

Communications (Postal Services) Regulations, 2022

In exercise of the powers conferred by Section 200 of the Communications Act, Cap 68:01 of the Laws of Malawi, I GOSPEL KAZAKO, Minister of Information and Communications Technology, on the advice of the Malawi Communications Regulatory Authority, make the following Regulations:

PART I - PRELIMINARY

1. Citation

These regulations may be cited as the Communications (Postal Services) Regulations 2022.

2. Application and Scope

These Regulations shall apply to postal licensees.

3. Interpretation

In these Regulations unless the context otherwise requires:

“letter” means any form of written communication or other document, article or object that is directed to a specific person or specific address and is to be conveyed other than by electronic means; and includes a packet, package or wrapper containing any such communication, document, article or object;

“Licensee” means a holder of a postal or courier license issued by the Authority

“postcard” means a card for sending a message by postal articles without an envelope, typically having a photograph or other illustrations on one

side.

“private bag” means a bag in respect to which an arrangement has been made with a public postal service provider for receipt of large volumes of postal articles;

“registered article” means a postal article registered by a Licencee before being sent and at each point along its route to safeguard against loss, theft or damage;

“Returned Letter Office” means an office designated for the return of undelivered postal articles.

“undelivered postal article” means a postal article which for any reason has not been claimed by addressee;

“UPU” means the Universal Postal Union, a specialized agency of the United Nations concerned with postal services.

PART II – LICENSING

4. Requirement for licence

- (1) A person shall not engage in the provision of postal services except under the authority of a licence granted by the Authority in accordance with the Act.
- (2) The Authority shall issue a postal licence in accordance with the requirements of the Act to a person who intends to operate a postal service.
- (3) The Authority shall prescribe the terms and conditions of each licence in accordance with the Act and these Regulations

5. License fees

A Licensee shall pay to the Authority licence fees as set by the Authority from time to time.

6. License application procedure

- (1) A person who wishes to apply for a postal licence shall do so in writing and in a manner prescribed by the Authority. .
- (2) The application shall be accompanied with
 - (a) specifications of the services to be delivered;
 - (b) the geographical area and distribution of the service and places where it will be delivered;
 - (c) a compensation policy for loss or damage of postal articles; and
 - (d) the required prescribed fee
- (3) The Authority shall from time to time issue guidelines prescribing -
 - (a) eligibility of applicants;
 - (b) license categories;
 - (c) manner of applications;
 - (d) information to accompany an application for each type of license;
 - (e) licensing procedures; and
 - (f) any other matter related to licensing.
- (5) The Authority may receive applications for postal and courier licenses at any time without waiting for any public invitation or tendering process.
- (6) An application under this regulation shall be accompanied a non-refundable application fee set by the Authority.

7. Failure to submit relevant information

- (1) Where an applicant fails to-

- (a) submit documents or information as required in regulation 6; or
- (b) appear on a date scheduled by the Authority to make for representation regarding its application;

the Authority shall not consider the application and shall inform the applicant of this fact in writing within fourteen days.

- (2) Failure to consider an application pursuant to sub-regulation (1), shall not prevent the applicant from resubmitting another application with the required information.
- (3) Resubmission of application under sub – regulation (2) shall be treated as a new application.
- (4) The Authority may at any time after the filing of an application for a licence or an application for modification or renewal of a licence or during the term of any licence, require from an applicant or licensee to provide further written statements of fact to enable it determine whether the application for a licence or application for modification or renewal should be granted or denied.
- (5) An applicant for a licence shall be bound by all terms, commitments, offers, presentations, proposals, plans and obligations stated in the application and shall ensure the accuracy of the information and representations submitted in the application.

8. Granting of Licence

- (1) The Authority shall evaluate any application submitted pursuant to regulation (6) within three (3) months from the date of receipt of the application and shall notify the successful applicants and other unsuccessful applicants the results of the evaluation and where necessary publish the results.
- (2) The Authority may grant or refuse to grant the licence to operate a postal service after considering an application in accordance with the Act.

- (3) The Authority shall invite successful applicant for negotiations before finalizing the procedures for the granting of the licence.
- (4) The Authority shall issue a licence under these Regulations subject to:
 - (a) Payment of applicable initial licence fees; and
 - (b) Publication of the licence in the Gazette.

