for-Service Date.
- 5.7. Upon reasonable notice as determined by the Authority, the Licensee shall provide access to its Facilities for inspection by the Authority.
- 6. Licence Fees**
  - 6.1. During the Term of this Licence, the Licensee shall pay the following Licence fees to the Authority:
    - (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;
  - 6.2. All outstanding fees and levies shall be payable within three (3) months from their due dates, failing which they shall attract simple interest from the date due until through the date paid at an annual rate equal to the prevailing bank rate plus five (5) percentage points.
  - 6.3. The Authority may revoke this licence in accordance with Clause 27 if, in any year, licence fees remain outstanding for a period of more than 12 months from the date such fees became due.
  - 6.4. Nothing herein shall limit the right of the Authority to engage all legally acceptable means, including, without limitation, institution of legal proceedings, to collect any unpaid and past due Licence fees from the Licensee.
- 7. Universal Service Contributions**
  - 7.1. The Licensee shall contribute to the Universal Service Fund (USF) through levies payable under Clause 6 and in accordance with the provisions of the Universal Service (US) Regulations.



7.2. 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 6.

**8. Performance Bond**

8.1. 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.

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 thirty (30) 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 lawful action against the Licensee to satisfy the penalty imposed where the guarantee is inadequate to satisfy the penalty.

**9. Accounting Requirements**

9.1. The Licensee shall within Four (4) months of the end of each financial year either:

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

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

9.2. The Licensee shall maintain management accounts in a manner consistent with generally acceptable accounting standards.

**10. Provision of Information**

10.1. 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.

10.2. 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.

10.3. 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.

10.4. 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.

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

**11. Compliance**

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.

**12. Technical Standards**

12.1. The Licensee shall comply with any applicable technical standards set by the Authority from time to time.

12.2. In setting out the technical standards under Clause 12.1, the Authority shall consult the Licensee.



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

### 13. Facilities Service Access by Network Service Operators

13.1. The Licensee may enter into facilities service access agreement with network service operators for access to its facilities service as specified under applicable Regulations.

13.2. The Facilities Service Access Agreement under Clause 13.1 shall be made on a non-discriminatory basis in accordance with access arrangements specified in this clause.

13.3. The Licensee shall offer any of its facilities service to any service provider at wholesale rates.

13.4. 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 conclusion of the Agreement.

13.5. Where a dispute arises between any parties to the agreement under 13.4, either party may request the Authority to make a determination.

13.6. When making a determination, pursuant to 13.5 the Authority shall make such determination or resolution within sixty (60) days of receipt of the written request.

13.7. The Licensee may refuse to offer access of its facilities service to network service operators on any of the following grounds:

(a) if it is technically or economically not feasible to do so.

(b) that the request for access is unreasonable;

(c) that the space available is insufficient to implement such access;

(d) that the Licensee may be prejudiced;

(e) that the access may cause irreparable damage to the property of the Licensee; or

(f) that there is no facilities Services Access Agreement between the Licensee and the network service operator.

13.8. Where the Licensee refuses to offer access of its facilities service to any network service 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.

### 14. Customer Service Contracts

14.1. The Licensee shall submit to the Authority for approval its Master Service Contract with Service Level Agreements (SLA) containing the standard terms and conditions for the provision of services under this Licence.

14.2. The Master Service Contract stipulated in clause 14.1 shall include:

(a) the customer's 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 condition specified by the Authority.

14.3. In exercising its powers under clause 14.1 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.



14.4. The Licensee shall honour all terms and conditions under its Master Customer Contract.

**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 15.7, 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 the Act or any applicable Regulations, it may 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. Monitoring**

The Authority shall have the right to monitor the services of the Licensee using any applicable means.

**18. Health and Environmental Concerns**

18.1. 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.

18.2. The Licensee shall as much as possible use green technology in its infrastructure and shall ensure that its facilities are environmental friendly.

18.3. 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.

**19. Emergency Crisis Management**

19.1. The Licensee shall, within 90 days from the Effective Date, 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.

19.2. 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.

19.2. The Licensee shall as soon as possible provide information for the restoration of its facilities service.

19.4. 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.

**20. Ownership**

20.1. The Licensee shall be incorporated in Malawi.

20.2. The Licensee shall not effect any changes to its shareholding unless with the prior written approval of the Authority.

20.3. The Licensee shall ensure it has at least twenty (20%) local Malawian shareholding by 13th March 2023, which shall be maintained throughout the period of the Licence.

20.4. The Authority may revoke the Licence in accordance with Clause 27 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 20.3.

20.5. Any change in composition of one quarter (1/4) or more of the Licensee's board of directors as a result of a change in the ownership of the issued share capital of the Licensee, shall require prior written approval of the Authority, unless such transfer is through any public stock exchange.

20.6. 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.

**21. Transfer of Licence or Change of Control**

21.1. This Licence is personal to the Licensee, and the Licensee shall not transfer, assign, pledge or hypothecate this Licence without the prior written consent of the Authority.

21.2. Any transaction, agreement or undertaking entered into by the Licensee with any other party that could have the effect of transferring or assigning or changing the control of the Licensee, including, without limitation, any option to purchase or any pledge of assets or shares to a lender or other creditor, shall require prior written approval by the Authority.

