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GENERAL NOTICE NO. 91

Licence No. CLF/MC/CS-DTT/2020/1



THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY

RENEWAL CONTENT SERVICES LICENCE FOR DIGITAL TERRESTRIAL TELEVISION BROADCASTING

issued to

RAISE 1996 (PRIVATE) LIMITED t/a "MULTI CHOICE MALAWI"

Issued Pursuant to Section 99 of the Communications Act 2016

A licence is hereby granted to **Raise 1996 (Private) Limited t/a "Multi Choice Malawi"** ("the Licensee") to provide Digital Terrestrial Television Broadcasting through its electronic communications network with effect from the Effective Date and valid for a period of ten (10) years up to 15th August 2030.

This licence shall be subject to the following standard conditions and other conditions as may be declared by the Malawi Communications Regulatory Authority ("the Authority") from time to time:

Dated this 21st day of August, 2020.

HENRY SHAMU
Director General

1. Definition

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

“**Act**” means the Communications Act (Cap 68:01 of the Laws of Malawi) of the laws of Malawi.

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

“**Authority**” means the Malawi Communications Regulatory Authority established under the Act;

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

“**Digital terrestrial television**” means the broadcasting of digital television signal over earth bound transmitters and receivers;

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

“**Facility Services**” means any services comprising of electronic communication infrastructure, including earth station, fixed links and cables, radio communication transmitters and links, satellite hubs, satellite control station, submarine cables and cable landing station;

“**Gross Annual Revenue**” means the total 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;

“**Licensee**” means Raise 1996 (Private) Limited t/a "Multi Choice Malawi";

“**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;

“**Primary Channel**” means a single programme channel provided by the Public Broadcasting Service Provider which includes information, news, current affairs and educational content, and is not purely an entertainment channel);

“**Public Broadcasting Service Provider**” means the Malawi Broadcasting Corporation, as established under section 108 of the Act;

“**Republic**” means the Republic of Malawi as constituted under Chapter 1 of the Constitution of Malawi;

“**Subscriber**” means a person having a contract with an authorized provider of a communications service in order to obtain any communications services;

“**Subscription content broadcasting service**” means means a service provided under a subscription contract;

2. Commencement and Licence Period

2.1. Period of Licence

(a) The Licence shall become operational on the Effective Date;

(b) The Licence shall be valid for a period of ten (10) years from 16th August 2020 up to 15th August 2030.

3. Scope of Licence

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

3.2 The Licensee is authorized under this Licence to provide Subscription Content Services for Digital Terrestrial Television Broadcasting using its electronic communications network

3.3 Notwithstanding Clause 3.2, the Licensee may use the electronic communication network capacity of other licensed network service operators.

3.4 For the purpose of providing the services under this Licence, the Licensee is authorized to.

(a) collect subscription fees from subscribers

(b) provide subscriber support services

(c) sale associated equipment

- (d) provide technical support services to subscribers; or
- (e) perform any other activity associated with the provision of subscription content services for Digital Terrestrial Broadcasting

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

4. Rights and Obligations to provide Subscription Content Services for Digital Terrestrial Broadcasting

4.1. The name of the Service is GOtv.

4.2. The Licensee shall not change the name of the Service without giving the Authority at least seven (7) days prior written notice of the change.

4.3. The Licensee shall carry and make available on its bouquet, on a free-to-view basis, the Primary Channel of a Public Broadcasting Service Provider, and the Public Broadcasting Service Provider will be responsible for delivering, at its own cost or subject to agreement with the Licensee, its Primary Channel to the Licensee's point of transmission.

4.4. The Licensee shall meet the quality of service targets specified in Schedule 1.

4.5. The Licensee is authorized to exercise any of its rights granted under this Licence, by itself or in co-operation with any agent, contractor or Service Provider ("Third Party"), provided that, where the Licensee elects to exercise any of its rights under this Licence in co-operation with any Third Party it shall be on the basis that:

- (a) the Licensee shall be liable for any acts or omissions of any Third Party in relation to the exercise of the rights granted under this Licence and such liability shall be limited to acts or omissions which constitute contraventions of this Licence;
- (b) the Licensee shall enter into a written agreement with any such Third Party with terms that ensure compliance with the terms and conditions of this Licence at all times;
- (c) the Licensee shall notify the Authority of any agreement entered into with any third party pursuant to this clause at least thirty (30) days prior to the commencement of such agreement;
- (d) the Authority shall, upon becoming aware of any breach of any condition of this Licence, by the Third party, or of any complaint lodged with the Authority in relation thereto, notify the Licensee in writing to correct such breach;
- (e) failure by the Authority to notify the Licensee of any contravention shall not in any way negate or limit the Authority's rights in respect of such contravention under this Licence.

5. Licence Fees

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

- (a) An initial fee of Five Thousand United States dollars (USD 5,000) payable in advance on or before the Effective Date.
- (b) An annual Licence fee of Five Thousand United States dollars (USD 5,000) payable in advance on or before each anniversary of the Effective Date.
- (c) A renewal licence fee to be determined by the Authority.
- (d). A levy equal to one percent (1%) of Gross Annual Revenue for each year payable at the end of each quarter in four instalments. Calculation of the first three (3) quarterly instalments 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.

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

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

6. Accounting Requirements

6.1. 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 seven (7) months after the end of the financial year to which the accounts relate.

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

6.3. Where the Licensed Services are provided in co-operation with a Third Party, as contemplated in clause 4.5, and any fees or levies are payable in respect of revenue collected by that party, then the Licensee shall submit to the Authority an extract of the Third Party's audited financial statements reflecting any revenue collected in respect of the Licensed Services

7. Performance Guarantee

7.1. The Licensee shall provide a guarantee acceptable to the Authority in the amount of One Thousand (USD1,000) to secure the performance of the Licensee's obligations contained in this Licence.

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

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

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

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

8. Provision of Information

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

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

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

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

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

9. Compliance

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

10. Hours of broadcast

10.1. The Licensee shall ensure that the Service is available for twenty-four (24) hours a day.

10.2. Should the Service be interrupted due to reasons beyond the Licensee's control, the Licensee shall notify the Authority within twenty-four (24) hours of becoming aware of such occurrence and shall take reasonable steps to ensure resumption of the Service within the shortest time possible.

10.3. Notwithstanding the provisions of sub-clauses 10.1 and 10.2, the Licensee may, on good cause shown, for example for the purposes of carrying out maintenance, and subject to the prior written notification to the Authority, temporarily suspend the provision of the Service subject to such terms and conditions as the Authority may reasonably impose.

11. Programming

11.1. The Licensee shall provide the Authority with a list of television programme channels that will comprise the Service.

- 11.2. The Licensee shall not make amendments to the list of programme channels without prior written notification to the Authority.
- 11.3. The Licensee shall adhere to the code of conduct for broadcasting services set out in the Second Schedule of the Act, provided that application of the Second Schedule by the Authority shall take cognizance of the peculiarities of the nature of the service provided by the Licensee.