9. Terms and conditions of license

- (1) A license issued by the Authority shall state -
 - (a) the scope of license;
 - (b) the duration of the license
 - (c) the terms and conditions under which the licence is granted;
 - (d) the postal service to be provided under the licence;
 - (e) where applicable, universal service obligations to be undertaken by the Licensee;
 - (f) roll out targets; and
 - (g) any other condition deemed necessary by the Authority.
- (2) A licence shall not be used by a licensee for a purpose other than that for which it was issued.

10. Performance Guarantee

- (1) The Authority may require a Licensee to furnish a performance bank guarantee from a bank registered in Malawi and when the Authority so requires, the licensee shall comply with the performance bank guarantee requirements.

- (2) In any case where a performance bank guarantee is required, the licensee shall furnish the bank guarantee in the form prescribed in the First Schedule to these Regulations or in other form as agreed by the Authority.
- (3) A licensee shall ensure that the guarantee is issued within thirty (30) days from the date of issue of the licence or its anniversary , whichever applies.
- (4) Where applicable, the Licensee shall renew the guarantee annually within twenty eight (28) days of the date of its expiry.
- (5) Failure to furnish the performance guarantee under this regulation by a licensee shall be deemed as a substantial breach of these Regulations and the Authority may revoke the Licence in accordance these Regulations.
- (6) In the event that the Authority imposes a penalty upon a Licensee for any breach of the Act, these Regulations, and its licence, the Authority shall, without prejudice to any of its rights or remedies have the right to draw upon the performance guarantee to partly or fully satisfy the penalty so imposed upon giving the licensee seven (7) days notice with reasons for doing so.
- (7) Notwithstanding this regulation, the Authority reserves the right to take any other action against a licensee for any breach of the Act, these Regulations and its licence.

11. Modification of licence

- (1) The Authority may modify or amend any term or condition of a postal 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.
- (2) A licensee may apply for modification or amendment of any term or condition of its licence.
- (3) Before amending a licence, the Authority shall take into account the following:

- (a) the justified interests of a licensee;
 - (b) the principles of fair competition and equality of treatment when modifying a licence; and
 - (c) the objectives of the Act.
- (4) Any application made pursuant to sub regulation (2), shall include:
- (a) A formal letter justifying the reasons for the modification or amendment;
 - (b) Application fee per amendment prescribed by the Authority;
 - (c) Any additional information or documents as may be requested by the Authority
- (5) The application by a licensee to modify the terms or conditions of a licence shall be published in
- (a) the Gazette;
 - (b) the website of the Authority; and
 - (c) a daily newspaper of national circulation.
- (6) The Authority shall amend any provision, in response to a request made sub regulation (2), subject to payment of applicable payment of amendment fees as prescribed by the Authority from time to time.
- (7) Before amending any provision of any licence issued under these Regulations, 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) the Authority shall give due consideration to any representations made by the licensee.
- (8) The Authority shall give an interested party thirty days to submit written comments on the proposed modification to the Authority.
 - (9) The Authority shall give due regard to the arguments of the licensee and the comments of interested parties when considering whether to grant the proposed modification.
 - (10) The Licensee may submit a response to the proposed amendment within thirty (30) days of the notice.
 - (11) If the Licensee does not respond within the thirty (30) day period under sub-regulation 7 , the Authority shall proceed to effect the amendment of the licence.
 - (12) 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.
 - (13) The Authority may before giving any notice of modification or amendment of licence, investigate—
 - (a) whether any matter relating to the provision of postal and courier services, operates against the public interest or is likely to do so; or
 - (b) whether the modification may remedy or prevent any adverse effects to the public relating to the provision of postal and courier services.

- (14) The Authority shall, as soon as practicable after commencing an investigation under sub-regulation 10, give notice by—
- (a) serving a copy of the notice initiating the investigation on a licensee; and
 - (b) publishing particulars of the investigation in a manner that may be appropriate for the purpose of bringing it to the attention of a person likely to be affected by it.
- (15) The Authority shall prepare a report on the investigation under sub-regulation 10 of this regulation which shall—
- (a) include conclusions on the matter investigated and reasons behind the conclusions;
 - (b) specify the negative effects against the public, where it concludes that a matter investigated is against or is likely to be against public interest, and
 - (c) specify modifications to be made to the licence where it concludes that any negative effects specified may be addressed by such amendments .
- (16) The Authority may amend a licence issued under these Regulations if it concludes basing on the report—
- (a) the matter investigated is or is likely to be against the public interest;
 - (b) the negative effects against the public may be addressed remedied or prevented by amendment the licence;
- (17) The Authority shall adhere to the procedure set out in this regulation before making an amendment to a licence following an investigation.
- (18) The Authority may grant a licensee a period of time to comply with the modification of its licence where modification causes undue hardship to the licensee.

