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CONTENTS PAGE

MACRA—Notice of Individual Facilities Services Licence awarded to Open Connect Limited (OCL) 123–137

GENERAL NOTICE NO. 42

Reference: CLF/01/18/OCL/IFSL

MACRA

Licence No. CFL/01/18/OCL/IFSL

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

MALAWI COMMUNICATIONS REGULATORY AUTHORITY

INDIVIDUAL FACILITIES SERVICE LICENCE

OPEN CONNECT LIMITED (OCL)

Issued pursuant to Section 39 of the Communications Act 2016

A Licence is hereby granted to Open Connect Limited (OCL) ("the Licensee") in respect of the ownership and provision of any electronic communications network facilities with effect from the 1st day of June 2018 and valid for a period of ten (10) years.

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

Notice issued at Blantyre, this 1st day of June 2018.

Dated this day 1st day of June 2018.

GODFREY ITAYE

Director General

1. Definitions

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;

"Gross Annual Revenue" means the total invoiced revenue of the Licensee derived from the provision of Facilities Services but shall not include capital expenditure recovery charges or 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 Open Connect Limited (OCL);

"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 Licencee 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 continue to provide the services from the Effective Date of the Licence.

5. Licence Fees

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

(*a*) An initial license fee of US$35, 000 (Thirty Five Thousand United States Dollars) payable in advance on or before the Effective Date.

(*b*) Annual Licence fee payable in advance on or before each anniversary of the Effective Date as follows:

(i) 1st anniversary – US$70,000 (Seventy Thousand United States Dollars)

(ii) 2nd anniversary and for the remainder of the period of the License - US$100, 000 (One Hundred United States Dollars)

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

(*d*) During the first two years from the Effective Date, all outstanding fees and levies shall be payable within six (6) months from their due dates, failing which they shall attract a five percent (5%) annual interest until full liquidation thereof. After the second anniversary of the Licence, all outstanding fees and levies shall be payable within three (3) months from their due dates, failing which they shall attract a five percent (5%) annual interest until full liquidation thereof.

(*e*) If, in any year, any licence fees remain outstanding for a period of more than six (6) months from the date such fees became due, the Licence may be revoked in accordance with Clause 26 of this Licence.

6 **Accounting Requirements**

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

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

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

6.2 The Licensee shall maintain management aceounts 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**

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

10. **Technical Standards**

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

10.2 In setting out the technical standards under Clause 10.1, the Authority shall consult the Licensee.

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

11. **Type Approval**

11.1 Subject to applicable Regulations, the Licensee shall submit to the Authority for type approval of any network equipment acquired after the Effective Date, that will be used for 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 Licensee shall within 30 days from the Effective Date submit to the Authority information regarding any network equipment used for facility services acquired before the Effective Date.

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 30 days 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 the 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 the prior approval of the Authority.

13.2 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 30 days 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 Acts of anti-competitive conduct envisaged in clause 16.1 include engaging in predatory price cutting which may be implied where—

(*a*) a service is priced at less than marginal cost for two (2) consecutive months or more;

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

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

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

(*e*) engaging in unfair pricing such as to reduce or eliminate competition including fixing prices for facilities services at a level which cannot be re-sold with a profit margin to customers.

(*f*) entering into exclusive arrangements which deny competitors access to facilities services.

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 to unduly benefit it or any associated person or use it 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 international 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 percent (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 ten percent (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 fifty percent (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.

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

25.2 Before amending any provision of this Licence, the Authority shall—

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

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

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

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

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

(*a*) rescind the amendment;

(*b*) modify the amendment; or

(*c*) proceed with the proposed amendment

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

25.6 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 specified technical standards;

(iii) failure to provide performance guarantee;

(iv) providing false information regarding the information necessary for renewal or any other information requested by the Authority pursuant to this Licence;

(v) failure to comply with lawful orders issued by the Authority pursuant to powers under this Licence;

(vi) conducting in unfair commercial trade practices;

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

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

(*b*) if the Licensee has been declared insolvent; 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 thirty (30) days from the date of notification in accordance with sub clause (a) above to remedy the breach or to show cause why it should not be punished; provided, however, that the Licensee may request additional time, not exceeding thirty (30) days, to remedy the breach and such request shall not be unreasonably denied by the Authority;

(*c*) having taken into account the Licensee's representations, the nature, gravity and consequences of the breach, the Authority may take any action that it considers appropriate including revoking the Licence.

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 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.

28. **Emergency Crisis Management**

28.1 The Licensee shall, within 90 days from the Effective Date, submit to the Authority for approval a Business Continuity Plan which shall include disaster recovery plan (DRP), setting out the emergency crisis management team and priorities and procedures it will apply for restoring its network in the event of a disaster or national emergency.

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 cause to be carried out by the Licensee Practical Tests on the Licensees facilities service to assess the effectiveness or functionality.

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

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.

33. **Performance assessment**

33.1 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. **Miscellaneous**

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

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

36.3 The Authority shall not be liable for any loss, damage, claim, charge or expense which may be incurred by the Licenceeas 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.

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

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

36.6 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.

36.7 Notwithstanding clause 36.6, the Authority may disclose information that it has been notified should be kept confidential if such disclosure is essential in order to fulfill its functions under the Act or if so directed under an order of a court.

36.8 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.

36.8 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 1st day of June 2018.

DIRECTOR GENERAL

Malawi Communications Regulatory Authority

SCheDULe 1: ROLL OUT OBLIGATIONS AND TARGETS

1. The Licensee shall install and maintain one or more Facilities as defined in this Licence in the areas and within the time periods specified in Table S1.1

2. In meeting the roll-out targets herein, the Licensee may access the Universal Service Fund (USF) which the Authority may set up from time to time in accordance with the terms and conditions set out in the USF

3. Where the Licensee fails to achieve any of the rollout targets specified in Table S1.1 it shall inform the Authority in writing stating the reasons for the failure.

4. The Authority shall assess the reasons stated by the Licensee and if satisfied with the reasons so stated, revise the roll out targets or, if not satisfied, shall provide reasons to the Licensee for its decision.

Table S1. 1

Phase	**Implementation target**
ONE **Effective Date plus 12 months**	**Coverage Area** Thyolo, Luchenza, Mulanje, Ruo, Njuli, Namadzi, Thondwe, Sadzi, Zomba, Matawale, Songani, Domasi, Malosa, Machinga, Liwonde, Ulongwe, Mangochi, Nkopola, Monkeybay, Salima, Nkhotakota, Dwangwa, Chintheche, Nkhata-bay, Mzuzu, Ekwendeni, Rumphi, Phwezi, Chilumba, Karonga, Raiply, Mzimba, Nkhamenya, Kasungu, Chinkhoma, Madisi, Mponela, Lilongwe, Dedza, Njolomole, Ntcheu, Balaka, Nkula, Mwanza, Lunzu, Blantyre.
TWO **Effective Date plus 24 months**	Chikhwawa, Nchalo, Makwasa, Phalombe, Mchinji, Neno, Chiradzulu, Namitete, Dowa,
THREE **Effective Date plus 36 months**	Ntchisi, Ngabu, Muloza, Chimwala, Makanjila, Manjawila, Vizara, Likoma Island, Chizumulu Island, Livingstonia, Chiweta, Nyungwe, Nsanje, Chitipa, Ntaja

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

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