



THE MALAWI GOVERNMENT GAZETTE

(Published by Authority)

3,583: Vol. LVIII No. 2]

Zomba, 8th January, 2021

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

Price: K500.00

CONTENTS	PAGE
MACRA— Notice of Africa's Talking Limited ..	3-5
— Notice of Business Computers Limited ..	7-9
— Nyasa, Individual Application Service Licence ..	11-29
— Nyasa, Individual Facilities Service Licence ..	31-42
— Nyasa, Individual Network Service Licence ..	43-58

GENERAL NOTICE NO. 5

Licence No. VAS/CLF/ASL/2021/1



MALAWI COMMUNICATIONS REGULATORY AUTHORITY

APPLICATION SERVICE LICENCE

Issued to

AFRICA'S TALKING LIMITED

Issued Pursuant to section 39 of the Communications Act, 2016

A licence is hereby granted to **AFRICA'S TALKING LIMITED** (the "Licensee") permitting the Licensee to provide Application Services in form of Value Added Services with effect from the Effective Date.

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

Notice issued at Blantyre, this 8th day of January, 2021.

HENRY SILIKA

Acting Director General

1. Commencement and duration

- 1.1. The commencement date of the Licence shall be the Effective Date, which is the date on which the Licence is published in the Gazette.
- 1.2. The Licence shall be valid for a period of five (5) years from the Effective Date.

2. Scope of the Licence

- 2.1. The Licensee is authorised, subject to clause 2.2, to provide Value Added Services comprising:
 - (a) short messaging services("SMS");
 - (b) multimedia services("MMS");
 - (c) voicemail;
 - (d) pre-paid calling card and electronic top-up services;
 - (e) instant messaging services;
 - (f) video conferencing services;
 - (g) interactive voicemail and voice services;
 - (h) financial transactions including, account balance transfers, funds transfers, bill payments and on-line, auctions; and
 - (i) any equivalent, similar or improved service as approved by the Authority from time to time.
- 2.2. The authorization to provide Value Added Services under clause 2.1 shall not entitle the Licensee to build its own network or lease capacity from existing network providers for the purpose of providing an independent end-to-end telephony or data service.

3. Licence Fees

- 3.1 The fees payable by the Licensee to the Authority shall be as follows:
 - (a) an annual licence fee of two thousand United States Dollars (USD2, 000) payable in advance on or before each anniversary of the Effective Date; and
 - (b) a levy equal to three point five percent (3.5%) of Gross Annual Revenue for each year payable at the end of each quarter in four 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.
- 3.2 All outstanding fees and levies shall be payable within three (3) months from their due dates, failing which they shall attract at the base lending rate until full liquidation thereof.

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.

4. General Terms and Conditions for an Application Service Licence for the Value Added Services

In addition to complying with Communications Act, the Regulations made thereunder, the Licensee shall comply with the General Terms and Conditions for an Application Service Licence for the provision of Value Added Service which the Authority may publish in the Government Gazette from time to time.

5. Notices

- 5.1 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 Managing Director

Africa's Talking Limited

Physical address: Lilongwe, Kaphiri
off M1 opposite Benz Lodge

P.O. Box X157

Post Dot Net, Crossroads,

Lilongwe

Telephone number: (+265) 995 548 624

E-mail address: kkaruga@africastalking.com

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

Signed on this 8th day of January, 2021.

HENRY SILIKA

Acting Director General

GENERAL NOTICE NO. 6

Licence No. ISP/CLF/BCL/2021/2

**MALAWI COMMUNICATIONS REGULATORY AUTHORITY****APPLICATION SERVICE LICENCE****Issued to****BUSSINESS COMPUTERS LIMITED****Issued pursuant to section 39 of the Communications Act 2016**

A licence is hereby granted to **BUSSINESS COMPUTERS LIMITED** ("the Licensee") in respect to the provision of Application Services (Internet Services) with effect from the Effective Date.

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

Notice issued at Blantyre, this 8th day of January, 2021

HENRY SILIKA*Acting Director General*

1. Commencement and Licence Period**1.1. Period of Licence**

- (a) The commencement date of the Licence shall be the Effective Date as published in the Gazette.
- (b) The Licence shall be valid for a period of Five (5) years from the Effective Date.

2. Service Coverage

2.1. "The licensee is authorized to provide services in the Republic of Malawi.

3. Licence Fees

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

- (a) An annual Licence fee of Ten Thousand United States Dollars (USD10, 000) payable in advance on or before each anniversary of the Effective Date.
- (b) A levy equal to three point five percent (3.5%) of Gross Annual Revenue for each year payable at the end of each quarter in four 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.
- (c) All outstanding fees and levies shall be payable within three (3) months from their due dates, failing which they shall attract at the base lending rate until full liquidation thereof.

3.2 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.

4. General Terms and Conditions for an Application Service Licence for the Provision of Data and Internet Services

The Licensee shall comply with the General Terms and Conditions for an Application Service Licence for the provision of Data and Internet Services published by the Authority in the Government Gazette and as amended from time to time.

5. Notices

5.1 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

Business Computers Limited

Blantyre

Telephone number: (+265)

(+265)

E-mail address:

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

Signed on this 8th day of January, 2021.

HENRY SILIKA

Acting Director General

GENERAL NOTICE NO. 8

Licence No.: NML/CFL/FSL/2020/21/1.



MACRA

THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY

INDIVIDUAL FACILITIES SERVICE LICENCE

NYASA MOBILE LIMITED

Issued pursuant to section 39 of the Communications Act 2016

A Licence is hereby granted to **Nyasa Mobile Limited** ("the Licensee") in respect of the ownership and provision of any electronic communications network facilities with effect from the 24th day of December 2020—and valid for a period of ten (10) years.

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

Notice issued at Blantyre, this 24th day of December 2020.

Dated this 8th day of January, 2021.

HENRY SILIKA

Acting Director General

1. Definition

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

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

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

“Authority” means the Malawi Communications Regulatory Authority

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

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

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

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

“Facilities Services Access Agreement” means an agreement between the Licensee and other providers of electronic communication and broadcasting content services that authorizes access by the other providers of electronic communication and broadcasting content services to the Licensee's facilities to facilitate the supply of communications services according to specific terms and conditions;

“Go Live Date” means the date on which the Licensee shall have completed installation, testing and commission of the Facilities, which date shall not be later than 12 months from the Effective Date;

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

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

“Licensee” means Nyasa Mobile Limited;

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

2. Commencement and Licence Period

2.1. Period of Licence

(a) The commencement date of the Licence shall be from the Effective Date as published in the Gazette.

(b) The Licence shall be valid for a period of ten (10) years from the Effective Date.

3. Scope of Licence

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

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

(a) To construct, own or maintain facilities;

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

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

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

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

4. Rights and Obligations to provide Facilities Service

4.1. The Licensee shall provide Facilities Services in accordance with the Act and applicable Regulations.

4.2. The Licensee shall provide the services under this licence in accordance with Schedule 1.

4.3. Without prejudice to clause 4.1, the Licensee shall be entitled to:

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

4.4. The Licensee shall provide the services from the Go Live Date

5. Licence Fees

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

- (a) An initial licence fee of US\$100, 000 (One Hundred Thousand United States Dollars) payable in advance on or before the Effective Date.
- (b) An annual Licence fee of US\$100, 000 (One Hundred United States Dollars) payable in advance on or before each anniversary of the Effective Date.
- (c) An annual levy equal to zero percent (0%) in the first (1st) and second (2nd) years of the licence, one percent (1%) in the third (3rd) year, two percent (2%) in fourth (4th) year and three and a half percent (3.5%) thereafter of audited Gross Annual Revenue payable at the end of each quarter in four installments. Calculation of the first three (3) quarterly installments shall be based upon the management accounts for that particular period. A final quarterly payment shall be made based on Gross Annual Revenue within thirty (30) days of issue of the audited accounts. Adjustment shall be made for the first three (3) quarterly payments if the Gross Annual Revenue in the management accounts differs from the one in the audited accounts.

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

5.2. All outstanding fees and levies shall be payable within three (3) months from their due dates, failing which they shall attract simple interest from the date due until through the date paid at an annual rate equal to the prevailing rate set by the Reserve Bank of Malawi plus two (2) percentage points.

5.3. The Authority may revoke this licence in accordance with Clause 26 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 six (6) months after the end of the financial year to which the accounts relate.

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

7. Performance Guarantee

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

7.2. The Licensee shall ensure that the guarantee is issued within ninety (90) days from the Effective Date or anniversary of the Effective Date, whichever applies. The Licensee shall renew the guarantee annually within twenty eight (28) days of the date of its expiry.

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

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

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

8. Provision of Information

- 8.1. The Licensee shall establish and maintain adequate records to permit the effective supervision and enforcement by the Authority of the Licensee's obligations under this Licence.
- 8.2. The Licensee shall furnish the Authority records, audited financial statements, management accounts, ICT indicators, reports, returns, or any other information that may be reasonably required by the Authority for the purpose of monitoring and enforcing compliance by the Licensee with its obligations under this Licence.
- 8.3. The Licensee shall submit information requested by the Authority under this clause within reasonable time and in a manner and format as specified by the Authority.
- 8.4. Where the Licensee is unable to submit information in the manner and format specified under Clause 8.3, it shall inform the Authority in writing stating the reasons why the specified manner and format cannot be complied with.
- 8.5. Where the Authority is satisfied with the reasons stated by the Licensee, the information shall be submitted by the Licensee in a manner that is reasonable and practical to give effect to the purpose for which the Authority requires the information.
- 8.6. The Authority may inspect files, records, accounts and any other data if necessary make copies of the documents inspected for the purpose of enabling the Authority to monitor and enforce compliance with this Licence.
- 8.7. 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 pursuance with any powers granted to it under the Act, Regulations and this Licence.

10. Technical Standards

- 10.1. The Licensee shall comply with any applicable technical standards set by the Authority from time to time in accordance with the International Telecommunication Union and other relevant standardization bodies.
- 10.2. In setting out the technical standards under Clause 10.1, the Authority shall consult the Licensee.

11. Type Approval

- 11.1. Subject to applicable Regulations, the Licensee shall submit to the Authority for type approval of any network equipment will be used for facilities services.
- 11.2. The Licensee shall make the submissions required under Clause 11.1 in a form and manner as specified by the Authority.
- 11.3. The Authority shall make a decision on a type approval application within 30 days from the date of submission of the application.
- 11.4. Subject to Clause 15.7 of this Licence, the Licensee shall permit any licensed network service operators to connect a type approved network equipment to its facilities.
- 11.5. The Licensee shall accept as conclusive evidence that network equipment is type approved by the Authority based on a written statement of compliance issued by the Authority in line with applicable Regulations.
- 11.6. The Licensee shall consult with the Authority from time to time regarding the arrangements for testing and type approval of network equipment.

12. Tariff

- 12.1. The Licensee shall within six (6) months from the Effective Date, submit to the Authority for approval its proposed tariff structure for the facilities service.
- 12.2. The tariff structure proposal under Clause 12.1 above shall include:
 - (a) a description of the service;
 - (b) terms and conditions on which the services are offered;
 - (c) the methodology adopted for determining the tariffs and the justification for any changes in the methodology;
 - (d) any relevant information that it proposes to publish to Network Service operators. Information to be published shall be in a form which is readily available, current and easy to understand; and
 - (e) any other information as stipulated by the Authority.
- 12.3. The Licensee shall ensure that the tariffs for its facilities service are based on the approved tariff structure.

- 12.4. For the avoidance of doubt, the Licensee shall provide any Facility Service at the tariffs, terms and conditions that are in accordance with the approved tariff structure so approved by the Authority and shall not depart or change the tariff structure without prior approval of the Authority.
- 12.5. In approving the tariff structure under this clause the Authority shall be guided by the need to ensure that such charges are transparently derived from relevant costs with a rate of return considered reasonable.
- 12.6. The Licensee shall not change its approved tariff structure without the prior written approval of the Authority.
- 12.7. Subject to any applicable Regulations or Rules, the Authority shall approve or refuse to approve a tariff structure within fourteen (14) days from the date of a submission made under Clause 12.6.
- 12.8. The Licensee shall cause to be published on its website, any approved tariff, within seven (7) days of the tariff coming into operation.