12. Transfer of licence .

- (1) A licensee shall not transfer a licence without the written consent of the Authority.
- (2) An application by a licensee for the transfer of a licence shall be made in writing to the Authority.
- (3) An application for the transfer of a licence shall be accompanied with an application for a licence completed by the person to whom the licensee intends to transfer the licence.
- (4) The Authority shall, in considering an application for transfer of a licence, have regard to the same terms and conditions as those that apply to the grant of a new licence, but the Authority may, in its discretion, refuse to grant the application.

13. Renewal of Licence

- (1) The Authority shall, before renewing a licence issued under these Regulations, take into consideration—
 - (a) the objectives of the Act;
 - (b) the satisfactory performance by the licensee of its obligations under its ending licence;
 - (c) whether the licensee continues to be financially and technically capable of meeting its obligations under the license; and
 - (d) whether the licensee has not, during the term of its licence, contravened the provisions of the Act, these, regulations, the terms and conditions of the licence, rules issued by the Authority or any other relevant laws and regulations;
- (2) Unless otherwise provided in the licence, a licensee shall apply for renewal of its licence at least twelve months before the expiry date of its licence.

- (3) The Authority shall renew a license issued under these Regulations subject to payment of applicable renewal fees as stipulated by the Authority from time to time.
- (4) The Authority may renew a licence with minimal change to the licence conditions or replace it with a new licence or another licence with updated licence conditions that meet the need of the prevailing regulatory environment.

14. Suspension or Cancellation of a Licence

- (1) The Authority may suspend or revoke a licence on the following grounds:
 - (a) failure by the postal licensee to offer services within the roll out period specified in the licence;
 - (b) failure by the postal licensee to meet any quality of service targets prescribed by the Authority in the license or by notice in the *Gazette*;
 - (c) where a licensee is declared bankrupt or insolvent or is liquidated under any laws in force in Malawi or any other country
 - (d) failure by a postal licensee to obtain insurance cover for indemnity purposes as prescribed by the Authority in the license or by notice in the *Gazette*;
 - (e) failure by a postal licensee to pay any fees or contributions prescribed in these Regulations.
 - (f) serious or continuous breach of the licence conditions;
- (2) The Authority shall give the licensee sixty days written notice with reasons of the intended suspension or cancellation during which the licensee shall have an opportunity to make representations to the Authority.
- (3) The Authority may stipulate in the notice the period during which the licensee is required to remedy the breach that caused the suspension.

PART III - GENERAL CONDITIONS

15. Duties of Licensee on transmission of postal articles

- (1) A licensee shall have the following duties:
 - (a) carry postal articles from the sender to the intended destination
 - (b) put measures in place to safeguard postal articles against loss, theft, fraud, damage and tampering;
 - (c) exercise due care in handling and processing of postal articles to prevent loss, theft, damage and tampering;
 - (d) notify the sender within a reasonable period of its inability to deliver the postal articles on time. The notification may be made by sms, email, telephone, letter or radio announcement
 - (e) oversee the screening process of deliveries of postal articles that are channelled during the conveyance process,
 - (f) ensure that suspicious postal articles are detected and disposed of.

16. Legal possession of postal articles

- (1) A licensee shall be deemed to possess a postal article from the moment that the postal article is handed to the licensee or his agent.
- (2) A licensee ceases to be in possession of a postal article as soon as it passes to the addressee, upon delivery of the postal article.
- (3) A licensee shall be liable for damage, loss and theft of a postal article from the point of receipt until delivery of the postal article.