12. Consumer Protection

- 12.1. The Licensee shall ensure that Consumer Rights applicable to content services consumers are respected in the provision of services under this Licence.
 - 12.2. The Licensee shall comply with any Consumer Protection Regulations made under the Act.
 - 12.3. The Licensee shall provide clear and understandable information to consumers.
 - 12.4. The licensee shall notify consumers about the availability of complaint procedures and they have in place systems for registering and handling complaints.
 - 12.5. The Licensee shall, within 30 days from making any change thereto, submit to the Authority for approval, its Master Customer Contract with Service Level Agreements (SLA) containing the standard terms and conditions for the provision of services under this Licence.
 - 12.6. The Master Customer Contract stipulated in Clause 12.5 shall include.
 - (a) consumer rights
 - (b) the services offered and covered by the terms of the agreement
 - (c) the conditions referring to suspension or interruption of the service in case of non-payment by the customer.
 - (d) the compensation or refund arrangements for the consumers which apply if the agreed service levels are not met and, if none are applicable, a statement to that effect.
 - (e) information on service quality levels offered.
 - (f) procedure for settling disputes with consumers as approved by the Authority; and
 - (g) any other reasonable condition deemed necessary by the Authority.
 - 12.7. In exercising its powers under clause 12.5, the Authority may direct the Licensee to amend or alter any term or condition of the Master Customer Contract to ensure compliance with the Act or any Regulations made there under.
 - 12.8. The Licensee shall honour all terms and conditions under its Master Customer Contract.
 - 12.9. Where a dispute arises between a consumer and the Licensee on the interpretation of a service agreement that had not been submitted to the Authority for approval prior to the dispute or complaint and the dispute is submitted to the Authority for resolution, the decision of the Authority shall prevail over the provisions in the service agreement.
 - 12.10. The Licensee shall make available to the public any approved Master Customer Contract in any of the following ways:
 - (a) filing a copy with the Authority;
 - (b) making copies available during regular business hours at its principal offices and any branch offices open to the public.
 - (c) by posting a copy on its website; or.
 - (d) any other mode specified by the Authority.
 - 12.11. The licensee shall establish and maintain a call centre and Customer Care Centre as stipulated in Schedule 1.
 - 12.12. The Licensee shall submit to the Authority every quarter or as directed by the Authority a report summarising the number of complaints received from its customers, the nature of the complaint and the steps taken by the Licensee to address those complaints. The report shall be in a manner and format as specified by the Authority.
 - 12.13. The Licensee shall provide services under this Licence to the public generally without discrimination.
 - 12.14 Where applicable, the Licensee shall ensure that it offers basic introductory packages of its services to Malawians
- ## 13. Audience Advisories.
- 13.1. The Licensee shall ensure that its programmes are classified to indicate the appropriate age restriction for viewing or listening to a programme in accordance with Schedule 2.

14. Notifications to Customers

- 14.1. Where applicable and subject to applicable Regulations, the Licensee shall give its customers seven (7) days' notice prior to effecting any changes in its tariffs and seven (7) days' notice prior to carrying out planned service outages.
- 14.2. A licensee shall immediately and without delay notify its customers of any problems affecting thirty (30) percent of the national service area.
- 14.3. The notices to customers under this clause shall be published in the following manner:
 - (a) media; or
 - (b) any other mode deemed necessary by the Authority.

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, and there are no pro-competitive, technological or efficiency gains which outweigh the effect of such conduct in the relevant market.
- 15.2. The 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 a period deemed unreasonable by the Authority;
 - (b) costs charged are likely to price competition out of the market or deter competitors from entering the market.
 - (c) the Licensee is able to recoup the full amount of the loss incurred during the period of price cutting;
 - (d) engaging in cross subsidizing where revenues for any services are used to unfairly cross subsidize the price of other services or equipment;
 - (e) engaging in unfair pricing such as to reduce or eliminate competition including fixing prices for services or
 - (f) entering into exclusive arrangements which deny competitors access to network services;provided that there are no pro-competitive, technological or efficiency gains which outweigh the effect of such predatory price cutting in the relevant market.
- 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 quality of its or competitor's networks;
 - (b) degrading the availability or quality of its or competitor's networks or unfairly raising its business, operations or technical costs;
 - (c) unlawfully interfering with the suppliers or customers of its or competitors' networks; or
 - (d) providing false information to other electronic communications operators or competitors or to any other third party.
- 15.4. Unless otherwise expressly provided for in this Licence, the Licensee shall not unlawfully prohibit, prevent or frustrate the provision of electronic communication network services by any person lawfully able to provide such services.
- 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 content 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, this licence or any applicable Regulations, it shall make a determination and impose any applicable regulatory sanctions under the licence.
- 15.8. In making a determination on anti-competitive practices under clause 15.7 and pursuant to section 59 of the Act, the Authority shall, in accordance with section 55(2) of the Act, co-ordinate with the Competition and Fair Trading Commission established under the Competition and Fair Trading Act. (Cap 48:09 of the Laws of Malawi).

16. Significant Market Power (SMP).

- 16.1. Where the Authority determines that the Licensee is a dominant market player in accordance with the Act or applicable or Regulations, it shall impose additional obligations on the Licensee in accordance with section 58 of the Act.
- 16.2. In determining whether the Licensee is a dominant market player, the Authority shall, in accordance with section 55(2) of the Act, co-ordinate with the Competition and Fair Trading Commission.

17. Tariff

- 17.1. The Licensee shall not set tariffs for the services without the prior written approval of the Authority.
- 17.2. The Licensee shall not change its approved tariff without the prior written approval of the Authority.
- 17.3. The Authority shall, within 14 days of receiving written notice of the licensee's tariffs, approve or reject the tariff. Where the Authority does not approve or reject the tariff within the prescribed period, the tariff shall be deemed to be approved and the license may implement the said tariff.
- 17.4. The Licensee shall publish the approved tariffs on its website within seven (7) days of their coming into operation.

18. Universal Service (US) Obligations

- 18.1. The Licensee shall contribute to the Universal Service Fund (USF) through levies payable under Clause 5 and in accordance with the provisions of the Universal Service (US) Regulations.
- 18.2. The Authority shall from time to time determine the percentage of the levies payable to the Universal Service Fund from the levies collected under Clause 5.

19. Ownership

- 19.1. The Licensee shall be incorporated in Malawi. -
- 19.2. The Authority may revoke the Licence where the licensee effects change of shareholding that effectively results in a change of control of the licence without prior approval of the Authority:
- 19.3. The Licensee shall notify the Authority of any changes that affects more than 10% of its shareholding.
- 19.4. 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 content service in Malawi not later than thirty (30) days before any such agreement takes effect, giving particulars of that agreement.

20. Local Empowerment

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

21. Transfer of Licence

- 21.1. The Licensee shall not assign or transfer this License without prior written consent of the Authority, which consent may be given subject to such reasonable terms and conditions as the Authority may impose, provided that the Authority shall not unreasonably withhold the consent.

22. Licence Amendment

- 22.1. The Authority may, in accordance with the Act, amend or modify any term or condition of this licence.
- (a) if it is necessary in the interest of the efficient management of the communications sector and provided that the amendment shall not cause substantial prejudice to the licensee;
- (b) if it is necessary to comply with any international agreement to which Malawi is a party.
- (c) if it is in the public interest; or
- (d) with the agreement of the licensee.
- 22.2. 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.