13. Facilities Service Modification

- 13.1. The Licensee shall not effect any modification of its facilities service that negatively affects its Licence obligations without prior written notification to the Authority.
- 13.2. Notwithstanding clause 13.1, the Authority shall reserve the right to object or give directions where any such modification negatively affects other licensees or consumers or is repugnant with any applicable legal obligations of the Republic of Malawi.
- 13.3. The Licensee shall bear costs of any modification in line with clause 13.1. Any change petitioned for and approved by the Authority shall be done at the Licensee's expense and shall not interfere with any other communications systems existing or formally planned in writing in Malawi.

14. Master Service Contract

- 14.1. The Licensee shall, within six (6) months from the Effective Date, submit to the Authority for approval its Master Service Contract with Service Level Agreements (SLA) containing the standard terms and conditions for the provision of services under this Licence.
- 14.2. The Master Service Contract stipulated in clause 14.1 shall include:
- (a) the customer's rights;
 - (b) the supply time for initial connection;
 - (c) the services offered and covered by the terms of the agreement;
 - (d) the conditions referring to suspension or interruption of the service in case of non-payment by the customer;
 - (e) the compensation or refund arrangements for the customers which apply if the agreed service levels are not met and, if none are applicable, a statement to that effect;
 - (f) information on service quality levels offered;
 - (g) procedure for settling disputes with customers as approved by the Authority; and
 - (h) any other condition specified by the Authority.
- 14.3. In exercising its powers under clause 14.1 the Authority may direct the Licensee to amend or alter any term or condition of the Master Customer Contract to ensure compliance with the Act or any Regulations made there under.
- 14.4. The Licensee shall honour all terms and conditions under its Master Customer Contract.

15. Facilities Service Access by Network Service Operators

- 15.1. The Licensee may enter into facilities service access agreement with network service operators for access to its facilities service as specified under applicable Regulations.
- 15.2. The Facilities Service Access Agreement under Clause 15.1 shall be made on a non-discriminatory basis in accordance with access arrangements specified in this clause.
- 15.3. The Licensee shall offer any of its facilities service to any service provider at wholesale rates.
- 15.4. The Licensee shall notify the Authority of any Facilities Services Access Agreement it has entered into and file a copy of the agreement with the Authority within fifteen (15) days from the conclusion of the Agreement.
- 15.5. Where a dispute arises between any parties to the agreement under 15.4, either party may request the Authority to make a determination.
- 15.6. When making a determination, pursuant to 15.5 the Authority shall make such determination or resolution within sixty (60) days of receipt of the written request.

- 15.7. The Licensee may refuse to offer access of its facilities service to network service operators on any of the following grounds:
- (a) if it is technically or economically not feasible to do so.
 - (b) that the request for access is unreasonable;
 - (c) that the space available is insufficient to implement such access;
 - (d) that the Licensee may be prejudiced;
 - (e) that the access may cause irreparable damage to the property of the Licensee; or
 - (f) that there is no facilities Services Access Agreement between the Licensee and the network service operator.
- 15.8. Where the Licensee refuses to offer access of its facilities service to any network service operator it shall submit to the Authority the reasons for such refusal and the Authority shall reserve the right to make an assessment of the reasons given and either uphold or overrule the decision of the licensee.

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. Where the Licensee has been determined as dominant by the Authority under the Act, it shall not engage in predatory price cutting which will be implied where:
- (a) a service is priced at less than marginal cost for two (2) consecutive months or more;
 - (b) costs charged are likely to price competition out of the market or deter competitors from entering the market;
 - (c) the Licensee is able to recoup the full amount of the loss incurred during the period of price cutting;
 - (d) engaging in cross subsidizing where revenues for any services are used to unfairly cross subsidize the price of facilities services;
 - (e) engaging in unfair pricing such as to reduce or eliminate competition including fixing prices for facilities services at a level which cannot be re-sold with a profit margin to customers.
 - (f) entering into exclusive arrangements which deny competitors access to facilities services.
- 16.3. The Licensee, on his own or through others, shall not engage in any practice which unfairly restrict or is likely to restrict competition in the industry or which deters or restricts or is likely to deter or restrict new entrants into the market including:
- (a) asserting false or misleading claims on the availability or standards of its facilities service or competitors' facilities service;
 - (b) degrading standards of its facilities service or competitor's services or network or unfairly raising its business, operations or technical costs;
 - (c) unlawfully interfering with the suppliers or network service operators of its competitors; or
 - (d) providing false information to other facilities service competitors or to any other third party.
- 16.4. In the provision of the services under this Licence, the Licensee shall not discriminate against or show any preference to any other network service operators.
- 16.5. The Licensee shall not enter into any contract with, merge with or acquire any other entity with the intention or effect of preventing, restricting or distorting competition in the provision of facilities services.
- 16.6. The Licensee shall comply with any other laws and Regulations which relate to fair trading or competitive behaviour.
- 16.7. Where the Authority is satisfied that there are reasonable grounds to believe that the Licensee is, alone or in concert with others, engaged in anti-competitive practices to the disadvantage of users of the Services contrary to the Act and any applicable law, it shall make a determination and impose any applicable regulatory sanctions under this Licence.
- 16.8. In making a determination on anti-competitive practices under clause 16.7, the Authority shall consult the Competition and Fair Trading Commission.

17. Significant Market Power (SMP)

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

- 19.1. The Licensee shall maintain confidentiality in respect of all information provided by network service operators
- 19.2. The Licensee shall not use any information received in a manner that is anti-competitive towards other facilities service operators.

20. Monitoring

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

21. Health and Environmental Concerns

- 21.1. The Licensee shall ensure the use of energy efficient, environmental friendly facilities service equipment and also ensure proper safety and health hazard issues in the installation and location of their facilities.
- 21.2. The Licensee shall as much as possible use green technology in its infrastructure and shall ensure that its facilities are environmental friendly.
- 21.3. The Licensee shall ensure that deployment of its facilities conform to any applicable EMF radiation Guidelines issued by the Authority from time to time as well as other relevant guidelines or rules by recognized inter-national bodies.

22. Ownership

- 22.1. The holder of this Licence must be incorporated in Malawi.
- 22.2. The Licensee shall ensure it has at least twenty (20%) local Malawian shareholding which shall be maintained throughout the period of the Licence.
- 22.3. The Authority may revoke the Licence in accordance with Clause 26 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 22.2.
- 22.4. The Licensee shall notify the Authority of any changes that affects more than 10% of its shareholding.
- 22.5. Unless otherwise agreed by the Authority, the Licensee shall notify the Authority of any joint venture agreement it may enter with third parties to provide facilities service in Malawi not later than thirty (30) days before any such agreement takes effect, giving particulars of that agreement including a copy thereof.

23. Local Empowerment

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

24. Transfer of Licence

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

25. Licence Amendment

- 25.1. The Authority may amend the 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.
- 25.2. Before amending any provision of this Licence, the Authority shall –
- (a) give seven (7) notice of the proposed amendment to the Licensee;
 - (b) publish a notice in the Gazette stating the amendment that it proposes to make and the reasons for it, and shall give any person with an interest an opportunity to make representations concerning the proposed amendment;
 - (c) give the Licensee not less than 30 days from date of publication in the Gazette to submit a response to the proposed amendment; and

(d) give due consideration to any representations made by the Licensee or any person.

25.3. If the Licensee does not respond to the notice of the proposed amendment within the period stipulated by the Authority under Clause 25.2(c), the amendment shall take effect on the date of expiry of the said period.

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

(a) rescind the amendment;

(b) modify the amendment; or

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

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

26. Revocation of Licence

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

(a) if the Licensee is in substantial or continuing breach of any of the terms and conditions of this licence including:

(i) failure to comply with its geographical roll out obligations specified in this Licence;

(ii) to the extent applicable, failure to achieve technical standards specified by the Authority under Clause 10 of this Licence;

(iii) failure to provide performance guarantee within 90 days from the date the performance guarantee became due;

(iv) knowingly 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) failure to pay outstanding Licence fees for over a period of twelve (12) months from the Effective Date or anniversary of the Effective Date; or

(vii) any other breach of the licence which is deemed substantial by the Authority taking into consideration the factors listed in Clause 26.2;

(b) if the Licensee has been declared insolvent by a competent court of law; or

(c) if the Licensee agrees in writing to cancel the Licence.

26.2. Without prejudice to Clause 26.1, in determining whether a breach is substantial or not, the Authority shall consider:

(a) the nature or gravity of the breach;

(b) the seriousness of the consequences of the breach;

(c) whether the breach significantly impairs the Licensee's ability to discharge its obligations under the Licence;

(d) whether the breach demonstrates the Licensee's significant inability to meet the conditions of the Licence; or

(e) whether the breach has been repeated or is continuing.

26.3. 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 seven (7) days from the date of the notification under sub clause (a) to respond to the alleged breach;

(c) in cases where the Licence may be revoked, 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 the Licence should not be revoked; 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;

(d) 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.

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

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

27. Regulatory Sanctions

27.1. Notwithstanding any criminal sanctions under the Act, the Authority re-serves the right to impose regulatory sanctions for breaches of Licence conditions including:-

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

28. Emergency Crisis Management

28.1. The Licensee shall, within six (6) months from the Effective Date, submit to the Authority for approval a Business Continuity Plan which shall include disaster recovery plan (DRP), setting out the emergency crisis management team and priorities and procedures it will apply for restoring its network in the event of a disaster or national emergency.

28.2. The Licensee shall from time to time review and where necessary revise its Business Continuity Plan (BCP) and in such event it shall ensure that the Authority is furnished with the most current version of the Plan.

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

28.4. The Authority may from time to time, as agreed with the Licensee, carry out Practical Tests on the Licensee's facilities service to assess effectiveness or functionality of the facilities.

29. Exercise of Powers

29.1. 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.

30. Force Majeure

30.1. 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.

30.2. 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.

30.3. 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.

31. Corporate Social Responsibility (CSR)

31.1. The Licensee shall carry out corporate social responsibility activities as determined by the Licensee as part of its obligations under the Licence.

31.2. The Licensee shall include the corporate social responsibility activities carried out pursuant to Clause 31.1 in its annual report to the Authority.

32. Liability

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

32.2. The Licensee may at its own option:

- (a) arrange for representation at any inquest or inquiry the subject matter of which may give rise to indemnity under Clause 32.1;
- (b) undertake the defence of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under Clause 32.1.

33. 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

34. Renewal of the Licence

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

34.2. 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.

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

34.4. 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.

35. Dispute Resolution

35.1. Any dispute arising out of or in relation to this Licence, shall if not settled amicably on the written request of either party be referred to arbitration in accordance with the Arbitration Act (Cap 6:03 of the Laws of Malawi) and the seat of arbitration shall be Blantyre, Malawi.

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

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

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

36. Notices

36.1. Any notice required or permitted under the terms and conditions of this Licence shall be in writing in the English language and shall be sufficiently served if delivered email. Such notice may also be delivered by hand or sent by registered mail as follows:

(a) in the case of the Authority, to:

The Director General,
Malawi Communications Regulatory Authority,
Private Bag 261,
Blantyre
Malawi
Telephone number: +265 1 810 497
Facsimile number: +265 1 812 890
E-mail address: dg-macra@macra.org.mw

(b) in the case of the Licensee, to:

The Chief Executive Officer
Nyasa Mobile Limited
P.O. Box 1363
Blantyre
Malawi
Telephone: +265 0 888 130 000
Email address: ceo@nyasamobile.com

36.2. Any notice under clause 36.1 shall be deemed, in the absence of proof to the contrary, to have been given and received at the time of delivery.