17. Security of postal articles

- (1) A licensee shall ensure security of postal articles in its possession by maintaining strict access control to the area where it keeps its postal articles.
- (2) The strict access control measures envisaged in sub-regulation (1) shall include ;
 - (a) installing alarms and surveillance equipment;
 - (b) limiting access to authorized personnel only;
 - (c) locking high value items; and.
 - (d) Any other measure specified by the Authority
- (3) A licensee shall maintain a register with accurate records of the amount of postal articles processed.
- (4) The register referred to in sub-regulation (3) shall be kept for a period of three (3) years.
- (5) A licensee shall develop and submit to the Authority security procedures for handling postal articles which shall include:
 - (a) regular risk assessment;
 - (b) records indicating as far as is reasonably practicable, its personnel responsible for the conveyance, receipt, collection, sorting, delivery or handling of specific postal articles that has been tampered with;
 - (c) measures to be taken, including monitoring, to prevent, detect loss or theft of, damage to, or tampered with, postal articles from or at premises, vehicles or equipment; and
 - (d) any other measure specified by the Authority.
- (6) A licensee shall submit to the Authority the security procedures referred to in sub-regulation (5) within thirty (30) days from the date of issue of licence.

- (7) The security procedures made pursuant to sub regulation (6) above, may be reviewed and updated annually.

Postal articles relating to offence

- (1) Where an authorized officer suspects that a postal article contains anything in respect of which an offence has been or is being committed, the authorized officer shall-
- (a) detain the postal article and
 - (b) by notice in writing, served personally or by post, request the addressee or the sender or any agent thereof, to attend at a designated office at a time specified in the notice and open the postal article in the presence of the authorized officer
- (2) Where a person on whom a written notice has been served under sub section (1) fails to attend or, having attended in person or a person's agent, refuses to open the postal article, the authorized officer shall open the postal article
- (3) A postal article opened under this section shall thereafter, unless it is required for the purpose of a criminal investigation or proceeding, be forwarded or delivered to the addressee with an explanation of the opening of the article

18. Dangerous/ Prohibited Goods

- (1) A licensee shall develop and display in a conspicuous place within its premises, a notice containing a list of dangerous and prohibited goods that shall not be conveyed.

19. Transmission of foreign post

A licensee shall ensure that the transmission of postal articles addressed to or received from any country outside Malawi is subject to the provisions of the UPU Constitution and Convention and any other convention or

agreement in regard to the transmission of such articles for the time being in force between the Government of Malawi and the postal authority of such country.

20. Postal articles subject to customs and excise laws

A licensee shall ensure that the postal articles handed in for transmission to or received from any place outside Malawi is accompanied by such forms, duly completed by the sender or receiver, as may be required by any relevant Customs and Excise laws of the land.

An authorized officer may detain a postal article suspected to contain goods liable to customs, excise or any other duty or tax and may, in the presence of the addressee or the addressee's representative, open and examine that postal article

Where an authorized officer does not find any goods liable to customs, excise or any other duty or tax in a postal article, the authorized officer shall deliver the postal article to the person to whom it is addressed or to the person's representative, on payment of the postal charges, if any, payable thereon.

Where an authorized officer finds goods that are liable to customs, excise or any other duty or tax, the authorized officer shall withhold the postal article from delivery until payment of the duty or tax and the postage, if any, payable thereon

21. Packing of postal articles

- (1) A licensee shall ensure that a sender of a postal article has packed and secured the article in such a manner that affords adequate protection to:
 - (a) the contents thereof:

- (b) other postal articles in the course of transmission: and
 - (c) employees of the licensee.
- (2) A licensee shall be liable for any damage caused to other postal items as a result of the dispatch of articles not acceptable for conveyance or by the non-observance of the conditions of acceptance, except in cases where there has been no fault or negligence on the part of the postal licensee.
- (3) A licensee may refuse to transmit any postal article which does not comply with sub-regulation (1).

22. Re-mailing

- (1) Unless otherwise agreed with a licensee a person shall not re-mail postal articles.
- (2) A licensee shall have a right to surcharge on delivery, any person for any postal articles found to be in contravention to sub regulation (1) above.

23. Transparent or panel envelopes

- (1) A licensee shall not transmit a postal article in envelopes with a transparent panel unless the following conditions are satisfied—
- (a) the transparent panel is parallel to the length of the envelope so that the addressee appears in the same direction and the application of the date stamp is not interfered with; and
 - (b) the transparent panel—
 - (i) is sufficiently transparent for the address to be perfectly legible even in artificial light;
 - (ii) can accommodate writing on it in ink;

- (iii) does not reflect artificial light;
 - (iv) is at least—
 - i. 40 mm from the top edge of the envelope;
 - ii. 15 mm from the right-hand edge;
 - iii. 15 mm from the left-hand edge;
 - iv. 15mm from the bottom edge;
 - (v) is not bordered by a coloured band or frame;
- (c) only the name and address of the addressee can be seen through the panel and the contents of the envelope are so folded that the address is not obscured, wholly or partly, through slipping; and
- (d) the address is legibly indicated in ink, by typewriting, or by a printing process in a deep colour.
- (2) A licensee shall not transmit postal articles in envelopes with an open panel.