- 22.3. The Licensee may submit a response to the proposed amendment at least thirty (30) days from the date of the notice.
- 22.4. If the Licensee does not respond after the thirty (30) days' period under clause 22.3, the Authority shall proceed with the proposed amendment which shall take effect upon its publication in the *Gazette*.
- 22.5. 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.
 - (d) in which case the amendment shall take effect upon final publication in the *Gazette*.
- 22.6. The Licensee shall comply with all new terms and conditions issued by the Authority.
23. **Suspension and Revocation of Licence.**
- 23.1. The Authority may, in accordance with the Act, suspend or revoke the Licence on any of the following grounds:
- (a) if the Licensee is in substantial or continuing breach of any of the terms and conditions of this licence including;
 - (i) failure to achieve specified Quality of Service Standards
 - (ii) concealing or providing false information regarding the information necessary for renewal or any other information requested by the Authority pursuant to this Licence
 - (iii) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;
 - (iv) conducting in uncompetitive market behavior or trade practices;
 - (v) failure to pay outstanding Licence fees for over a period of six (6) months from the Effective Date or anniversary of the Effective Date; or.
 - (vi) any other breach of the licence which is deemed substantial by the Authority taking into consideration the factors listed in Clause 23.2;
 - (b) if the Licensee has been declared insolvent; or
 - (c) if the Licensee agrees in writing to cancel the Licence.
- 23.2. Without prejudice to Clause 23.1, 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.
- 23.3. 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.
- 23.4. The suspension or 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.
- 23.5. The suspension or revocation of the Licence shall not relieve the Licensee from any obligations accrued and due under any law or this licence.
24. **Regulatory Sanctions**
- 24.1. Notwithstanding any criminal sanctions under the Act, the Authority reserves the right to impose regulatory sanctions for breaches of licence conditions including:

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

25. Emergency Crisis Management

25.1. 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.

25.2 The Licensee shall as soon as possible provide information for the restoration of the services.

26. Exercise of Powers

26.1. In exercising any powers granted to the Authority in terms of this licence, the Authority shall:

- (a) act reasonably having regard to all surrounding circumstances;
- (b) prior to exercising any power, afford the Licensee reasonable opportunity to make representations to the Authority in respect of all relevant issues; and
- (c) at the request of the Licensee, furnish written reasons for any decision made

27. Force Majeure

27.1. 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.

27.2. 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.

27.3. 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.

28. Corporate Social Responsibility (CSR)

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

29. Liability

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

30. Performance Assessment

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

31. Renewal of the Licence

31.1. This Licence may be renewed for such number of years as may be provided by the applicable Regulations at the expiry of its term provided the Licensee is in compliance in all material respects with its licence provisions.

31.2. 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.

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

31.4. 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.

32. Dispute Resolution

- 32.1. Any dispute arising out of or in relation to this Licence, shall if not settled amicably on the written request of either party, be referred to arbitration in accordance with the Arbitration Act and the seat of arbitration shall be Blantyre, Malawi.
- 32.2. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction.

33. Miscellaneous

- 33.1. The Licensee shall comply with all terms and conditions of this Licence, applicable laws and Regulations issued by the Authority from time to time.
- 33.2. The Licensee shall observe the requirements of any applicable international conventions on telecommunications to the extent that such a convention imposes obligations on Malawi unless otherwise expressly exempted by the Authority.
- 33.3. The Authority or any Government department shall not be liable for any loss, damage, claim, charge or expense which may be incurred as a result of or in relation to the activities of the Licensee, its employees, agents, or authorized representatives.
- 33.4. Unless otherwise agreed by the parties, all correspondences from the Authority shall be in writing and shall be sent to the Licensee's principal place of business.
- 33.5. Any correspondence issued by the Authority marked as private and confidential, shall remain private and confidential and the Licensee shall not disclose the same without prior consent of the Authority.
- 33.6. The Authority shall keep confidential any information provided to it as part of the exercise of its functions under the Act which the Licensee has marked as confidential.
- 33.7. Notwithstanding clause 33.6, the Authority may disclose information that it has been notified should be kept confidential if such disclosure is essential in order to fulfil its functions under the Act or if so directed under an order of a court.
- 33.8. Nothing in the provisions of this License shall be deemed to have been waived by any act of or acquiescence on the part of the Authority, unless the same is issued in writing by the Authority.
- 33.9. A waiver of any provision of this licence shall not be construed as a waiver of any other provision or the same provision on another occasion.

Dated this 21st day of August, 2020.

HENRY SHAMU
Director General

MALAWI COMMUNICATIONS REGULATORY AUTHORITY

SCHEDULE 1

(Clauses 4, 4 and 12, 11)

QUALITY OF SERVICE

NO.	PARAMETER	BENCHMARKS	ASSESSMENT PERIOD	PENALTIES AS A RESULT OF NOT MEETING BENCHMARKS
1.	Call Centre	<p>>99%</p> <p>The licensee should ensure that its service centre (Call centre) remains operational between 08h00 and 20h00 during weekdays. Licensee should ensure that its call centre is also operational between 08h00 and 15h00 during weekends and public holidays</p>	Every three (3) months	US\$ 10,000
2.	Subscriber Notification	<p>>99%</p> <p>The licensee should ensure that its subscribers are notified on any change in subscription fees by the subscription broadcasting service provider</p>	Every three (3) months	US\$ 15,000
3.	Subscriber Complaints	<p>< 2%</p> <p>The licensee should ensure that there are appropriate complaints handling procedures in place to ensure speedy (within 48 Hrs) and efficient resolution of complaints by subscribers</p>	Every six (6) months	US\$ 5,000
4.	Parental control mechanisms	<p>>99.9%</p> <p>The Licensee shall ensure that the decoders it sells to subscribers are capable of applying mechanisms that enable parents or guardians to control access to broadcast content or channels that are accessible on the service but may not be appropriate for certain viewers, including children Every three (3) months US\$ 10,000</p>	Every three (3) months	US\$ 5,000

SCHEDULE 2

(Clauses 13)

PROGRAMME CLASSIFICATION

CLASS DESCRIPTION.	CLASSIFICATION	TYPE OF PROGRAMMING
F	Generally acceptable content for all ages	Kids programmes
U	Universal programmes should be suitable for audiences aged four years and over, although it is impossible to predict what might upset any particular child.	Some kids programmes
PG	PG parental Guidance – General viewing, but some scenes may be unsuitable for young children. A PG film or programme should not unsettle a child aged around eight or older. Unaccompanied children of any age may watch, but parents are advised to consider whether the content may upset younger, or more sensitive, children.	Programmes, Movies
12	Films or programmes classified 12 contain material that is not generally suitable for children aged under 12. Parental Discretion is advised	Programmes, Movies
16	Generally Content not suitable for viewers younger than 16, may contain scenes of violence, sex, nudity or strong language. Viewer Discretion is advised	Programmes, Movies
18	Content may be X-rated and adult scenes, may contain extreme violent scene, profanity and other adult types of content	Programmes and movies. May be shown from 10 pm to 5 am
V	Violence.	Not suitable for viewers younger than 16
S	Sex	Not Suitable for younger viewers
PG	Parental Guidance	Not suitable for viewers younger than 13 and parental guidance is advised
L	Strong Language	Not suitable for viewers younger than 10
N	Nudity	Not suitable for viewers younger than 18
P	Prejudice or Negative Stereotyping	Not suitable for viewers younger than 10
B	Blasphemy	Not Suitable for viewers younger than 13 and parental guidance is advised

GENERAL NOTICE NO. 92

Licence No. CLF/MC/CS-SMS/2020/1



**THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY
RENEWAL OF INDIVIDUAL CONTENT SERVICES LICENCE FOR THE PROVISION OF
SUBSCRIPTION MANAGEMENT SERVICES IN MALAWI (DTH)**

issued to

RAISE 1996 (PRIVATE) LIMITED t/a "MULTI CHOICE MALAWI"

Issued Pursuant to Section 99 of the Communications Act 2016

A licence is hereby granted to **Raise 1996 (Private) Limited t/a "Multi Choice Malawi"** ("the Licensee") in respect of the provision of subscription management services with effect from the Effective Date and valid for a period of seven (7) years up to the 23rd day of July 2027.