37. Miscellaneous

- 37.1. The Licensee shall comply with all terms and conditions of this Licence, applicable laws and Regulations issued by the Authority from time to time.
- 37.1. 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.
- 37.1. The Authority shall not be liable for any loss, damage, claim, charge or expense which may be incurred by the Licensee as a result of or in relation to the activities of the Licensee, its employees, agents, or authorized representatives unless the same is occasioned by the acts or omissions of the Authority.
- 37.1. 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.
- 37.1. 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.
- 37.1. 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.
- 37.1. Notwithstanding clause 37.6, the Authority may disclose information that it has been notified should be kept confidential if such disclosure is essential in order to fulfill its functions under the Act or if so directed under an order of a court.
- 37.1. 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.
- 37.1. 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 8th day of January, 2021.

HENRY SILIKA

Acting Director General

Malawi Communications Regulatory Authority

SCHEDULE 1: ROLL OUT OBLIGATIONS AND TARGETS

Table S1.1

Phase	Implementation target
ONE Effective Date plus 12 months	Coverage Area Blantyre, Lilongwe, Mzuzu & Zomba,
TWO Effective Date plus 24 months	Mulanje, Thyolo, Chikhwawa, Balaka, Mwanza, Neno, Mangochi, Ntcheu, Dedza, Kasungu, Salima, Rumphu, Karonga, Mzimba Nchalo, Makwasa, Chitakale, Luchenza, Namadzi, Liwonde, Ntaja, Ulongwe, Nkopola, Monkey Bay, Kampata, Nthenje, Mvera
THREE Effective Date plus 36 months	Nsanje, Chiradzulu, Machinga, Phalombe, Mchinji, Nkhotakota, Dowa, Ntchisi, Chitipa, Nkhata-Bay Ngabu, Muloza, Chimwala, Makanjila, Zalewa/Mwanza T/O, Manjawila, Lizulu, Linthipe, Namitete, Mponela, Dwangwa, Chintcheche, Vizara, Likoma Island, Mzokoto, Livingstonia, Chiweta, Nyungwe

Table S1.2

Penalties for missing roll out targets

Target	Penalty
Coverage area	USD100,000 or proportion thereof in relation to number of places unserved

General Notice No. 9

Licence No NML/CFL/NSL/2020/21/1



THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY
INDIVIDUAL NETWORK SERVICES LICENCE
NYASA MOBILE LIMITED

Issued pursuant to section 39 of the Communications Act 2016

A licence is hereby granted to **Nyasa Mobile Connect Limited** ("the Licensee") in respect of the ownership and provision of any electronic communications network services with effect from the 24th day of December 2020 and valid for a period of Ten (10) years.

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

Notice issued at Blantyre, this 8th day of January, 2021.

HENRY SILIKA

Acting Director General

1. Definition

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

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

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

“**Authority**” means the Malawi Communications Regulatory Authority;

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

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

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

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

“**Go Live Date**” means the date on which the Licensee shall have completed installation, testing and commission of its Network, which date shall not be later than 12 months from the Effective Date;

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

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

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

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

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

“**Licensee**” means Nyasa Mobile Limited;

“**Network Equipment**” means equipment including software and physical devices together with ancillary parts which are required for operating and maintaining an electronic communication network for providing Network Services but shall exclude equipment and devices that fall under a Network Facilities Licence;

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

2. Commencement and Licence Period

2.1. Period of Licence

- (a) The commencement date of the Licence shall be from the effective date as published in the Gazette.
- (b) The Licence shall be valid for a period of ten (10) years from the effective date.

3. Scope of Licence

- 3.1. This Licence is issued subject to the Act and any Regulations made there-under.
- 3.2. The Licensee is authorized to operate and maintain electronic communication system for the purposes of providing network services using any applicable technology;
- 3.3. For the purpose of providing the Network Services under this Licence, the Licensee is authorised:
 - (a) to provide network services to Network Services, Application and Content Service Licensees;
 - (b) to install, operate and maintain an electronic communication network provided that this does not include such

facilities that falls under a Network Facilities Licence.

- (c) to connect its electronic communications network to other licensees' networks in the Republic of Malawi;
- (d) to procure, rent, and maintain Network Equipment for use in connection with its Network Services; and
- (e) to do all other things necessary or requisite to the provision of the Network Services.

3.4. The Licensee shall provide the services from the Go Live Date

3.5. The Licensee may use electronic communication network capacity of other network service Operators.

3.6. The Licensee shall provide international connectivity services to its Customers by means of any connection to an International Gateway Licensee.

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

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

3.9. The services that the Licensee is authorised to provide by means of its telecommunication network include:

- (a) domestic interconnectivity;
- (b) international interconnectivity;
- (c) signal distribution;
- (d) bandwidth services;
- (e) satellite services;
- (f) any equivalent, similar or improved network services as approved by the Authority from time to time.

4. Rights and Obligations to provide Telecommunication Services

4.1. The Licensee shall install operate and maintain an electronic communication system within Malawi and provide domestic and international network services in accordance with the Act, Regulations and licence terms and conditions.

4.2. The Licensee may enter into Interconnection and access agreements with other network service operators in accordance with the provisions of Sections 60, 62, 63 and 64 of the Act respectively and any Regulations made thereunder.

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

4.4. Subject to clause 4.5, the Licensee shall be entitled by virtue of this Licence to operate the electronic communication system and to provide all of the Network Services together with all other rights granted hereunder.

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

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

- (f) failure by the Authority to notify the Licensee of any contravention shall not in any way negate or limit the Authority's rights in respect of such contravention under this Licence.

5. Licence Fees

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

- (a) An initial licence fee of US\$100, 000 (One Hundred Thousand United States Dollars) payable in advance on or before the Effective Date.
- (b) An annual Licence fee of US\$100, 000 (One Hundred United States Dollars) payable in advance on or before each anniversary of the Effective Date.
- (c) An annual levy equal to zero percent (0%) in the first (1st) and second (2nd) years of the licence, one percent (1%) in the third (3rd) year, two percent (2%) in fourth (4th) year and three and a half percent (3.5%) thereafter of audited Gross Annual Revenue payable at the end of each quarter in four installments. Calculation of the first three (3) quarterly installments shall be based upon the management accounts for that particular period. A final quarterly payment shall be made based on Gross Annual Revenue within thirty (30) days of issue of the audited accounts. Adjustment shall be made for the first three (3) quarterly payments if the Gross Annual Revenue in the management accounts differs from the one in the audited accounts. The levy referred to in this clause shall not include revenue generated from international incoming communication traffic.
- (d) Radio Licence fees in accordance with radio frequency spectrum fees set by the Authority under the Act.

5.2. All outstanding fees and levies shall be payable within three (3) months from their due dates, failing which they shall attract simple interest from the date due until through the date paid at an annual rate equal to the prevailing rate set by the Reserve Bank of Malawi plus two (2) percentage points.

5.3. The Authority may revoke this licence in accordance with Clause 27 if, in any year, licence fees remain outstanding for a period of more than six (6) months from the date such fees became due.

6. International Call Termination Rate

- 6.1. Where applicable, the Licensee shall charge a minimum of USD 0.20 or as advised by the Authority from time to time for all international incoming voice traffic.
- 6.2. The Licensee shall submit to the Authority within seven (7) days any information or data required by the Authority to establish mechanisms and measures for monitoring compliance with this clause.
- 6.3. The licensee shall collect and remit to the Authority a fee of USD 0.08 per minute from the revenues generated from international incoming voice traffic.
- 6.4. All fees collected under clause 6.3 shall be payable to the Authority on or before the 75th day of the month following the month in which the fees were paid from international carriers, failure of which shall attract a penalty of 20% of the amount of the fees
- 6.5. The Authority may, from time to time, revise the minimum rate and the amount of the fee applicable to international incoming voice traffic under this clause.

7. Accounting Requirements

- 7.1. The Licensee shall within four (4) months of the end of each financial year either:
 - (a) provide the Authority with annual financial statements audited in a manner consistent with internationally recognized standards and certified by a qualified independent auditor; or
 - (b) provide the Authority with a written statement of the reasons the audited financial statements cannot be provided within that period and agree with the Authority a date for their provision, which date shall not be more than six (6) months after the end of the financial year to which the accounts relate.
- 7.2. The Licensee shall maintain management accounts in accordance with generally accepted accounting standards.

8. Performance Guarantee

- 8.1. The Licensee shall provide a guarantee acceptable to the Authority in the amount of US\$40, 000 (Forty Thousand United States Dollars) to secure the performance of the Licensee's obligations contained in this Licence.
- 8.2. The Licensee shall ensure that the guarantee is issued within ninety (90) days from the Effective Date or anniversary of the Effective Date, whichever applies. The Licensee shall renew the guarantee annually within twenty eight (28) days of the date of its expiry.
- 8.3. Failure to furnish the performance guarantee under this clause by the Licensee shall be deemed as a substantial breach of this Licence and the Authority may revoke the Licence in accordance with its terms and conditions.

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

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

9. Provision of Information

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

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

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

9.4. Where the Licensee is unable to submit information in the manner and format specified under Clause 9.4, it shall inform the Authority in writing stating the reasons why the specified manner and format cannot be complied with.

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

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

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

10. Compliance

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

11. Network Coverage

11.1. Unless otherwise approved by the Authority, the Licensee shall provide network services in the areas and by the dates specified in Schedule 1.

11.2. The Licensee shall submit to the Authority not later than ninety (90) days after the end of its financial year a report of its performance in relation to the network service targets stipulated in Schedule 1 in the preceding financial year.

11.3. Network Service Targets set in Schedule 1 shall be reviewed by the parties after five (5) years.

12. Public Emergency Services

12.1. Where applicable-

(a) the Licensee shall provide connectivity to Application Service Operators for emergency services twenty- four (24) hour free of charge;

(b) the Licensee shall facilitate and cooperate with all government bodies, departments and official agencies responsible for emergency services and national security in line with the National Numbering Plan;

(c) the Licensee may facilitate connectivity to emergency services through a centralised call centre designated by the Authority;

(d) the Licensee shall not claim or charge interconnection fees from any other network service operator where interconnection for the connectivity to emergency numbers or short codes is required.

13. Network Service Development

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

13.2. The Licensee shall submit to the Authority the Plan stipulated in clause 13.1 within thirty (30) days from the Effective Date.

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

14. Quality of Service Standards

14.1. The Licensee shall ensure that its network shall conform to ITU, ETSI, and GSM MoU specifications and any other national and international standards as specified by the Authority as applicable to all public telecommunication networks in the Republic of Malawi.

14.2. The Licensee shall achieve the Quality of Service (QoS) standards as specified in the Communications (Quality of Service) Regulations 2016 as currently in force and as the same may hereafter be amended, re-enacted or superseded from time to time and in any other applicable Regulations.

14.3. The Licensee shall ensure that voice and data traffic passes through its network with minimal interference, degradation or loss.

14.4. Where the Licensee fails to meet six (6) or more QoS targets with margin failure of 10% or more, the Licensee shall be deemed to have been issued with a first warning for failure to meet such targets for the first time and if the Licensee fails to meet six or more QoS targets a second time it shall be deemed to have been issued with a final warning and any subsequent failure to meet four or more QoS target shall be deemed substantial and continuing breach of this licence entitling the Authority to revoke the licence in accordance with clause 33 of this licence.

14.5. The Licensee shall adhere to the following service conditions:

(a) the provision of a system designed and maintained to provide the Services continuously twenty four (24) hours a day throughout the year;

(b) the rectification of all failures and restoration of service within the shortest practicable time; and

(c) the use of its best endeavors to minimize down time for essential maintenance and network upgrade.

14.6. The Licensee shall maintain records regarding its compliance with this clause and the Authority may at any time request the submission of such records.