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

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



**23. Liability**

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

**24. Performance Assessment**

The Authority shall in the third (3rd), sixth (6th) and ninth (9th) years of this Licence review the performance of the Licensee against the terms and conditions of the Licence.

**25. Renewal**

25.1. 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.

25.2. In deciding whether to renew the Licence the Authority shall consider:

- (a) the Licensee performed in accordance with the obligations of its licence;
- (b) the Licensee continues to meet the eligibility requirements under the Act;
- (c) the Licensee continues to be financially and technically capable of meeting his obligations under the Act and any other related laws; and
- (d) the Licensee has not, during the validity period of this Licence, contravened the provisions of the Act, the terms and conditions of the Licence, the rules issued by the Authority or any other relevant laws and regulations.

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

25.4. 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.

**26. Licence Amendment**

26.1. The Authority may modify or amend any term or condition of this Licence 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.

26.2. 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.

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

26.4. If the Licensee does not respond within the thirty (30) day period under clause 25.3 the amendment shall take effect on the thirtieth (30th) day after the date of notice.

26.5. 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.

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



## 27. Revocation of Licence

27.1. 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 comply with its geographical roll out obligations specified in this Licence;
  - (ii) to the extent applicable, failure to achieve specified technical standards;
  - (iii) failure to provide performance guarantee;
  - (iv) providing false information regarding the information necessary for renewal or any other information requested by the Authority pursuant to this Licence;
  - (v) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;
  - (vi) conducting in unfair commercial trade practices;
  - (vii) failure to pay outstanding Licence 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 26.2;
- (b) if the Licensee has been declared insolvent;
- (b) if the Licensee has ceased to carry on its business and to provide the services for which this Licence was granted; or
- (d) if the Licensee agrees in writing to cancel the Licence.

27.2. Without prejudice to Clause 26.1, 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.

27.3. 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.

27.4. 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.

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



**28. Regulatory Sanctions**

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.

**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. Notices**

- 30.1. All notices to the Licensee may be sent to its main or registered office and such telephone, fax and email addresses as it shall notify the Authority from time to time.
- 30.2. Any notice addressed to the Licensee at its physical address shall be delivered by hand or by registered post, and notice sent by email or fax shall be confirmed.
- 30.3. Any notice shall be deemed to have been given:
  - (a) on delivery, if sent by hand during business hours on a business day;
  - (b) Seven (7) days after mailing if sent by registered post mailed from Malawi to an address within Malawi; or
  - (c) on receipt, if sent by confirmed fax or email.
- 30.4. All written notices to the Authority shall be marked for the attention of the Director General and shall be hand delivered or otherwise sent to the official addresses for notices published by the Authority from time to time.
- 30.5. Any notice given pursuant to this Licence shall be deemed to be appropriately served if the same is done in accordance with the laws currently in force in Malawi.

**31. Miscellaneous**

- 31.1. If any provision of this Licence is found to be invalid and unenforceable for any reason, the remaining provisions shall nevertheless remain of full force and effect.
- 31.2. The Licensee shall participate in the development of the Electronic Communication industry by supporting independent contractors and supporting industry development initiatives.
- 31.3. The Licensee shall comply with the applicable standards and requirements of the ITU or other international organisations as accepted or adopted by the Republic.
- 31.4. This Licence shall confer benefit on and be binding upon the parties hereto and their respective successors and assignees.
- 31.5. Except as may otherwise be provided by law or this License, nothing in this Licence shall impose any liability on any member or staff of the Authority or the Licensee in their personal capacity.



- 31.6. The Licensee shall be responsible for any discrepancies, errors or omissions in any information technical or otherwise, supplied by it as part of this License, whether the same have been approved by the Authority or not, unless such discrepancies, errors or omissions are solely due to inaccurate information furnished to the Licensee by the Authority.
- 31.7. 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.
- 31.8. 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.
- 31.9. 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.
- 31.10. Notwithstanding clause 36.6, the Authority may disclose information that it has been notified should be kept confidential if such disclosure is essential in order to fulfill its functions under the Act or if so directed under an order of a court.
- 31.10. 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.
- 31.12. 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.

Issued at Blantyre, this 9th day of December, 2022

STANLEY C. KHAILA PhD  
*Chairperson*

DAUD SULEMAN  
*Director General*

## ANNEX 1

Technical Specifications for the Northern Route



GENERAL NOTICE No. 163

Licence No. CLF/NCSC/LUANAR/31/2022



THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY  
COMMERCIAL SOUND CONTENT LICENCE

Issued to

Lilongwe University of Agriculture &amp; Natural Resources (LUANAR FM)

Issued pursuant to Sections 6 (2) (b) and 98 of the Communications Act 2016

A licence is hereby granted to Lilongwe University of Agriculture & Natural Resources (LUANAR FM) ("the Licensee") in respect to the provision of a National Commercial Sound Content Broadcasting Services with effect from the 11th day of November, 2022 and valid for a period of seven (7) years.

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 9th day of December, 2022.