This licence shall be subject to the following standard conditions and other conditions as may be declared by the Malawi Communications Regulatory Authority ("the Authority") from time to time:

Dated this 21st day of August, 2020.

HENRY SHAMU
Director General

1. Definition

In these General Terms and Conditions unless the context otherwise requires, the terms used will have the same meaning as set out in the Communications Act, Cap 68:01 and:

- (a) any word or phrase importing any one gender shall include all other genders
- (b) any word or phrase importing the singular shall include the plural;
- (c) words and phrases shall have the meanings assigned herein.

“**Act**” means the Communications Act number 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, established under the Act;

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

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

“**Current Affairs**” means contemporary issues and events of national importance;

“**Facility Services**” means any passive 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;

“**Licence**” means a Content Services Licence authorising the provision of Subscription Management Services (DTH);

“**Licensee**” means a person issued with a Content Services Licence for the provision of Subscription Management Services (DTH);

“**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;

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

“**Gross Annual Revenue**” means the total revenue derived by the Licensee from the provision of the services;

“**Primary Channel**” means a single programme channel provided by the Public Broadcasting Service Provider which includes information, news, current affairs and educational content, and is not purely an entertainment channel;

“**Public Broadcasting Service Provider**” means the Malawi Broadcasting Corporation, as established under section 108 of the Act;

“**Subscriber**” means any person who subscribes to a subscription broadcasting services on whose behalf the Licensee provides subscription management services.

“**Subscription Content service**” means a content service provided under subscription contract;

“**Republic**” means the Republic of Malawi as constituted under Chapter 1 of the Constitution;

2. Commencement and Licence Period

2.1. Period of Licence

- (a) The License shall become operational on the Effective Date.
- (b) The License shall be valid for a period of seven (7) years from the Effective Date.

3. Scope of Licence

- 3.1. This Licence is issued subject to the Act and any Regulations made there- under.
- 3.2. The Licensee is authorized under this Licence to provide Subscription Management Services (DTH).
- 3.3. For the purpose of providing the services under this Licence, the Licensee is authorized to:
 - (a) collect subscription fees from subscribers;

- (b) provide subscriber support services;
- (c) sell associated equipment;
- (d) provide technical support services to subscribers; or
- (e) perform any other activity associated with the support of subscribers of subscription broadcasting services.

3.4 This Licence is valid in the Republic of Malawi.

4. Rights and Obligations to provide Subscription Broadcasting Services

4.1 The Licensee shall provide the services within Malawi in accordance with the Act, Regulations and licence terms and conditions.

4.2 The Licensee shall facilitate carriage by the subscription broadcasting service provider for whom it provides subscription management services, on a free-to-view basis, the Primary Channel of the Public Broadcasting service Provider, and the Public Broadcasting Service Provider will be responsible for delivering, at its own cost, its Primary Channel to the subscription broadcaster's point of transmission.

4.3 The licensee shall provide the services in the whole of the geographical territory of Malawi

4.4 The Licensee shall meet the quality of service targets specified in Schedule 1.

4.5 The Licensee is authorized to exercise any of its rights granted under this Licence, by itself or in co-operation with any agent, contractor or Service Provider ("Third Party"), provided that, where the Licensee elects to exercise any of its rights under this Licence in co-operation with any Third Party it shall be on the basis that:

- (a) the Licensee shall be liable for any acts or omissions of any Third Party in relation to the exercise of the rights granted under this Licence and such liability shall be limited to acts or omissions which constitute contraventions of this Licence;
- (b) the Licensee shall enter into a written agreement with any such Third Party with terms that ensure compliance with the terms and conditions of this Licence at all times;
- (c) the Licensee shall notify the Authority of any agreement entered into with any third party pursuant to this clause at least thirty (30) days prior to the commencement of such agreement;
- (d) the Authority, acting reasonably and having due regard to the commercial considerations applying to the Licensee at any material time, may require the Licensee to modify the proposed agreement thereof within fifteen (15) days of receipt of the aforesaid notice, provided that the Authority shall not require any modification to be made which would, as a result, render the Licensee to be in a less favorable commercial or legal position than any other telecommunication operator;
- (e) the Authority shall, upon becoming aware of any breach of any condition of this Licence, by the Third party, or of any complaint lodged with the Authority in relation thereto, notify the Licensee in writing to correct such breach;
- (f) failure by the Authority to notify the Licensee of any contravention shall not in any way negate or limit the Authority's rights in respect of such contravention under this Licence.

5. Licence Fees

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

- (a) An initial fee of Ten Thousand US dollars (USD 10, 000.00) payable in advance on or before the Effective Date.
- (b) An annual licence fee of Ten Thousand US dollars (USD 10, 000.00) payable in advance on or before each anniversary of the Effective Date.
- (c) A renewal licence fee to be determined by the Authority.
- (d) A levy equal to one percent (1%) of Gross Annual Revenue for each year payable within 30 days after 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.
- (e) Radio Licence fees in accordance with a Spectrum Licence Fee Schedule published by the Authority from time to time.

5.2 The Licensee shall pay all outstanding fees and levies within three (3) months from their due dates, failing which the Licensee shall pay interest on all outstanding fees and levies at 1 percent above the ruling commercial lending rate until full liquidation thereof.

5.3 The Authority may revoke the Licence if in any year, licence fees remain outstanding for a period of more than six (6) months from the date such fees became due.

6. Accounting Requirements

6.1 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 seven (7) months after the end of the financial year to which the accounts relate.

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

7. Performance Guarantee

7.1 The Licensee shall provide a guarantee acceptable to the Authority in the amount of Five Thousand United States dollars (US\$5,000) to secure the performance of the Licensee's obligations contained in this Licence.

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

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

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

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

8. Hours of broadcast

8.1 The Licensee shall to the best of its ability, ensure that the services it manages or supports are available to subscribers in accordance with the agreement between subscribers and the subscription broadcasting service provider.

8.2 Notwithstanding clause 8.1, where the Licensee is aware that the services have been interrupted due to reasons beyond the control of the Licensee, the Licensee shall notify the Authority within twenty-four (24) hours of becoming aware of such occurrence and shall liaise with the subscription broadcasting service provider to ensure that the problem is rectified within the shortest time possible.