14.7. Without compromising the QoS standards the Licensee shall ensure efficient use of spectrum.

14.8. Where there is the possibility of cross border radio interference, the Licensee shall provide support to the Authority in coordination meetings with the affected country.

14.9. The Licensee shall without undue delay, and in any case not later than 1 hour, notify the Authority of any significant failure of its network.

14.10. The Authority may not impose any penalties for failure to meet QoS Targets as a result of force majeure, provided that the Licensee shall promptly notify the Authority within twelve (12) hours of the facts and circumstances giving rise to such inability to comply and the Licensee shall take any commercially reasonable action necessary to correct any fault or avoid any such circumstances so as to re-establish compliance with QoS targets.

14.11. In any circumstances under clause 14.11 above, the Licensee shall notify its customers of the network failure through any other reasonable means possible.

14.12. The Authority reserves the right to inspect and independently verify the cause and extent of the failure to comply with the QoS targets.

14.13. The Licensee shall make all reasonable endeavors to comply with the applicable recommendations of the ITU and its associated organizations.

15. Application of International Telecommunication Regulations

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

15.2. Where any international organization to which a network service operator in the Republic of Malawi wishes to belong and requires that there should be a single signatory per country, the Licensee may be that signatory upon liaising with other interested network service operators provided that the Licensee shall protect and promote the interests of all network service operators in Malawi.

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

16. Spectrum Obligations

16.1. The Licensee shall not use any frequency that requires a license without prior assignment by the Authority.

16.2. The Licensee shall apply for radio licences for individual transceiver stations within its network in the manner and form as specified by the Authority and the Authority shall respond within 14 days from the application date.

- 16.3. The Licensee shall only use assigned frequencies after the grant of a valid radio Licence covering those frequencies and in accordance with the terms of the radio Licence.
- 16.4. The Licensee shall pay for radio frequencies in accordance with a Spectrum Fee Schedule published by the Authority from time to time.
- 16.5. The Licensee shall submit to the Authority its spectrum usage plan for its assigned frequencies within six (6) months from the effective date.
- 16.6. The Authority may in consultation with the Licensee re-farm frequencies assigned to the Licensee as required to meet the growth in demand for the Service in accordance with the National Frequency Band Plan and any applicable Regulations.
- 16.7. The Authority reserves the right to make any re-arrangement in the assignment within the band for maintaining the continuity of spectrum allocated or assigned if required in the future and the Licensee shall ensure that its equipment shall have provision to readjust according to such re-arrangement.
- 16.8. The Authority will make re-arrangement stipulated under clause 16.7 for any of the following reasons:
- (a) to create a level – playing field for all operators;
 - (b) to achieve overall objectives of the Authority under the Act and any other relevant Regulations made there-under; or
 - (c) to comply with international best practices.
- 16.9. The Authority shall at any time inspect and analyze the spectrum efficiency of any assigned frequencies to ensure proper utilization of the frequencies.
- 16.10. The Licensee shall ensure that transmission is restricted as per ITU Radio Regulations and any applicable Regulations to avoid harmful interference within its assigned frequency band.
- 16.11. The Authority shall revoke a radio licence assigned to any licensee for any of the following reasons:
- (a) frequency hoarding;
 - (b) failure to pay frequency fees;
 - (c) use of frequencies contrary to terms and conditions of a radio licence;
 - (d) use of unassigned frequencies; or
 - (e) any substantial breach of terms and conditions of a radio licence .

17. Type Approval

- 17.1. The Licensee shall submit to the Authority for type approval of any network equipment that will be used for its Network Services.
- 17.2. The Licensee shall make the submissions required under Clause 17.1 in a form and manner as specified by the Authority.
- 17.3. The Authority shall make a decision on a type approval application within 30 days from the date of submission of the application.
- 17.4. Subject to Clause 21.7 of this Licence, the Licensee shall permit any licensed network services, application services, and content services operator to connect a type approved network equipment to its network.
- 17.5. The Licensee shall accept as conclusive evidence that network equipment is type approved by the Authority based on a written statement of compliance issued by the Authority in line with applicable Regulations.
- 17.6. The Licensee shall consult with the Authority from time to time regarding the arrangements for testing and type approval of network equipment.

18. Numbering

Where applicable, the Licensee shall facilitate the provision of services requested by the Application service operator and other authorized entities using assigned Numbering resources in line with the National Numbering Plan.

19. Tariff

- 19.1. The Licensee shall within six (6) months from the Effective Date, submit to the Authority for approval its proposed tariff structure for the facilities service.
- 19.2. The tariff structure proposal under Clause 19.1 above shall include:
- (a) a description of the service;

- (b) terms and conditions on which the services are offered;
- (c) the methodology adopted for determining the tariffs and the justification for any changes in the methodology;
- (d) any relevant information that it proposes to publish to Network Service operators. Information to be published shall be in a form which is readily available, current and easy to understand; and
- (e) any other information as stipulated by the Authority.

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

19.4. For the avoidance of doubt, the Licensee shall provide any Facility Service at the tariffs, terms and conditions that are in accordance with the approved tariff structure so approved by the Authority and shall not depart or change the tariff structure without prior approval of the Authority.

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

19.6. The Licensee shall not change its approved tariff structure without the prior written approval of the Authority.

19.7. Subject to any applicable Regulations or Rules, the Authority shall approve or refuse to approve a tariff structure within fourteen (14) days from the date of a submission made under Clause 19.6.

19.8. The Licensee shall cause to be published on its website, any approved tariff, within seven (7) days of the tariff coming into operation.

20. Interconnection Obligations

20.1. Subject to the Act, the Licensee shall enter into an interconnection agreement with any network service operator and such interconnection agreement shall include:

- (a) the connection of the Licensee's network to any other licensed network service operator in accordance with Section 60 of the Act and any applicable Regulations made there-under;
- (b) the handing over of traffic in either direction between the Licensee and other network service operators;
- (c) the provision of related services requested by other network service operators; and
- (d) any other services as approved by the Authority from time to time

20.2. If the initial interconnection agreement with a network service Operator is not concluded within three (3) months, the provisions of clause 20.10 shall apply.

20.3. The terms and conditions of any interconnection agreement entered into by the Licensee shall:

- (a) be in accordance with the terms and conditions of this Licence;
- (b) comply with the Act and any Regulations made thereunder;
- (c) not discriminate against any other network service operator;
- (d) conform with the standards referred to in clause 14 of this Licence;
- (e) not cause harm to any electronic communications network; and
- (f) not discriminate based on technology used, type of carriers being connected, or the services to be provided, unless there are technical factors requiring different standards.

20.4. The Licensee has the right to enter into an interconnection agreement with any other network service operator, provided that arrangements for interconnection do not adversely affect the rights and obligations of the Licensee and any other network service operators or its applications service operators including such applications service operators' right to privacy and to confidentiality of any communications.

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

- (a) the type of services to be offered;
- (b) the method to configure and maintain the connection to the Licensee's network and vice versa;
- (c) the points of Interconnection of the networks;
- (d) the capacity required to ensure a reasonable grade of service on agreed commercial terms between the parties;
- (e) a requirement that any traffic is received with a specifically defined minimum quality of service;
- (f) the billing and collection arrangement between the parties;

- (g) that the Licensee shall provide Interconnection services to the requesting network service operator on cost based principles in accordance with applicable Regulations;
- (h) subject to the performance to other network elements and system, that the interconnection arrangements shall ensure that the quality of service offered to the application services users in the Republic of Malawi is not degraded. The arrangements for interconnection between the Licensee's network and other networks shall also ensure that there are regular exchange of technical information and network management data relevant to the operation and maintenance of the Licensee's and other electronic communication networks, including traffic routing, carried traffic, network failure rates and scheduled maintenance;
- (i) that future requirements for interconnection are facilitated in accordance with the conditions of this Licence and in consultation with other network service operators within three (3) months of a notice of such requirements being given; and
- (j) where applicable, arrangements for communication with other network service operators for the provision of access to Emergency Services.

- 20.6. The Licensee shall, after negotiating an interconnection agreement, submit to the Authority an application for approval of the interconnection agreement.
- 20.7. The application made under Clause 20.6 shall be accompanied by a copy of the proposed interconnection agreement.
- 20.8. The Authority shall, within thirty days of receipt of the application, make a decision on the application.
- 20.9. The Authority may declare void any term of the proposed interconnection agreement considered to be inconsistent with the Act or any applicable Regulation.
- 20.10. Where the Licensee requests for interconnection and is unable to conclude an interconnection agreement with any network service operator within three (3) months from the written request for interconnection it shall refer the matter to the Authority for determination with a copy to the other licensee.
- 20.11. In making its determination pursuant to clause 20.8 above, the Authority shall consider such factors that it considers necessary including terms and conditions that are:
- (a) consistent with the objectives of any applicable ICT related policy;
 - (b) not less favourable than those for any similarly licensed operator providing network services in the Republic of Malawi; and
 - (c) based on commercial terms.
- 20.12. When requested to make its determination under clause 20.10, the Authority shall determine the terms and conditions of interconnection within thirty (30) days of receipt of the written request from the Licensee.
- 20.13. Any network interconnection agreement made pursuant to this clause shall be filed with the Authority and may be open to inspection by the public upon written request to the Authority.
- 20.14. The Licensee may at time, make a written request to the Authority to review any term(s) of the interconnection agreement. Where such request has been made, the Licensee shall supply the other party copies of the request.
- 20.15. The Licensee may refuse to interconnect with other operators on any of the grounds set out in section 62(4) of the Act.
- 20.16. Where the Licensee refuses to interconnect with any other operator it shall submit to the Authority the reasons for such refusal and the Authority shall reserve the right to make an assessment of the reasons given and either uphold or overrule the decision of the licensee.

21. Network Access by Application and Content Service Operators

- 21.1. The Licensee may enter into Network Access Agreement with, Network, Application and Content Service operators for access to its electronic communication network as specified under the applicable Regulations.
- 21.2. The Network Access Agreement under Clause 21.1 shall be made on a non-discriminatory basis by means of the connection offered to all users in accordance with access arrangements specified in this clause.
- 21.3. The Licensee shall not impose restrictions on usage of the services acquired by a Application and Content Service Licensees from the Licensee under the network access agreement.
- 21.4. The Licensee shall offer any of its network services to any Network, Application and Content Service Licensee at wholesale rates.
- 21.5. The Licensee shall notify the Authority of any Network Access Agreement it has entered into and file a copy of the

agreement with the Authority within fifteen (15) days from the conclusion of the Agreement.

- 21.6. When requested to make a determination or to resolve a dispute under this clause, the Authority shall make such determination or resolution within sixty (60) days of receipt of the written request.
- 21.7. The Licensee may refuse to offer access of its network to Application and Content Service operators on any of the grounds set out in section 68(4) of the Act.
- 21.8. Where the Licensee refuses to offer access of its network to Application and Content Service operators it shall submit to the Authority the reasons for such refusal and the Authority shall reserve the right to make an assessment of the reasons given and either uphold or overrule the decision of the licensee.