DR. STANLEY KHAILA

*Chairperson*

DAUD SULEMAN

*Director General*



## 1. Ownership and Control

- 1.1. The Licence shall be owned, controlled by Lilongwe University of Agriculture & Natural Resources (LUANAR FM) an entity that is duly registered as such in terms of the applicable law of the Republic.
- 1.2. The content broadcasting service shall be operated by the Licensee or by bona fide employees of the Licensee.
- 1.3. The Licensee may 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 content service licensee;
  - (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;
- (a) 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.
- 1.4. The Licensee shall not transfer or assign or sell a licence granted to it or cede control in the operations of the licence or merge with another person or licensee without prior written approval of the Authority.
- 1.5. The Licensee shall not transfer any shares, ownership or change any person in control of the business, without prior approval of the Authority.
- 1.6. The Licensee shall provide the Authority with a certified copy of its controlling entity's constitution, deed of trust or other founding documents.

## 2. Commencement And Licence Period

- 2.1. The commencement date of the Licence shall be from the effective date as published in the Gazette.
- 2.2. The Licence shall be valid for a period of seven (7) years from the effective date.

## 3. Licence Fees

- 3.1. The Licence fees payable by the Licensee to the Authority shall be as follows:
  - (a) An annual Licence fee of Five Thousand US dollars (USD 5000) payable in advance on or before each anniversary of the Effective Date.
  - (b) A levy equal to One percent (1%) 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 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.



(d) If, in any year, any licence fees or levies remain outstanding for a period of more than six (6) months from the date such fees became due, the Licence may be revoked.

**4. Scope of Licence**

4.1. The Licensee is authorized to provide a Commercial Sound Content Broadcasting Service throughout the Republic.

4.2. The Licensee is authorized to broadcast from studios situated at the following addresses:

(a) Blantyre;

(b) Lilongwe;

(c) Mzuzu; and

(d) any other studios to be developed from time to time including outside broadcasting.

**5. Name of Station**

5.1. The name of the station in respect to which the Licensee is authorized to own, operate and provide a geographical community sound content broadcasting service under this Licence is—"LUANAR FM"

5.2. The Licensee shall not change the name of the station without obtaining the prior written authorization of the Authority in accordance with such procedures as may be determined by the Authority from time to time.

5.3. The Licensee may, in the place of the name of the station as specified in sub-clause 5.1 hereof, and in its discretion, use the shortened form of its name. Provided that clause 5.2 hereof shall apply in respect of the said shortened form of the Licensee's name. Further provided that this sub-clause shall be subject to any relevant and applicable laws governing the use of abbreviated names in the Republic and at international level.

**6. Roll Out Obligations**

6.1. The licensee shall roll out services within twelve (12) months from the effective date of its license.

6.2. Where the Licensee fails to roll out within the prescribed period, the Licence shall be deemed to be automatically revoked.

6.3. The Authority may extend the roll out period referred in subsection (1):

(a) only once;

(b) for a period not longer than 12 months; and

(c) only on grounds of force majeure event as accepted the Authority.

**7. Programming**

7.1. The Licensee shall within 90 days from the effective date submit to the Authority its Programme Schedule. The Programme Schedule shall form part of this Licence as Annex 1.

7.2. The Licensee shall notify the Authority of any intended modification to the Programme Schedule

7.3. The licensee shall not amend more than 20% of its programme schedule without prior authorisation from the Authority.

**8. General Terms and Conditions for a Broadcasting Content Service Licence**

8.1. The Licensee shall comply with the General Terms and Conditions for a Broadcasting Content Service Licence published by the Authority in the Government Gazette and as amended from time to time.

**9. Notices**

9.1. All communication between the parties made pursuant to this Licence shall be in writing, and shall be sent or transmitted to the following addresses:

In case of the Authority, to:

The Director General



MACRA House

Salmin Armour Road

Private Bag 261

Blantyre

Telephone number: (265)1 883 611

Facsimile number: (265) 1 883 890

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

In case of the Licensee; to

The General Manager

Physical address: LUANAR, Bunda College

Postal address: P.O. Box 219, Lilongwe

Telephone number:

Facsimile number:

E-mail address: skasiya@luanar.ac.mw

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

Notice issued at Blantyre, this 9th day of December, 2022.

DR. STANLEY KHAILA

*Chairperson*

DAUD SULEMAN

*Director General*

## ANNEX 1

## Clause 6.1

### LICENCE FORMAT

Licensee : Lilongwe University of Agriculture and Natural Resources

Station Name : Luanar FM

### DESCRIPTION OF FORMAT

This Licence is issued to the Licensee subject to the maintenance of a mixed format comprising the elements listed below:

1. Educational programmes
2. Entertainment programmes
3. News update
4. Sports news
5. Spiritual programmes

6. Health issues
7. Environmental programmes
8. Documentaries
9. Drama
10. Socio-Economic Programmes

The Licensee shall, within one hundred and twenty (120) days of the Effective Date, introduce educational programmes covering, inter alia:

- (a) HIV-Aids
- (b) Position of women, children and the disabled
- (c) Career guidance
- (d) General health and hygiene, and any other educational areas as may be required by the targeted audience.