8.3 Notwithstanding the provisions of clauses 8.1 and 8.2, the Licensee may, on good cause shown, for example for the purposes of carrying out maintenance, and subject to the prior written authorization from the Authority, temporarily suspend the provision of the services subject to such terms and conditions as the Authority may reasonably impose.

9. Provision of Information

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

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

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

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

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

10. Compliance

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

11 Tariff

- 11.1 The Licensee shall before providing the services, submit to the Authority for approval its proposed tariff for the services.
- 11.2 The Licensee shall not change its approved tariff without the prior written approval of the Authority.
- 11.3 The Licensee shall publish the approved tariffs on its website within seven (7) days of their coming into operation.

12. Type Approval

- 12.1 Subject to applicable Regulations, the Licensee shall submit to the Authority for type approval any content service equipment to be used for connection or access to the network services licensee prior to its installation.
- 12.2 Any submissions made to the Authority by the Licensee pursuant to this clause shall be made in the form and manner specified by the Authority.
- 12.3 The Licensee shall from time to time consult with the Authority on arrangements for testing and type approval of its content service equipment.

13. Consumer Protection

- 13.1 The Licensee shall ensure that Consumer Rights applicable to content services consumers are respected in the provision of services under this Licence.
- 13.2 The Licensee shall comply with any Consumer Protection Regulations made under the Act.
- 13.3 The Licensee shall provide clear and understandable information to consumers.
- 13.4 The licensee shall notify consumers about the availability of complaint procedures and they have in place systems for registering and handling complaints.
- 13.5 The Licensee shall, within 30 days from making any amendments thereto, submit to the Authority for approval, its Master Customer Contract with Service Level Agreements (SLA) containing the standard terms and conditions for the provision of services under this Licence.
- 13.6 The Master Customer Contract stipulated in Clause 13.5 shall include:
 - (a) consumer rights
 - (b) the services offered and covered by the terms of the agreement;
 - (c) the conditions referring to suspension or interruption of the service in case of non-payment by the customer;
 - (d) the compensation or refund arrangements for the consumers which apply if the agreed service levels are not met and, if none are applicable, a statement to that effect;
 - (e) information on service quality levels offered;
 - (f) procedure for settling disputes with consumers as approved by the Authority; and
 - (g) any other reasonable condition deemed necessary by the Authority.
- 13.7 In exercising its powers under clause 13.5 the Authority may direct the Licensee to amend or alter any term or condition of the Master Customer Contract to ensure compliance with the Act or any Regulations made there under.
- 13.8 The Licensee shall honour all terms and conditions under its Master Customer Contract.
- 13.9 Where a dispute arises between a consumer and the Licensee on the interpretation of a service agreement that had not been submitted to the Authority for approval prior to the dispute or complaint and the dispute is submitted to the Authority for resolution, the decision of the Authority shall prevail over the provisions in the service agreement.
- 13.10 The Licensee shall make available to the public any approved Master Customer Contract in any of the following ways: -
 - (a) filing a copy with the Authority;
 - (b) making copies available during regular business hours at its principal offices and any branch offices open to the public;
 - (c) by posting a copy on its website; or
 - (d) Any other mode specified by the Authority.
- 13.11 The licensee shall operate its Customer Care Center between 08h00 and 20h00 during weekdays and between 08h00 and 15h00 during weekends and public holidays

13.12 The Licensee shall submit to the Authority every quarter or as directed by the Authority a report summarising the number of complaints received from its customers, the nature of the complaint and the steps taken by the Licensee to address those complaints. The report shall be in a manner and format as specified by the Authority

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

13.14 The Licensee shall endeavor to facilitate the provision of basic introductory packages to Malawians by the subscription broadcasting service provider for whom it provides subscription management services.

14. Audience Advisories

The Licensee shall ensure that the subscription broadcasting service provider for whom it provides subscription management services, classifies its programmes to indicate the appropriate age restriction for viewing or listening to a programme in accordance with Schedule 2.

15. Notifications to Customers

15.1 Where applicable and subject to applicable Regulations, the Licensee shall give its customers seven (7) days' notice prior to effecting any changes in its tariffs and seven (7) days' notice prior to carrying out planned service outages.

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

15.3 The notices to customers under this clause shall be published in the following manner:

(a) media; or

(b) any other mode deemed necessary by the Authority.

16. Anti-Competitive Conduct, Unfair Competition and Discrimination

16.1 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.

16.2 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 defers or restricts or is likely to deter or restrict new entrants into the market.

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

16.4 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 content services.

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

16.6 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.

16.7 In making a determination on anti-competitive practices under clause 16.6 and pursuant to section 59 of the Act, the Authority shall, in accordance with section 55(2) of the Act, co-ordinate with the Competition and Fair Trading Commission established under the Competition and Fair Trading Act. (Cap 48:09 of the Laws of Malawi)

17. Significant Market Power (SMP)

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

17.2 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, in accordance with section 55(2) of the Act, co-ordinate with the Competition and Fair Trading Commission.

18. Universal Service (US) Obligations

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

18.2 The Authority shall from time to time determine the percentage of the levies payable to the Universal Service Fund from the levies collected under Clause 5.

19. Monitoring

The Authority shall monitor and enforce compliance by the Licensee with its obligations under the Act, any applicable Regulations and this Licence.

20. Ownership

20.1 The Licensee shall be incorporated in Malawi.

20.2 The Licensee shall ensure that it has at least twenty (20%) local Malawian shareholding which shall be maintained throughout the period of the Licence.

20.3 The Authority may revoke the Licence in accordance with Clause 24 of this Licence where the licensee effects change of shareholding that effectively affect the control of the licence without prior approval of the Authority or fails to comply with local ownership requirements under clause 20.2.

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

21. Local Empowerment

21.1 The Licensee shall ensure that at least 50% of the executive management are Malawian nationals and that it shall not employ more than five percent (5%) of foreign nationals for the rest of its staff.

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

22. Transfer of Licence

The Licensee shall not assign or transfer this Licence without prior written consent of the Authority issued in terms of section 42(3) of the Act.

23. Licence Amendment

23.1 The Authority may, in accordance with the Act, 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.

23.2 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.

23.3 The Licensee may submit a response to the proposed amendment at least thirty (30) days from the date of the notice.

23.4 If the Licensee does not respond after the thirty (30) days' period under clause 23.3, the Authority shall proceed with the proposed amendment which shall take effect upon its publication in the *Gazette*.

23.5 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 upon its publication in the *Gazette*

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

24. Suspension and Revocation of Licence

24.1 The Authority may, in accordance with the Act, suspend or 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 roll out obligations specified in this Licence;

(ii) failure to achieve specified quality of service targets;

(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 License fees for over a period of twelve (12) months from the Effective Date or anniversary of the Effective Date; or
- (viii) any other breach of the licence which is deemed substantial by the Authority taking into consideration the factors listed in Clause 24.2.

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

24.2 Without prejudice to Clause 24.1, 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.

24.3 Before suspending or revoking the 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.

24.4 When considering whether or not to suspend or revoke the Licence, the Authority shall take into account:

- (a) the Licensee's representations,
- (b) the nature, gravity and consequences of the breach; and
- (c) any other factor deemed necessary by the Authority.

24.5 The suspension or 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.

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

25. 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) suspension or revocation of the licence; or
- (f) other penalties deemed necessary by the Authority.