22. Anti-Competitive Conduct, Unfair Competition and Discrimination

- 22.1. 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.
- 22.2. Where the Licensee has been determined as dominant by the Authority under the Act, it shall not engage in predatory price cutting which will be implied where:
- (a) a service is priced at less than marginal cost for two (2) consecutive months or more;
 - (b) costs charged are likely to price competition out of the market or deter competitors from entering the market;
 - (c) the Licensee is able to recoup the full amount of the loss incurred during the period of price cutting;
 - (d) engaging in cross subsidizing where revenues for any services are used to unfairly cross subsidize the price of other services or equipment;
 - (e) engaging in unfair pricing such as to reduce or eliminate competition including fixing prices for services or equipment at a level which cannot be re-sold with a profit margin to application and content service operators;
 - (f) entering into exclusive arrangements which deny competitors access to network services.
- 22.3. The Licensee, on his own or through others, shall not engage in any practice which unfairly restrict or is likely to restrict competition in the industry or which deters or restricts or is likely to deter or restrict new entrants into the market including:
- (a) asserting false or misleading claims on the availability or quality of its or competitors networks;
 - (b) degrading the availability or quality of its or competitor's networks or unfairly raising its business, operations or technical costs;
 - (c) unlawfully interfering with the suppliers or customers of its or competitors' networks; or
 - (d) providing false information to other electronic communications operators or competitors or to any other third party.
- 22.4. In the provision of the Services, the Licensee shall not discriminate against or show any preference to any other Application and Content Service operators and shall provide network services to Application and Content Service operators that are equal in quality, subject to the same conditions and provided within the same provisioning time intervals that the licensee provides to others.
- 22.5. Unless otherwise expressly provided for in this Licence, the Licensee shall not prohibit, prevent or frustrate the provision of electronic communication network services by any person lawfully able to provide such services.
- 22.6. The Licensee shall not enter into any contract with, merge with or acquire any other entity with the intention or effect of preventing, restricting or distorting competition in the provision of network services.
- 22.7. The Licensee shall comply with any other laws and Regulations which relate to fair trading or competitive behaviour.
- 22.8. Where the Authority is satisfied that there are grounds to believe that the Licensee is, alone or in concert with others, engaged in anti-competitive practices to the disadvantage of users of the Services contrary to the Act and any applicable law, it shall make a determination and impose any applicable regulatory sanctions under this licence.
- 22.9. In making a determination on anti-competitive practices under clause 23.8, the Authority may consult the Competition and Fair Trading Commission.

23. Significant Market Power (SMP)

- 23.1. 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.

- 23.2. In determining whether or not a Licensee has significant market power and in determining additional obligations to be imposed on a Licensee found to hold significant market power, the Authority shall have recourse to applicable laws and shall consult the Competition and Fair Trading Commission.

24. Universal Service (US) Obligations

- 24.1. 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.
- 24.2. 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.

25. Customer Confidentiality

- 25.1. The Licensee shall maintain confidentiality in respect of all information provided by its customers.
- 25.2. The Licensee shall not use any information received in a manner that is anti-competitive towards other network service providers.

26. Monitoring

- 26.1. The Authority shall have the right to establish, maintain and install an electronic monitoring system using any applicable technology for the purposes of allowing off line and on line data submission necessary for the monitoring and enforcing compliance by the Licensee with its obligations under the Act and any Regulations.
- 26.2. Unless otherwise agreed by the parties, the Licensee shall within seven (7) days upon request from the Authority provide any information or data of its network that is necessary for the electronic monitoring system, in the manner and format specified by the Authority.
- 26.3. Subject to any applicable Regulations, the Licensee shall facilitate, provide and maintain appropriate interface points and links that are supported by its equipment and systems between its network and the Authority's monitoring system at all times for the purposes of monitoring its network services and application services being carried on their network
- 26.4. In complying with 26.3 above, the Licensee shall comply with directions issued by the Authority

27. Resource Sharing

- 27.1. The Licensee may whenever technically and economically feasible and subject to a negotiated agreement, make available its network resources or part of it to any other network service operators.
- 27.2. The Licensee may collaborate on installing a shared network with other networks service operators to facilitate the provision of communication services and sharing of resources.

28. Health and Environmental Concerns

- 28.1. 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.
- 28.2. Where applicable, the Licensee shall as much as possible use green technology in its systems, and shall ensure that the technology constitutes at least 20% of its off- grid network equipment including transceivers within five (5) years from the effective date.
- 28.3. 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.

29. Ownership

- 29.1. The holder of this Licence must be incorporated in Malawi.
- 29.2. The Licensee shall ensure it has at least twenty (20%) local Malawian shareholding which shall be maintained throughout the period of the Licence.
- 29.3. The Authority may revoke the Licence in accordance with clause 33 of this Licence where the licensee effects change of shareholding that effectively affect the control of the licence without prior approval of the Authority which approval shall not be unreasonably withheld or fails to comply with local ownership requirements under clause 29.2.
- 29.4. The Licensee shall notify the Authority of any changes that affects more than 10% of its shareholding.
- 29.5. Unless otherwise agreed by the Authority, the Licensee shall notify the Authority of any joint venture agreement it may enter with third parties to provide network service in Malawi not later than thirty (30) days before any such agreement takes effect, giving particulars of that agreement including a copy thereof.

30. Local Empowerment

- 30.1. 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.
- 30.2. The Licensee shall, during the term of licence, take measures to ensure participation in its management structure by local indigenous Malawians.

31. Transfer of Licence

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

32. Licence Amendment

32.1. The Authority may amend the 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.

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

- (a) give seven (7) notice of the proposed amendment to the Licensee;
- (b) publish a notice in the Gazette stating the amendment that it proposes to make and the reasons for it, and shall give any person with an interest an opportunity to make representations concerning the proposed amendment;
- (c) give the Licensee not less than 30 days from date of publication in the Gazette to submit a response to the proposed amendment; and
- (d) give due consideration to any representations made by the Licensee or any person.

32.3. If the Licensee does not respond to the notice of the proposed amendment within the period stipulated by the Authority under Clause 32.2(c), the amendment shall take effect on the date of expiry of the said period.

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

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

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

33. Revocation of Licence

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

- (a) if the Licensee is in substantial or continuing breach of any of the terms and conditions of this licence including:
 - (i) failure to achieve the networks service roll-out targets;
 - (ii) failure to achieve specified Quality of Service Standards;
 - (iii) failure to provide performance guarantee within 90 days from the date the performance guarantee became due;
 - (iv) knowingly providing false information regarding the information necessary for renewal or any other information requested by the Authority pursuant to this Licence;
 - (v) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;
 - (vi) conducting in uncompetitive market behavior or trade practices;
 - (vii) failure to pay outstanding License fees for over a period of six (6) 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 33.2;

- (b) if the Licensee has been declared insolvent by a competent court of law; or
- (c) if the Licensee agrees in writing to cancel the Licence.

33.2. Without prejudice to Clause 33.1, 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.

33.3. 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 seven (7) days from the date of the notification under sub clause (a) to respond to the alleged breach;
- (c) in cases where the Licence may be revoked, 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 the Licence should not be revoked; 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.
- (d) 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.

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

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

34. Regulatory Sanctions

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

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

35. Emergency Crisis Management

35.1. The Licensee shall within six (6) months from the Effective Date submit to the Authority for approval a Business Continuity Plan which shall include disaster recovery plan (DRP), setting out the emergency crisis management team and priorities and procedures it will apply for restoring its network in the event of a disaster or national emergency.

35.2. The Licensee shall from time to time review and where necessary revise its Business Continuity Plan (BCP) and in such event it shall ensure that the Authority is furnished with the most current version of the Plan.

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

35.4. The Authority may from time to time, as agreed with the Licensee, carry out Practical Tests on the Licensees networks service to assess the effectiveness or functionality of the services.

36. 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.

37. Force Majeure

- 37.1. 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.
- 37.2. 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.
- 37.3. 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.

38. Corporate Social Responsibility (CSR)

- 38.1. The Licensee shall carry out corporate social responsibility activities as determined by the Licensee as part of its obligations under the Licence.
- 38.2. The Licensee shall include the corporate social responsibility activities carried out pursuant to Clause 38.1 in its annual report to the Authority.

39. Liability

- 39.1. The Licensee shall indemnify the Authority against any injury, losses, claims, charges or expenses, or which may be made against the Authority by third parties as a direct consequence of the Licensee's actions.
- 39.2. The Licensee may at its own option:
 - (a) arrange for representation at any inquest or inquiry the subject matter of which may give rise to indemnity under Clause 40.1;
 - (b) undertake the defence of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under Clause 40.1.

40. 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

41. Renewal of the Licence

- 41.1. This Licence may be renewed for such number of years as may be determined by the Authority at the expiry of its term provided the Licensee is in compliance in all material respects with its licence provisions.
- 41.2. In deciding whether to renew the Licence the Authority shall consider whether:
 - (a) the Licensee performed in accordance with the obligations of its licence;
 - (b) the licensee continues to meet the eligibility requirements under the Act;
 - (c) the licensee continues to be financially and technically capable of meeting his obligations under the Act and any other related laws; and
 - (d) the licensee has not, during the validity period of his licence, contravened the provisions of the Act, the terms and conditions of the licence, the rules issued by the Authority or any other relevant laws and regulations.
- 41.3. The Licensee shall apply for renewal in writing not later than six (6) calendar months before the expiration of the term of its Licence.
- 41.4. 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.

42. Dispute Resolution

- 42.1. Any dispute arising out of or in relation to this Licence, shall if not settled amicably on the written request of either party be referred to arbitration in accordance with the Arbitration Act (Cap 6:03 of the Laws of Malawi) and the seat of arbitration shall be Blantyre, Malawi.
- 42.2. The number of arbitrators shall be one (1) appointed jointly by the Parties.

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

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

43. Notices

43.1. Any notice required or permitted under the terms and conditions of this Licence shall be in writing in the English language and shall be sufficiently served if delivered email. Such notice may also be delivered by hand or sent by registered mail as follows:

(a) in the case of the Authority, to:

The Director General,
Malawi Communications Regulatory Authority,
Private Bag 261,
Blantyre
Malawi
Telephone number: +265 1 810 497
Facsimile number: +265 1 812 890
E-mail address: dg-macra@macra.org.mw

(b) in the case of the Licensee, to:

The Chief Executive Officer
Nyasa Mobile Limited
P.O. Box 1363
Blantyre
Malawi
Telephone: +265 0 888 130 000
Email address: ceo@nyasamobile.com

43.2. Any notice under clause 43.1 shall be deemed, in the absence of proof to the contrary, to have been given and received at the time of delivery.

44. Miscellaneous

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

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

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

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

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

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

44.7. Notwithstanding clause 44.6, the Authority may disclose information that it has been notified should be kept confidential if such disclosure is essential in order to fulfil its functions under the Act or if so directed under an order of a court.

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

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

Dated this 8th day of January, 2021.

HENRY SILIKA

Acting Director General

Malawi Communications Regulatory Authority

SCHEDULE 1 – SERVICE COVERAGE

TABLE S1A – COVERAGE TARGETS AND SERVICE QUALITY						
PHASE	IMPLEMENTATION TARGET					PENALTY
		(Received Signal Strength (RxLev)		Received signal Quality (RxQual)	Q o s Targets	
		URBAN	RURAL			
PHASE ONE Effective Date + 12 months	Blantyre, Lilongwe, Mzuzu & Zomba, plus designated feeder roads up to 25 Km from each city centre.	≥-82 dBm	≥-92 dBm	0≤5	90% of t h e coverage area	\$100000 or proportion thereof in relation to number of p l a c e s unserved
PHASE TWO Effective Date + 24 months	Mulanje, Thyolo, Chikhwawa, Balaka, Mwanza, Neno, Mangochi, Ntcheu, Dedza, Kasungu, Salima, Rumphi, Karonga, Mzimba Nchalo, Makwasa, Chitakale, Luchenza, Namadzi, Liwonde, Ntaja, Ulongwe, Nkopola, Monkey Bay, Kamphata, Nathenje, Mvera	≥-82 dBm	≥-92 dBm	0≤5	90% of t h e coverage area	\$100000 or proportion thereof in relation to number of p l a c e s unserved
P H A S E THREE Effective Date + 36 months	Nsanje, Chiradzulu, Machinga, Phalombe, Mchinji, Nkhotakota, Dowa, Ntchisi, Chitipa, Nkhata-Bay Ngabu, Muloza, C h i m w a l a , M a k a n j i l a , Zalewa/Mwanza T/O, Manjawila, Lizulu, Linthipe, Namitete, Mponela, Dwangwa, Chintheche, Vizara, Likoma Island, M z o k o t o , Livingstonia, Chiweta, Nyungwe	≥-82 dBm	≥-92 dBm	0≤5	90% of t h e coverage area	\$100000 or proportion thereof in relation to number of p l a c e s unserved
PHASE FOUR Effective Date + 60 months	A minimum of 10 Km either side of the M1 and M2 roads and up to 10 Km for M3, M5 and M12 trunk roads	≥-82 dBm	≥-92 dBm	0≤5	90% of t h e coverage area	\$100000 or proportion thereof in relation to number of p l a c e s unserved

GENERAL NOTICE NO. 7



**THE MALAWI COMMUNICATIONS REGULATORY AUTHORITY
INDIVIDUAL APPLICATION SERVICES IN MALAWI**

Issued to

NYASA MOBILE LIMITED

Licence No.NML/CLF/ASL/2020/21/1

Issued pursuant to section 39 of the Communications Act

A Licence is hereby granted to Nyasa Mobile Limited ("the Licensee") in respect of the provision of Application Services with effect from the 24th day of December 2020 and valid for a period of ten (10) years.