26. Exercise of Powers

In exercising any powers granted to the Authority in terms of this licence, the Authority shall-

- (a) act reasonably having regard to all surrounding circumstances;
- (b) prior to exercising any power, afford the Licensee reasonable opportunity to make representations to the Authority in respect of all relevant issues; and
- (c) at the request of the Licensee, furnish written reasons for any decision made.

27. Intellectual Property Rights (IPR)

The licensee shall not violate any Intellectual Property Rights of any person, and shall be held responsible for any violation of these rights under the relevant laws in Malawi.

28. Corporate Social Responsibility (CSR)

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

29. Liability

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

30. Performance Assessment

The Authority shall in the second (2nd) and fourth (4th) years of this Licence review the performance of the Licensee against the terms and conditions of the Licence

31. Renewal

31.1 This Licence may be renewed for such number of years as may be provided by applicable Regulations and Rules, at the expiry of its term provided the Licensee is in compliance in all material respects with its licence provisions.

31.2 In deciding whether to renew the licence the Authority shall have regard to the factors set out in section 44(3) of the Act.

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

31.4 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.

31.5 The Authority shall renew the licence subject to payment of applicable renewal fees and any outstanding fees.

32. Dispute Resolution

32.1 Any dispute arising out of or in relation to this Licence, shall if not settled amicably on the written request of either party be referred to arbitration in accordance with the Arbitration Act and the seat of arbitration shall be Blantyre, Malawi.

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

33. Applicable law

This Licence and its performance shall be subject to any other applicable Laws of the Republic.

34. Notices

34.1 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: MultiChoice House, Independence Drive, Namiwawa

Postal address: P O Box 801, Blantyre

Telephone number: +265 1 821 777

Facsimile number: +265 1 823 369

E-mail address: Gus.Banda@mw.multichoice.com

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

35. **Force Majeure**

35.1 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.

35.2 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.

35.3 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.

36. **Miscellaneous**

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

36.2 The Licensee shall observe the requirements of any applicable international conventions on telecommunications to the extent that such a convention imposes obligations on Malawi unless otherwise expressly exempted by the Authority.

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

36.4 Unless otherwise agreed by the parties, all correspondences from the Authority shall be in writing and shall be sent to the Licensee's principal place of business.

36.5 Any correspondence issued by the Authority marked as private and confidential, shall remain private and confidential and the Licensee shall not disclose the same without prior consent of the Authority.

36.6 Nothing in the provisions of this Licence shall be deemed to have been waived by any act of or acquiescence on the part of the Authority, unless the same is issued in writing by the Authority.

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

Dated this 21st day of August, 2020..

HENRY SHAMU
Director General

MALAWI COMMUNICATIONS REGULATORY AUTHORITY

SCHEDULE 1

(Clauses 4.4 and 12.11)

QUALITY OF SERVICE

NO.	PARAMETER	BENCHMARKS	ASSESSMENT PERIOD	PENALTIES AS A RESULT OF NOT MEETING BENCHMARKS
1.	Call Centre	>99% The licensee should ensure that its service centre (Call centre) remains operational between 08h00 and 20h00 during weekdays. Licensee should ensure that its call centre is also operational between 08h00 and 15h00 during weekends and public holidays	Every three (3) months	US\$ 10,000
2.	Subscriber Notification	>99% The licensee should ensure that its subscribers are notified on any change in subscription fees by the subscription broadcasting service provider	Every three (3) months	US\$ 15,000
3.	Subscriber Complaints	< 2% The licensee should ensure that there are appropriate complaints handling procedures in place to ensure speedy (within 48 Hrs) and efficient resolution of complaints by subscribers	Every six (6) months	US\$ 5,000
4.	Parental control mechanisms	>99.9% The Licensee shall ensure that the decoders it sells to subscribers are capable of applying mechanisms that enable parents or guardians to control access to broadcast content or channels that are accessible on the service but may not be appropriate for certain viewers, including children Every three (3) months US\$ 10,000	Every three (3) months	US\$ 5,000

SCHEDULE 2

(Clauses 13)

PROGRAMME CLASSIFICATION

CLASS DESCRIPTION.	CLASSIFICATION	TYPE OF PROGRAMMING
F	Generally acceptable content for all ages	Kids programmes
U	Universal programmes should be suitable for audiences aged four years and over, although it is impossible to predict what might upset any particular child.	Some kids programmes
PG	PG parental Guidance – General viewing, but some scenes may be unsuitable for young children. A PG film or programme should not unsettle a child aged around eight or older. Unaccompanied children of any age may watch, but parents are advised to consider whether the content may upset younger, or more sensitive, children.	Programmes, Movies
12	Films or programmes classified 12 contain material that is not generally suitable for children aged under 12. Parental Discretion is advised	Programmes, Movies
16	Generally Content not suitable for viewers younger than 16, may contain scenes of violence, sex, nudity or strong language. Viewer Discretion is advised	Programmes, Movies
18	Content may be X-rated and adult scenes, may contain extreme violent scene, profanity and other adult types of content	Programmes and movies. May be shown from 10 pm to 5 am
V	Violence.	Not suitable for viewers younger than 16
S	Sex	Not Suitable for younger viewers
PG	Parental Guidance	Not suitable for viewers younger than 13 and parental guidance is advised
L	Strong Language	Not suitable for viewers younger than 10
N	Nudity	Not suitable for viewers younger than 18
P	Prejudice or Negative Stereotyping	Not suitable for viewers younger than 10
B	Blasphemy	Not Suitable for viewers younger than 13 and parental guidance is advised

GENERAL NOTICE NO. 93

Licence No. CLF/MC/NS-DTT/2020/1



THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY
RENEWAL OF NETWORK SERVICES LICENCE
FOR DIGITAL TERRESTRIAL TELEVISION BROADCASTING SIGNAL DISTRIBUTION
(SELF-PROVISIONING)

issued to

RAISE 1996 (PRIVATE) LIMITED t/a "MULTI CHOICE MALAWI"

Issued Pursuant to Section 39 of the Communications Act 2016

A licence is hereby granted to **Raise 1996 (Private) Limited t/a "Multi Choice Malawi"** ("the Licensee") in respect of the ownership and provision of electronic communications network for Digital Terrestrial Broadcasting Signal Distribution (self-provisioning) with effect from the Effective Date and valid up to 15th August 2030.

This licence shall be subject to the following standard conditions and other conditions as may be declared by the Malawi Communications Regulatory Authority ("the Authority") from time to time —

Dated this 21st day of August, 2020.

HENRY SHAMU
Director General

1. Definition

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

“**Act**” means the Communications Act (Cap 68:01 of the Laws of Malawi) ;

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

“**Authority**” means the Malawi Communications Regulatory Authority established under the Act;

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

“**Digital terrestrial television broadcasting signal distribution**” means the process whereby the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, and is conveyed to any broadcast target area by means of earth bound transmitters and receivers;

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

“**Facility Services**” means any services comprising of electronic communication infrastructure, including earth station, fixed links and cables, radio communication transmitters and links, satellite hubs, satellite control station, submarine cables and cable landing station;

“**Gross Annual Revenue**” means the total 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;

“**Licensee**” means Raise 1996 (Private) Limited t/a “Multi Choice Malawi”;

“**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;

“**Republic**” means the Republic of Malawi as constituted under Chapter 1 of the Constitution of the Republic of Malawi;

“**Self-provisioning**” means broadcasting signal distribution provided by a broadcasting (content) service licensee in respect of its own broadcasting (content) service.

2. Commencement and Licence Period

2.1. Period of Licence

(a) The Licence shall become operational on the Effective Date.

(b) The Licence shall be valid for a period of ten (10) years from 16th August 2020 up to 15th August 2030.

3. Scope of Licence

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

3.2 The Licensee is hereby authorised to provide Digital Terrestrial Television Broadcasting Signal Distribution (self-provisioning) Services in the Republic of Malawi.

3.3 The Licensee shall not, unless with the consent of the Authority in writing or otherwise provided in this licence:

(a) provide signal transmission or signal diffusion services to any other person; or

(b) provide digital terrestrial signal distribution services to any other licensed content service provider in Malawi.

3.4 The Licensee may use the electronic communication network capacity of other licensed network service operators.

3.5 This Licence is valid in the Republic of Malawi.

4. Rights and Obligations to provide Terrestrial Television Broadcasting Signal Distribution Services

4.1 The Licensee shall operate and maintain a digital terrestrial broadcasting network within Malawi in accordance with the Act, Regulations and licence terms and conditions.

4.2. The Licensee may enter into interconnection and access agreements with other network service operators in accordance with the provisions of the Act and any Regulations made there-under.

4.3 Without prejudice to clause 4.1, the Licensee shall operate and maintain or lease the use of any electronic communication system or equipment, subject to any terms and conditions that may from time to time be prescribed by the Authority and which are applicable to all network service operators.

4.4 Subject to clause 4.5, the Licensee shall be entitled by virtue of this Licence to operate the digital broadcasting network and to provide all of the services together with all other rights granted hereunder.

- 4.5 The Licensee is authorized to exercise any of its rights granted under this Licence, by itself or in co-operation with any agent, contractor or Service Provider ("Third Party"), provided that, where the Licensee elects to exercise any of its rights under this Licence in co-operation with any Third Party it shall be on the basis that:
- (a) the Licensee shall be liable for any acts or omissions of any Third Party in relation to the exercise of the rights granted under this Licence and such liability shall be limited to acts or omissions which constitute contraventions of this Licence;
 - (b) the Licensee shall enter into a written agreement with any such Third Party with terms that ensure compliance with the terms and conditions of this Licence at all times;
 - (c) the Licensee shall notify the Authority of any agreement entered into with any third party pursuant to this clause at least thirty (30) days prior to the commencement of such agreement;
 - (d) the Authority shall, upon becoming aware of any breach of any condition of this Licence, by the Third party, or of any complaint lodged with the Authority in relation thereto, notify the Licensee in writing to correct such breach;
 - (e) failure by the Authority to notify the Licensee of any contravention shall not in any way negate or limit the Authority's rights in respect of such contravention under this Licence.

5. Licence Fees

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

- (a) An initial fee of Twenty Thousand US dollars (USD 20, 000.00) payable in advance on or before the Effective Date .
- (b) An annual Licence fee of Twenty Thousand US dollars (USD 20, 000.00) payable in advance on or before each anniversary of the Effective Date.
- (c) A renewal licence fee to be determined by the Authority.
- (d) 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.
- (e) Radio Licence fees as set by the Authority under the Act.

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

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

6. Accounting Requirements

6.1 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 seven (7) months after the end of the financial year to which the accounts relate.

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

6.3 Where the Licensed Services are provided in co-operation with a Third Party, as contemplated in clause 4.5, and any fees or levies are payable in respect of revenue collected by that party, then the Licensee shall submit to the Authority an extract of the Third Party's audited financial statements reflecting any revenue collected in respect of the Licensed Services.

7. Performance Guarantee

7.1 The Licensee shall provide a guarantee acceptable to the Authority in the amount of Ten Thousand United States dollars (US\$10,000) to secure the performance of the Licensee's obligations contained in this Licence.

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

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

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

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

8. Provision of Information

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

8.2 The Licensee shall furnish the Authority records, audited financial statements, 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.

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

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

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

9. Compliance

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

10. Hours of Broadcast

10.1 The Licensee shall ensure that the Digital Terrestrial Television Broadcasting Service is available for twenty-four (24) hours a day.

10.2 Should the Digital Terrestrial Television Broadcasting Service be interrupted due to reasons beyond the Licensee's control, the Licensee shall notify the Authority within twenty-four (24) hours of becoming aware of such occurrence and shall take reasonable steps to ensure resumption of the Service within the shortest time possible.

10.3 Notwithstanding the provisions of sub-clauses 10.1 and 10.2, the Licensee may, on good cause shown, for example for the purposes of carrying out maintenance, and subject to the prior written notification to the Authority, temporarily suspend the provision of the Service subject to such terms and conditions as the Authority may reasonably impose.

11. Type Approval

11.1 Subject to applicable Regulations, the Licensee shall submit to the Authority for type approval any network equipment in use and to be used for connection or access. The Licensee shall make the submissions in a form and manner as specified by the Authority

11.2 The Licensee shall not permit any Application Service Operator to connect any terminal equipment unless it is type approved by the Authority.

11.3 The Licensee shall accept as conclusive evidence that terminal equipment is type approved by the Authority based on a written statement of compliance issued by the Authority in line with applicable Regulations.

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

12. Anti-Competitive Conduct, Unfair Competition and Discrimination

12.1. Where the Licensee has been authorized by the Authority under Clause 3.3 to provide digital terrestrial signal distribution services to third party licensed content service providers in Malawi, it shall not engage in anti-competitive conduct which in the view of the Authority inhibits or impedes fair competition and there are no pro-competitive, technological or efficiency gains which outweigh the effect of such conduct in the relevant market.

12.2. The anti-competitive conduct envisaged in clause 12.1 include engaging in predatory price cutting which may be implied where:

(a) a service is priced at less than marginal cost for a period deemed unreasonable by the Authority;

(b) costs charged are likely to price competition out of the market or deter competitors from entering the market;

(c) the Licensee is able to recoup the full amount of the loss incurred during the period of price cutting;

(d) engaging in cross subsidizing where revenues for any services are used to unfairly cross subsidize the price of other services or equipment;

- (e) engaging in unfair pricing such as to reduce or eliminate competition including fixing prices for services or
- (f) entering into exclusive arrangements which deny competitors access to network services; provided that there are no pro-competitive, technological or efficiency gains which outweigh the effect of such predatory price cutting in the relevant market.

- 12.3 The Licensee, on his own or through others, shall not engage in any practice which unfairly restrict or is likely to restrict competition in the industry or which deters or restricts or is likely to deter or restrict new entrants into the market including:
- (a) asserting false or misleading claims on the availability or quality of its or competitor's networks;
 - (b) degrading the availability or quality of its or competitor's networks or unfairly raising its business, operations or technical costs;
 - (c) unlawfully interfering with the suppliers or customers of its or competitors' networks; or
 - (d) providing false information to other electronic communications operators or competitors or to any other third party.
- 12.4 Unless otherwise expressly provided for in this Licence, the Licensee shall not unlawfully prohibit, prevent or frustrate the provision of electronic communication network services by any person lawfully able to provide such services.
- 12.5 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 network services.
- 12.6 The Licensee shall comply with any other laws and Regulations which relate to fair trading or competitive behaviour.
- 12.7 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, this licence and any applicable Regulations, it shall make a determination and impose any applicable regulatory sanctions under this licence.
- 12.8 In making a determination on anti-competitive practices under clause 11.7 and pursuant to section 59 of the Act, the Authority shall, in accordance with section 55 (2) of the Act, co-ordinate with the Competition and Fair Trading Commission established under the Competition and Fair Trading Act. (Cap. 48:09 of the Laws of Malawi) .