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

Notice issued at Blantyre, this 8th day of January, 2021.

HENRY SILIKA
Acting Director General

1. Definition

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

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

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

“Authority” means the Malawi Communications Regulatory Authority

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

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

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

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

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

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

“Go Live Date” means the date on which the Licensee shall commence providing the services which date shall not be later than twelve (12) months from Effective Date;

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

“Licensee” means Nyasa Mobile Limited;

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

2. Commencement and Licence Period

2.1. Period of Licence

(a) The commencement date of the Licence shall be from the Effective Date as published in the Gazette.

(b) The Licence shall be valid for a period of ten (10) years from the Effective Date.

3. Scope of Licence

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

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

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

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

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

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

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

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

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

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

3.6. The Licensee shall provide the services from the Go Live Date

4. Rights and Obligations

4.1. The Licensee shall provide application services in terms of this licence and the Act.

4.2. Without prejudice to clause 4.1, the Licensee shall resell application services to end users subject to any terms and conditions that may from time to time be prescribed by the Authority and which are applicable to all application service providers.

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

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

5. Licence Fees

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

- (a) An annual Licence fee of Ten Thousand US dollars (USD 10, 000.00) payable in advance on or before each anniversary of the Effective Date.

(b) An annual levy equal to zero percent (0%) in the first (1st) and second (2nd) years of the licence, one percent (1%) in the third (3rd) year, two percent (2%) in fourth (4th) year and three and a half percent (3.5%) thereafter of audited Gross Annual Revenue 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 accounts differs from the one in the audited accounts. The levy referred to in this clause shall not include revenue generated from international incoming communication traffic.

5.2. All outstanding fees and levies shall be payable within three (3) months from their due dates, failing which they shall attract simple interest from the date due until through the date paid at an annual rate equal to the prevailing rate set by the Reserve Bank of Malawi plus two (2) percentage points.

5.3. The Authority may revoke this licence in accordance with Clause 38 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. International Call Termination Rate

6.1. The Licensee shall charge a minimum rate of USD 0.20 or as advised by the Authority from time to time for all international incoming voice traffic.

6.2. The Licensee shall not charge its customers a higher fee for its local voice traffic as a result of the introduction of the minimum rate for international incoming voice traffic.

6.3. The Licensee shall submit to the Authority within seven (7) days any information or data required by the Authority to establish mechanisms and measures for monitoring compliance with this clause.

6.4. The licensee shall collect and remit to the Authority a fee of USD 0.08 per minute from the revenues generated from international incoming voice traffic.

6.5. All fees collected under clause 6.4 shall be payable to the Authority on or before the 15th day of the month following the month in which the fees were paid from international carriers, failure of which shall attract a penalty of 20% of the amount of the fees.

6.6. The Authority may, from time to time, revise the minimum rate and the amount of the fee applicable to international incoming voice traffic under this clause.

7. Accounting Requirements

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

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

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

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

8. Performance Guarantee

8.1. The Licensee shall provide a guarantee acceptable to the Authority in the amount of Twenty Thousand United States Dollars (US\$20, 000) to secure the performance of the Licensee's obligations contained in this Licence.

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

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

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

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

9. Provision of Information

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

- 9.2. The Licensee shall furnish the Authority records, audited financial statements, management accounts, ICT indicators, reports, returns, or any other information that may be reasonably required by the Authority for the purpose of monitoring and enforcing compliance by the Licensee with its obligations under this Licence.
- 9.3. The Licensee shall submit information requested by the Authority under this clause within reasonable time and in a manner and format as specified by the Authority.
- 9.4. The Authority may inspect files, records, accounts and any other data if necessary make copies of the documents inspected for the purpose of enabling the Authority to monitor and enforce compliance with this Licence.
- 9.5. The Licensee shall bear the cost of any expenses it incurs in ensuring compliance with record keeping and provision of information.

10. Compliance

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

11. Service Standards

- 11.1. The Licensee shall ensure that its application services conform to ITU, ETSI, and GSM MoU specifications and any other national and international standards as specified by the Authority.
- 11.2. The Licensee shall achieve the Quality of Service (QoS) standards as specified in the Communications (Quality of Service) Regulations 2016 as currently in force and as the same may hereafter be amended, re-enacted or superseded from time to time and in any other applicable Regulations.
- 11.3. Where the Licensee fails to meet six (6) or more Service Standards with margin failure of 10% or more, the Licensee shall be deemed to have been issued with a first warning for failure to meet such standards for the first time and if the Licensee fails to meet Service Standards a second time it shall be deemed to have been issued with a final warning and any subsequent failure to meet Service Standards shall be deemed substantial and continuing breach of this licence entitling the Authority to revoke the licence in accordance with clause 38 of this licence.
- 11.4. The Licensee shall adhere to the following service conditions:
 - (a) the provision of continuous services twenty four (24) hours a day throughout the year;
 - (b) the rectification of all failures and restoration of service within the shortest practicable time; and
 - (c) the use of its best endeavors to minimize down-time for application services.
- 11.5. The Licensee shall maintain records regarding its compliance with this clause and the Authority may at any time request the submission of such records.
- 11.6. Without compromising the Service Standards the Licensee shall ensure efficient use of spectrum where applicable.
- 11.7. Where there is the possibility of cross border radio interference, the Licensee shall provide support to the Authority in coordination meetings with the affected country.
- 11.8. The Authority may not impose any penalties for failure to meet Service Standards as a result of force majeure, provided that the Licensee shall promptly notify the Authority within twelve (12) hours of the facts and circumstances giving rise to such inability to comply and the Licensee shall take any commercially reasonable action necessary to correct any fault or avoid any such circumstances so as to re-establish compliance with Service Standards.
- 11.9. In any circumstances under clause 10.8 above, the Licensee shall make public announcements of the service failure through radio, print media or any other reasonable means possible.
- 11.10. The Authority reserves the right to inspect and independently verify the cause and extent of the failure to comply with Service Standards.
- 11.11. The Licensee shall make all reasonable endeavors to comply with the applicable recommendations of the ITU and its associated organizations.

12. Service Coverage

- 12.1. Unless otherwise approved by the Authority, the Licensee shall provide coverage for application services in the areas and by the dates specified in Schedule 1.
- 12.2. The Licensee shall submit to the Authority not later than thirty (30) days after the end of its financial year a report of its performance in relation to the service roll out targets stipulated in Schedule 1 in the preceding financial year.
- 12.3. Service Roll out Targets set in Schedule 1 shall be reviewed by the parties after five (5) years.

13. Facilities Service Modification

- 13.1. The Licensee shall submit for notification to the Authority a Development Plan setting out targets for on-going development of its services and shall outline the achievement measurements for the targets of the plan and the Authority shall reserve the right to require the Licensee to review any aspect of the plan that is inconsistent with the Act and any Regulation.
- 13.2. The Licensee shall submit to the Authority the Plan stipulated in clause 12.1 within thirty (30) days from the Effective Date.
- 13.3. The Licensee may from time to time review its Development Plan to accommodate technological changes in the industry.

14. Public Emergency Call Services

- 14.1. The Licensee shall provide twenty-four (24) hour access to emergency numbers to its customers free of charge.
- 14.2. Where necessary the Licensee shall provide twenty-four (24) hour access to emergency service providers to its customers free of charge.
- 14.3. The Licensee shall provide and use exclusively for emergency services, the short codes assigned to emergency services in the National Numbering Plan.
- 14.4. The Licensee shall facilitate and cooperate with all government bodies, departments and official agencies responsible for emergency services and national security.
- 14.5. The Licensee may enter into agreements with other service providers for the provision of emergency services through a centralised call centre designated by the Authority which shall be accessible to customers from different telecommunication networks.
- 14.6. The Authority reserves the right to declare emergency numbers or short codes that any person may call free of charge and the Licensee shall connect the Emergency numbers or short codes as directed by the Authority in line with National Numbering Plan.
- 14.7. Where interconnection for the provision of emergency numbers or short codes is required, the Licensee shall not claim or charge interconnection fees from other application service providers.

15. Directory Information

- 15.1. Where applicable and subject to any relevant Regulations, the Licensee shall provide its customers with access to any Directory Information Service offered by either itself, any application service provider, to this end the Licensee shall exchange relevant customer or subscriber data with other application service providers.
- 15.2. The Licensee shall maintain an integrated customer or subscriber data base for the purposes of providing directory information and inquiry services to its customers.
- 15.3. The Licensee shall inform the public through the media or any other means specified by the Authority of its intention to provide or update directory services to the public. Provided that the Licensee shall at all times inform and make available to its subscribers technical means to opt out from the directory services.
- 15.4. The Licensee shall upon request of or consent from a customer make necessary arrangements to have the number of the customer published in a directory service offered by either itself, other application service providers.
- 15.5. The Licensee shall make directory services accessible to its customers in hard copy or any other accessible format.
- 15.6. The Licensee shall not use any information or data obtained from a customer under this clause for any purpose other than the Directory Service and shall comply with any data protection laws applicable to the processing of such data.
- 15.7. The Licensee shall correct its records for purposes of providing directory services where a mistake in the customer information is brought to its attention and shall correct such information in the next publication of the directory, or if it is an electronic directory, immediately.

16. Consumer Protection

- 16.1. The Licensee shall ensure that Consumer Rights applicable to application services are respected in the provision of services under this Licence.
- 16.2. The Licensee shall comply with any Consumer Protection Regulations made under the Act.
- 16.3. The Licensee shall provide clear and understandable information to customers or potential customers which information shall include;
 - (a) the name of the service provider,