13. Significant Market Power (SMP)

- 13.1 Where the Authority determines that the Licensee is a dominant market player in accordance with the Act or applicable Regulations, it shall impose additional obligations on the Licensee in accordance with section 58 of the Act.
- 13.2 In determining whether the Licensee is a dominant market player, the Authority shall, in accordance with section 55(2) of the Act, co-ordinate with the Competition and Fair Trading Commission.

14. Universal Service (US) Obligations

- 14.1 The Licensee shall contribute to the Universal Service Fund (USF) through levies payable under Clause 5 and in accordance with the provisions of the Universal Service (US) Regulations.
- 14.2 The Authority shall from time to time determine the percentage of the levies payable to the Universal Service Fund from the levies collected under Clause 5.

15. Health and Environmental Concerns

- 15.1 The Licensee shall ensure the use of energy efficient, environmental friendly network equipment and also ensure proper safety and health hazard issues in the installation and location of their network equipment including transceivers and other locations of installations.
- 15.2 The Licensee shall as much as possible use green technology in its systems, particularly in respect of any off- grid network equipment deployed by the Licensee.
- 15.3 The Licensee shall ensure that deployment of its network equipment including transceivers conform to any applicable EMF radiation Guidelines issued by the Authority from time to time as well as other relevant guidelines or rules by recognized international bodies.

16. Ownership

- 16.1 The Licensee shall be incorporated in Malawi.
- 16.2 The Licensee shall ensure that it has at least twenty (20%) local Malawian shareholding which shall be maintained throughout the period of the Licence.
- 16.3 The Authority may revoke the Licence in accordance with clause 20 of this Licence where the licensee effects change of shareholding that effectively result in a change in the control of the licence without prior approval of the Authority or fails to comply with local ownership requirements under clause 16.2.

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

16.5 Unless otherwise agreed by the Authority, the Licensee shall notify the Authority of any joint venture agreement it may enter with third parties to provide network service in Malawi not later than thirty (30) days before any such agreement takes effect.

17. Local Empowerment

17.1 The Licensee shall ensure that at least 50% of the executive management are Malawian nationals and that it shall not employ more than five percent (5%) of foreign nationals for the rest of its staff.

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

18. Transfer of Licence

The Licensee shall not assign or transfer this Licence without prior written consent of the Authority issued in terms of section 42 (3) of the Act.

19. Licence Amendment

19.1 The Authority may, accordance with section 41 of the Act, amend or modify any term or condition of this licence:

- (a) if it is necessary in the interest of the efficient management of the communications sector and provided that the amendment shall not cause substantial prejudice to the licensee;
- (b) if it is necessary to comply with any international agreement to which Malawi is a party;
- (c) if it is in the public interest; or
- (d) with the agreement of the licensee.

19.2 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.

19.3 The Licensee may submit a response to the proposed amendment at least thirty (30) days from the date of the notice.

19.4 If the Licensee does not respond after the thirty (30) days' period under clause 19.3, the Authority shall proceed with the proposed amendment which shall take effect upon its publication in the *Gazette*.

19.5 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
- (d) in which case the amendment shall take effect upon its publication in the *Gazette*.

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

20. Suspension and Revocation of Licence

20.1 The Authority may, in accordance with section 43 of the Act, suspend or 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) concealing or providing false information regarding the information necessary for renewal or any other information requested by the Authority pursuant to this Licence;
 - (ii) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;
 - (iii) conducting in uncompetitive market behavior or trade practices;
 - (iv) failure to pay outstanding Licence fees for over a six (6) months from the Effective Date or anniversary of the Effective Date; or
 - (v) any other breach of the licence which is deemed substantial by the Authority taking into consideration the factors listed in Clause 20.2;
- (b) if the Licensee has been declared insolvent; or
- (c) if the Licensee agrees in writing to cancel the Licence.

20.2 Without prejudice to Clause 20.1, 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.

20.3 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.

20.4 The suspension or 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.

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

21. 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) suspension or revocation of the licence; or
- (f) other penalties deemed necessary by the Authority.

22. Emergency Crisis Management

22.1 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.

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

22.3 The Authority may from time to time cause to be carried out by the licensee practical tests on the Licensee's network services to assess the effectiveness or functionality.

23. Exercise of Powers

In exercising any powers granted to the Authority in terms of this licence, the Authority shall:

- (a) act reasonably having regard to all surrounding circumstances;
- (b) prior to exercising any power, afford the Licensee reasonable opportunity to make representations to the Authority in respect of all relevant issues; and
- (c) at the request of the Licensee, furnish written reasons for any decision made.

24. Force Majeure

24.1 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.

24.2 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.

24.3 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.

25. Corporate Social Responsibility (CSR)

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

26. Liability

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

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 of the Licence

28.1 This Licence may be renewed for such number of years as may be provided by the applicable Regulations and Rules at the expiry of its term provided the Licensee is in compliance in all material respects with its licence provisions.

28.2 In deciding whether to renew the Licence the Authority shall consider whether:

- (a) the Licensee performed in accordance with the obligations of its licence;
- (b) the Licensee continues to meet the eligibility requirements under the Act;
- (c) the Licensee continues to be financially and technically capable of meeting his obligations under the Act and any other related laws; and
- (d) the Licensee has not, during the validity period of 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.

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

28.4 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.

29. Dispute Resolution

29.1 Any dispute arising out of or in relation to this Licence, shall if not settled amicably on the written request of either party, be referred to arbitration in accordance with the Arbitration Act and the seat of arbitration shall be Blantyre, Malawi.

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

30. Miscellaneous

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

30.2 The Licensee shall observe the requirements of any applicable international conventions on telecommunications to the extent that such a convention imposes obligations on Malawi unless otherwise expressly exempted by the Authority.

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

30.4 Unless otherwise agreed by the parties, all correspondences from the Authority shall be in writing and shall be sent to the Licensee's principal place of business.

30.5 Any correspondence issued by the Authority marked as private and confidential, shall remain private and confidential and the Licensee shall not disclose the same without prior consent of the Authority.

30.6 The Authority shall keep confidential any information provided to it as part of the exercise of its functions under the Act which the Licensee has marked as confidential.

30.7 Notwithstanding clause 30.6, the Authority may disclose information that it has been notified should be kept confidential if such disclosure is essential in order to fulfil its functions under the Act or if so directed under an order of a court.

30.8 Nothing in the provisions of this Licence shall be deemed to have been waived by any act of or acquiescence on the part of the Authority, unless the same is issued in writing by the Authority.

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

Dated this 21st day of August, 2020.

HENRY SHAMU
Director General

Renewal of Network Service Licence