- (b) applicable short codes for consumer services,
 - (c) activation fee or initiation fee including deposit requirements if applicable,
 - (d) access fees or base charges, tariff provisions for calculating charges per call including minimum charges,
 - (e) peak and off peak times and rates, night, weekend, holiday, national and international rates; and
 - (f) Any other information specified by the Authority.
- 16.4. The licensee shall notify customers about the availability of consumer complaint procedures and have in place systems for registering and handling complaints.
- 16.5. The Licensee shall within six (6) months from the Effective Date submit to the Authority for approval Master Customer Contract with Service Level Agreements (SLA) containing the standard terms and conditions for the provision of services under this Licence.
- 16.6. The Master Customer Contract stipulated in clause 15.5 shall include:
- (a) the customer/consumer rights
 - (b) the supply time for initial connection;
 - (c) the services offered and covered by the terms of the agreement;
 - (d) the conditions referring to suspension or interruption of the service in case of non-payment by the customer;
 - (e) the compensation or refund arrangements for the customers which apply if the agreed service levels are not met and, if none are applicable, a statement to that effect;
 - (f) information on service quality levels offered;
 - (g) procedure for settling disputes with customers as approved by the Authority; and
 - (h) any other reasonable condition deemed necessary by the Authority.
- 16.7. In exercising its powers under clause 15.5 the Authority may direct the Licensee to amend or alter any term or condition of the Master Customer Contract to ensure compliance with the Act or any Regulations made there under.
- 16.8. The licensee shall honour all terms and conditions under its Master Customer Contract.
- 16.9. Where a dispute arises between a Customer and the Licensee on the interpretation of a service agreement that had not been submitted to the Authority for approval prior to the dispute or complaint and the dispute is submitted to the Authority for resolution, the decision of the Authority shall prevail over the provisions in the service agreement.
- 16.10. The Licensee shall make available to the public any approved Master Customer Contract in any of the following ways: -
- (a) filing a copy with the Authority;
 - (b) making copies available during regular business hours at its principal offices and any branch offices open to the public;
 - (c) by posting a copy on its website; or
 - (d) Any other mode specified by the Authority.
- 16.11. The Licensee shall retain a copy of each post paid subscriber contract for at least one (1) year following termination of the contract.
- 16.12. The licensee shall establish and maintain a call centre at all times and Customer Care Centre during working hours.
- 16.13. The Licensee shall submit to the Authority every quarter or as directed by the Authority a report summarising the number of complaints received from its customers, the nature of the complaint and the steps taken by the Licensee to address those complaints. The report shall be in a manner and format as specified by the Authority.
- 16.14. The Licensee shall not by act or omission engage in unfair commercial practices when selling or promoting its services to customers.
- 16.15. Unfair commercial practices stipulated under clause 15.14 shall include:
- (a) providing customers with misleading, inadequate or unclear details on tariff or services; or
 - (b) any act or omission that puts the customer on an unfair disadvantage. For the purposes of this clause, "Misleading" includes false information that is untruthful in any way or deceptive and may cause or likely to cause for the customer to make a transactional decision that he may not have taken

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

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

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

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

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

17. Settling Disputes with Customers

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

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

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

- (a) where the complaint remains unresolved after fourteen (14) days from the date when the complaint was made;
- (b) where the customer is dissatisfied with the decision of the Licensee; or
- (c) any other ground specified in applicable Regulations.

18. Billing Arrangements

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

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

- (a) the tariffs;
- (b) due date of payment before late charges are incurred;
- (c) any other condition deemed necessary by the Authority.

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

- (a) cost of application service
- (b) duration of application service;
- (c) airtime balance; and
- (d) any other condition deemed necessary by the Authority.

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

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

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

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

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

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

19. Itemized Billing

- 19.1. The Licensee shall within seven (7) days from date of request provide any post paid or pre-paid customer an itemized bill in such a manner that is self explanatory and where necessary with appropriate explanation to clearly show the call details of the customer for the billing period to verify the billed amount.
- 19.2. The Licensee shall ensure that application services which are free of charge to its Customers, including calls to emergency lines, shall be identified in its Customers' itemized bills.

20. Notifications to Customers

- 20.1. Subject to applicable Regulations, the Licensee shall give its customers three (3) days notice prior to effecting any changes in its tariffs and seven (7) days notice prior to carrying out planned service outages.
- 20.2. A licensee shall immediately and without delay notify its customers of any problems affecting thirty (30) percent of the national service area.
- 20.3. The licensee shall communicate to customers pursuant to this clause via sms, media or any other mode specified by the Authority.

21. Application of International Telecommunication Regulations

- 21.1. The Licensee shall comply with any international agreements that have been ratified by the Government of Malawi.
- 21.2. The Licensee shall have the status of a Recognized Operating Agency within the meaning of the International Telecommunication Regulations (ITRs).
- 21.3. The Licensee may negotiate and conclude commercial and operating agreements with any Authorized Foreign Operator, subject to any Code of Practice as may be published by the Authority.
- 21.4. The Licensee shall not enter into any agreement with an Authorized Foreign Operator which unfairly precludes or restricts the provision of international services by another application service provider. Provided that the Authority shall ensure that all application service providers shall equally comply with this requirement.
- 21.5. Where it acts as signatory to an international agreement the Licensee shall provide access to services governed by that agreement to other application service providers licensed to provide international services on a commercially agreed and non-discriminatory basis. Provided that all such agreements entered into by other application service providers shall be made available to the Authority, and shall further ensure that this provision equally applies to all other application service providers operators.
- 21.6. Where any international organization to which an application service providers in the Republic of Malawi wishes to belong requires that there should be a single signatory per country, the Licensee may be that signatory upon liaising with other interested application service providers. Provided that the Licensee shall protect and promote the interests of all application service providers in Malawi.
- 21.7. The Licensee shall comply with any Regulations issued by the Authority on traffic routing, accounting rates and settlement procedures for international Voice Telephony Services.

22. Spectrum Obligations

- 22.1. Where applicable, the Licensee shall not use any frequency without prior assignment by the Authority.
- 22.2. To this end, the Licensee shall apply for radio licences for individual base stations within its network in the manner and form as specified by the Authority and the Authority shall respond within 14 days from the application date.
- 22.3. The Licensee shall only use an assigned frequency after the grant of a valid radio Licence covering that frequency and in accordance with the terms of the radio Licence.
- 22.4. The Licensee shall pay for radio frequencies in accordance with the Spectrum Licence Fee Schedule published by the Authority under the Communications Act.
- 22.5. The Licensee shall submit to the Authority its spectrum usage plan for its assigned frequencies within thirty (30) days from the effective date.
- 22.6. The Authority may assign or re-farm frequencies assigned to the Licensee as required to meet the growth in demand for the Service in accordance with the National Frequency Band Plan and any applicable Regulations.
- 22.7. The Authority reserves the right to make any re-arrangement in the assignment within the band for maintaining the continuity of spectrum allocated or assigned if required in the future and the Licensee shall ensure that its equipment shall have provision to readjust according to such re-arrangement.
- 22.8. The Authority will make rearrangement stipulated under clause 21.7 for any of the following reasons:
- (a) to create a level – playing field for all operators;

(b) to achieve overall objectives of the Authority under the Act and any other relevant Regulations made thereunder; or

(c) to comply with international best practices.

22.9. The Authority shall at any time inspect and analyze the spectrum efficiency of any assigned frequencies to ensure proper utilization of the frequencies.

22.10. The Licensee shall ensure that transmission is restricted as per ITU Radio Regulations and any applicable Regulations to avoid harmful interference within its assigned frequency band.

22.11. The Authority shall revoke a radio licence assigned to any licensee for any of the following reasons:

(a) frequency hoarding;

(b) failure to pay frequency fees;

(c) use of frequencies contrary to terms and conditions of a radio licence;

(d) use of unassigned frequencies; or

(e) any other ground specified by the Authority.

22.12. Without prejudice to any other appropriate regulatory sanctions under the Act or applicable Regulations, the Licensee shall be liable to a penalty of 300% of the normal annual applicable fees per frequency unit for use of any frequency without authorisation from the Authority.

23. Type Approval

23.1. Subject to applicable Regulations, the Licensee shall submit to the Authority for type approval prior to use any application service terminal equipment to be used for the provision of the service. The Licensee shall make the submissions in a form and manner as specified by the Authority.

23.2. The Authority shall make a decision on a type approval application within 30 days from the date of submission of the application.

23.3. The Licensee shall permit any Customer to connect any type approved Terminal Equipment

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

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

24. Numbering

24.1. The Licensee shall comply with the National Numbering Plan stipulating the allocation and assignment of numbers issued by the Authority.

24.1. The Licensee shall not use any short codes or any other services listed in the National Numbering Plan without prior approval by the Authority.

24.1. The Authority may assign additional blocks of contiguous numbers in accordance with the applicable Regulations and National Numbering Plan in sufficient time to enable the Licensee as required to meet the demand for its Services.

24.1. The Licensee shall have the right to make individual number assignments to its Customers at its sole discretion.

24.1. The Authority shall from time to time consult the Licensee in respect of —

(a) the arrangements for the allocation and re-allocation of Numbers within the National Numbering Plan, as may be amended from time to time and including any developments of, additions to, or replacements of the National Numbering Plan; and

(b) the public announcements, by the Authority, regarding newly assigned block numbers for the Licensee.

24.1. The Licensee shall register its subscribers in accordance with any applicable Regulations.

25. Tariff

25.1. The Licensee shall within six (6) months from the Effective Date, submit to the Authority for approval its proposed tariff structure for the facilities service.

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

- (a) a description of the service;
- (b) terms and conditions on which the services are offered;
- (c) the methodology adopted for determining the tariffs and the justification for any changes in the methodology;
- (d) any relevant information that it proposes to publish to Network Service operators. Information to be published shall be in a form which is readily available, current and easy to understand; and
- (e) any other information as stipulated by the Authority.

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

25.4. For the avoidance of doubt, the Licensee shall provide any Facility Service at the tariffs, terms and conditions that are in accordance with the approved tariff structure so approved by the Authority and shall not depart or change the tariff structure without prior approval of the Authority.

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

25.6. The Licensee shall not change its approved tariff structure without the prior written approval of the Authority.

25.7. Subject to any applicable Regulations or Rules, the Authority shall approve or refuse to approve a tariff structure within fourteen (14) days from the date of a submission made under Clause 24.6.

25.8. The Licensee shall cause to be published on its website, any approved tariff, within seven (7) days of the tariff coming into operation.

26. Interconnection Obligations

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

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

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

26.3. The terms and conditions of any interconnection agreement entered into by the Licensee shall:

- (a) be in accordance with the terms and conditions of this Licence;
- (b) comply with the Act and any Regulations made thereunder;
- (c) not discriminate against any other application services provider;
- (d) conform with the standards referred to in clause 10 of this Licence;
- (e) not discriminate based on technology used, type of carriers being connected, or the services to be provided, unless there are technical factors requiring different standards.

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

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

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

- (g) that the interconnection arrangements shall ensure that the quality of service offered to the application services users in the Republic of Malawi is not degraded. The arrangements for interconnection between the Licensee's terminal equipment and other networks shall also ensure that there are regular exchange of technical information and network management data;
- (h) that future requirements for interconnection are facilitated in accordance with the conditions of this Licence and in consultation with other application services providers within three (3) months of a notice of such requirements being given; and
- (i) arrangements for communication with other application services providers for the provision of access to Emergency Services through a centralized call centre as designated by the Authority;

26.6. The Licensee shall file proposed terms and conditions of any interconnection agreement, including any proposed changes or amendments thereto.

26.7. The Authority may within twenty- eight (28) days of the filing of the agreement under clause 25.8 declare void any term of the agreement considered to be inconsistent with the Act or any regulation.

26.8. Where the Licensee is unable to conclude an interconnection agreement with any application services providers within three (3) months from the written request for interconnection it shall refer the matter to the Authority for determination with a copy to the other Operator.

26.9. In making its determination pursuant to clause 25.8 above, the Authority shall consider such factors that it considers necessary including terms and conditions that are:

- (a) consistent with the objectives of national ICT related policies;
- (b) not less favourable than those for any similarly licensed operator providing application services in the Republic of Malawi; and
- (c) based on commercial terms.

26.10. When requested to make its determination under clause 25.8, the Authority shall determine the terms and conditions of interconnection within thirty (30) days of receipt of the written request from the Licensee.

26.11. Any network interconnection agreement made pursuant to this clause shall be filed with the Authority and may be open to inspection by the public upon written request to the Authority.

26.12. The Licensee may at time, make a written request to the Authority to review any term(s) of the interconnection agreement. Where such request has been made, the Licensee shall supply the other party copies of the request.

26.13. The Licensee may refuse to interconnect with other application services providers if it is technically or economically not feasible to do so.

26.14. Where the Licensee refuses to interconnect with any other application services providers it shall submit to the Authority the reasons for such refusal and the Authority shall reserve the right to make an assessment of the reasons given and either uphold or overrule the decision of the licensee.

27. International and Domestic Roaming

27.1. The Licensee may provide domestic and international roaming services.

27.2. Where the Licensee elects to provide international roaming services pursuant to clause 26.1, the Licensee shall use its best endeavors to enter into International Roaming Agreements with any relevant operator in other countries.

27.3. The Licensee may negotiate and enter into Domestic Roaming Agreements with other application services provider.

27.4. Where the Licensee provides domestic roaming services to other application services providers, it shall:

- (a) not unnecessarily or unreasonably refuse to provide domestic roaming services;
- (b) provide domestic roaming services at cost based pricing; and
- (c) provide services on a non-discriminatory basis.

27.5. The Licensee shall—

- (a) provide domestic roaming Services in accordance with the applicable standards of the ITU, ETSI and other international recognized bodies; and
- (b) Conclude any agreement to provide domestic roaming services with any other operator within ninety days (90) days of receipt of a request for such service.

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

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

28. Anti-Competitive Conduct, Unfair Competition and Discrimination

28.1. The Licensee shall not engage in anti-competitive conduct which in the view of the Authority inhibits or impedes fair competition including exploiting a position of dominance such as to unreasonably gain an advantage which impedes, limits, restricts or distorts fair competition.

28.2. Where the Licensee has been determined as dominant by the Authority under the Act, it shall not engage in predatory price cutting which will be implied where:

- (a) a service is priced at less than marginal cost for two (2) consecutive months or more;
- (b) costs charged are likely to price competition out of the market or deter competitors from entering the market;
- (c) the Licensee is able to recoup the full amount of the loss incurred during the period of price cutting;
- (d) engaging in cross subsidizing where revenues for any services are used to unfairly cross subsidize the price of other services;
- (e) engaging in unfair pricing such as to reduce or eliminate competition including fixing prices for services at a level which cannot be re-sold with a profit margin to customers.
- (f) entering into exclusive arrangements which deny competitors access to services.

28.3. The Licensee, on his own or through others, shall not engage in any practice which unfairly restrict or is likely to restrict competition in the industry or which deters or restricts or is likely to deter or restrict new entrants into the market including;

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

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

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

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

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

28.8. The Licensee shall not enter into any contract with, merge with or acquire any other entity with the intention or effect of preventing, restricting or distorting competition in the provision of application services.

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

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

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

29. Significant Market Power (SMP)

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

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

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

29.3. In determining whether or not a Licensee has significant market power and in determining additional obligations to be imposed on a Licensee found to hold significant market power, the Authority shall have recourse to applicable laws and shall consult the Competition and Fair Trading Commission.

30. Universal Service (US) Obligations

30.1. The Licensee shall contribute to the Universal Service Fund (USF) through levies payable under Clause 4 and in accordance with the provisions of the Universal Service (US) Regulations.

30.2. The Authority shall from time to time determine the percentage of the levies payable to the Universal Service Fund from the levies collected under Clause 4.

31. Customer Confidentiality

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

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

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

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

31.3. The Licensee shall not use any information received in a manner that is anti-competitive towards other application service providers.

32. Monitoring

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

32.2. Unless otherwise agreed by the parties, the Licensee shall within seven (7) days upon request from the Authority provide any information or data of its application services that is necessary for the electronic monitoring system, in the manner and format specified by the Authority.

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

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

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

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

34. Health and Environmental Concerns

34.1. The Licensee shall ensure the use of energy efficient, environmental friendly terminal equipment.

34.2. The Licensee shall as much as possible use green technology in its applications.

34.3. The Licensee shall ensure that deployment of its terminal equipment conform to any applicable EMF radiation Guidelines issued by the Authority from time to time as well as other relevant guidelines or rules by recognized international bodies.

35. Ownership

35.1. The holder of this Licence must be incorporated in Malawi.

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

35.3. The Authority may revoke the Licence in accordance with clause 38 of this Licence where the licensee effects *change of shareholding that effectively affect the control of the licence* without prior approval of the Authority or fails to comply with local ownership requirements under clause 34.2.

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

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

36. Local Empowerment

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

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

37. Transfer of Licence

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

38. Licence Amendment

38.1. The Authority may amend the 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.

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

- (a) give seven (7) notice of the proposed amendment to the Licensee;
- (b) publish a notice in the Gazette stating the amendment that it proposes to make and the reasons for it, and shall give any person with an interest an opportunity to make representations concerning the proposed amendment;
- (c) give the Licensee not less than 30 days from date of publication in the Gazette to submit a response to the proposed amendment; and
- (d) give due consideration to any representations made by the Licensee or any person.

38.3. If the Licensee does not respond to the notice of the proposed amendment within the period stipulated by the Authority under Clause 37.2(c), the amendment shall take effect on the date of expiry of the said period.

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

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

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

39. Revocation of Licence

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

- (a) if the Licensee is in substantial or continuing breach of any of the terms and conditions of this licence including:
- (i) failure to achieve the networks service roll-out targets;
 - (ii) failure to achieve specified Quality of Service Standards;
 - (iii) failure to provide performance guarantee within 90 days from the date the performance guarantee became due;
 - (iv) knowingly 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) failure to pay outstanding License fees for over a period of six (6) months from the Effective Date or anniversary of the Effective Date; or
 - (vii) any other breach of the licence which is deemed substantial by the Authority taking into consideration the factors listed in Clause 38.2;

(a) if the Licensee has been declared insolvent by a competent court of law; or

(b) if the Licensee agrees in writing to cancel the Licence.

39.2. Without prejudice to Clause 38.1, 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.

39.3. Before taking any action to impose a punishment on the Licensee under 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 seven (7) days from the date of the notification under sub clause (a) to respond to the alleged breach;
- (c) in cases where the Licence may be revoked, the Authority shall allow the Licensee not less than thirty (30) days from the date of notification under with sub clause (a) above to remedy the breach or to show cause why the Licence should not be revoked; 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.
- (d) Having taken into account the licensee's representations, the nature, gravity and consequences of the breach, the Authority may take any action that it considers appropriate including revoking the Licence.

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

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

40. Regulatory Sanctions

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

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

41. Emergency Crisis Management

- 41.1. The Licensee shall within six (6) months from the Effective Date submit to the Authority for approval a Business Continuity Plan which shall include Disaster Recovery Plan (DRP), setting out the emergency crisis management team and priorities and procedures it will apply for restoring its services in the event of a disaster or national emergency.
- 41.2. The Licensee shall from time to time review and where necessary revise its Business Continuity Plan (BCP) and in such event it shall ensure that the Authority is furnished with the most current version of the Plan.
- 41.3. The Licensee shall as soon as possible provide information for the restoration of its application service.
- 41.4. The Authority may from time to time, as agreed with the Licensee, carry out Practical Tests on the Licensees application services to assess the effectiveness or functionality of the services.

42. Exercise of Powers

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

43. Force Majeure

- 43.1. Any failure by the Licensee to comply with any obligation, term or condition of the Licence shall be exempted to the extent that it is caused by an event beyond the control of the Licensee, including extreme weather conditions, fire, war or civil strife.
- 43.2. The Licensee shall use reasonable endeavours to minimize the impact on its operations of any event of this nature and to remedy, if possible, the failure.
- 43.3. The Licensee shall keep the Authority informed of any problems which may be encountered, their consequences on its operations and the steps it is taking to address them.

44. Corporate Social Responsibility (CSR)

- 44.1. The Licensee shall carry out corporate social responsibility activities as determined by the Licensee as part of its obligations under the Licence.
- 44.2. The Licensee shall include the corporate social responsibility activities carried out pursuant to Clause 43.1 in its annual report to the Authority.

45. Liability

- 45.1. The licensee shall indemnify the Authority against any losses, claims, charges or expenses, actions, damages or demands which may be made against the Authority by third parties as a result of or in relation to the activities of the Licensee, its service providers, servants, or agents in connection with the provision of the application services.
- 45.2. The Licensee may at its own option:
- (a) arrange for representation at any inquest or inquiry the subject matter of which may give rise to indemnity under Clause 44.1;
 - (b) undertake the defence of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under Clause 44.1.

46. Performance Assessment

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

47. Renewal of the Licence

- 47.1. This Licence may be renewed for such number of years as may be determined by the Authority at the expiry of its term provided the Licensee is in compliance in all material respects with its licence provisions.
- 47.2. In deciding whether to renew the licence the Authority shall take into account the following:
- (a) the satisfactory performance by the Licensee of its obligations under the Licence
 - (b) customers' satisfaction with the performance of the Licensee during the term of the licence
 - (c) any other factor deemed necessary by the Authority
- 47.3. The Licensee shall apply for renewal in writing not later than twelve (12) calendar months before the expiration of the term of its Licence.

47.4. On renewal, the Authority may amend the provisions of this Licence as necessary to take into account any changes in the industry or address any challenges experienced by the Authority and the Licensee.

48. Dispute Resolution

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

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

49. Notices

49.1. Any notice required or permitted under the terms and conditions of this Licence shall be in writing in the English language and shall be sufficiently served if delivered email. Such notice may also be delivered by hand or sent by registered mail as follows:

(a) in the case of the Authority, to:

The Director General,
Malawi Communications Regulatory Authority,
Private Bag 261,
Blantyre
Malawi
Telephone number: +265 1 810 497
Facsimile number: +265 1 812 890
E-mail address: dg-macra@macra.org.mw

(b) in the case of the Licensee, to:

The Chief Executive Officer
Nyasa Mobile Limited
P.O. Box 1363
Blantyre
Malawi
Telephone: +265 0 888 130 000
Email address: ceo@nyasamobile.com

49.2. Any notice under clause 48.1 shall be deemed, in the absence of proof to the contrary, to have been given and received at the time of delivery.

50. Miscellaneous

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

50.2. 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.

50.3. 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.

50.4. 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.

50.5. 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.

50.6. 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.

50.7. Notwithstanding clause 49.6, 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.

50.8. 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.

50.9. 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 8th day of January, 2021.

HENRY SILIKA
Acting Director General
Malawi Communications Regulatory Authority

SCHEDULE 1 – SERVICE COVERAGE

TABLE S1A – COVERAGE TARGETS AND SERVICE QUALITY						
PHASE	IMPLEMENTATION TARGET					PENALTY
		(Received Signal Strength (RxLev))		Received signal Quality (RxQual)	Q o s Targets	
		URBAN	RURAL			
PHASE ONE Effective Date + 12 months	Blantyre, Lilongwe, Mzuzu & Zomba, plus designated feeder roads up to 25 Km from each city centre.	≥-82 dBm	≥-92 dBm	0≤5	90% of t h e coverage area	\$100000 or proportion thereof in relation to number of p l a c e s unserved
PHASE TWO Effective Date + 24 months	Mulanje, Thyolo, Chikhwawa, Balaka, Mwanza, Neno, Mangochi, Ntcheu, Dedza, Kasungu, Salima, Rumphu, Karonga, Mzimba Nchalo, Makwasa, Chitakale, Luchenza, Namadzi, Liwonde, Ntaja, Ulongwe, Nkopola, Monkey Bay, Kamphata, Nthenje, Mvera	≥-82 dBm	≥-92 dBm	0≤5	90% of t h e coverage area	\$100000 or proportion thereof in relation to number of p l a c e s unserved
P H A S E THREE Effective Date + 36 months	Nsanje, Chiradzulu, Machinga, Phalombe, Mchinji, Nkhotakota, Dowa, Ntchisi, Chitipa, Nkhata-Bay Ngabu, Muloza, C h i m w a l a , M a k a n j i l a , Zalewa/Mwanza T/O, Manjawila, Lizulu, Linthipe, Namitete, Mponela, Dwangwa, Chintheche, Vizara, Likoma Island, M z o k o t o , Livingstonia, Chiweta, Nyungwe	≥-82 dBm	≥-92 dBm	0≤5	90% of t h e coverage area	\$100000 or proportion thereof in relation to number of p l a c e s unserved
PHASE FOUR Effective Date + 60 months	A minimum of 10 Km either side of the M1 and M2 roads and up to 10 Km for M3, M5 and M12 trunk roads	≥-82 dBm	≥-92 dBm	0≤5	90% of t h e coverage area	\$100000 or proportion thereof in relation to number of p l a c e s unserved