24. Literature for the blind

- (1) A licensee shall transmit for free, any postal article consisting of periodicals, books and papers of any kind including unsealed letters, impressed in Braille or other special type for the use of the blind;

Provided—

- (a) the postal article conforms to the mass and sizes specified in the Second Schedule to these Regulations.
- (b) that the packing and make-up conform to the specifications applicable to printed papers and the words “Literature for the blind” are clearly marked on the upper left-hand corner of the address side; and

- (c) that they are sent by or addressed to an officially recognized institute for the blind.

25. Compensation

- (1) A License shall compensate any affected person for any loss, or damage to an uninsured postal article transmitted through its network,

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- (2) Notwithstanding sub regulation (1), a postal or courier licensee may be exempted from liability where the Authority determines that the loss or damage to an uninsured postal article was caused by force majeure events

- (3) Any compensation payable by a postal or courier licensee pursuant to sub regulation (1) above shall be done in accordance with Third **Schedule**

PART IV - DELIVERY OF POSTAL ARTICLES AND DISPOSAL OF UNDELIVERED POSTAL ARTICLES

26. Delivery of Recorded Postal articles and insured letters

- (1) A licensee shall deliver recorded postal articles or insured letters to the address specified on the postal article.
- (2) Notwithstanding sub regulation (1), a licensee may withhold the article and notify the addressee to collect at the office of delivery to ensure compliance with any other laws of the land.
- (3) The addressee of a recorded postal article or insured letter may be required to provide identification to the representative of the licensee before delivery is effected.

27. Disposal of undeliverable postal articles

A postal article_

- (a) which does not have an address or bears an illegible address or is**

- otherwise undeliverable**
- (b) the acceptance of which is refused by the person to whom it is addressed; or**
 - (c) which has been posted or is reasonably suspected to have been posted in contravention of the law;**

shall be sent to the office known as the returned letter office or any authorized branch of such office and dealt with as may be determined by the guidelines on the treatment of undeliverable postal articles

- (1) The Authority shall from time to time issue guidelines on the treatment of undeliverable items.
- (2) A licensee shall submit to the Authority for approval its procedures on the treatment of undeliverable items in accordance with the guidelines issued by the Authority within 90 days from the days from the date of issue of licence or its anniversary , whichever applies.

28. Articles to indicate return address of sender

- (1) A Licencee shall ensure that a sender of any postal article indicates on the cover, wrapper or envelope a return address.
- (2) A Licencee shall return to the sender any postal article other than a newspaper which cannot be delivered and bears on the cover thereof the name and address of such sender.
- (3) A Licencee shall return newspaper to the sender only if a request to do so appears on the wrapper.

29. Disposal of undelivered articles

- (1) In addition to the modes of disposing an undelivered postal article stipulated in section 133(3) of the Act, a Licensee may -
 - (a) dispose an undelivered postal article from another country by returning it to the country of origin.
 - (b) dispose an undelivered postal article that is subject to customs duty by delivering it to the Commissioner of Customs and Excise for disposal.

PART V – SALE AND USE OF POSTAGE STAMPS

30. License to sell postage stamps

- (1) A public postal licensee shall issue postage stamps and other philatelic instruments to denote the prepayment of postal and other service charges.
- (2) The Authority shall from time to time issue guidelines on postage stamps.

**PART VI- COMPENSATION FOR LOSS OF REGISTERED OR INSURED
POSTAL ARTICLES**

31. Compensation

Unless otherwise provided for in these Regulations a Licensee shall pay compensation in respect of the loss or damage to any postal article, which occurs during conveyance of the article.

32. Compensation not payable in certain cases

- (1) A Licensee shall not be liable to pay compensation in respect to -
 - (a) any postal article which has been posted unregistered;
 - (b) contents of a postal article which have not been declared;
 - (c) any postal article containing anything which may not be lawfully sent by post;
or
 - (d) a postal article lost or damaged as a result of the negligence or omission on the part of the sender

33. Application for compensation

- (1) A person applying for compensation under this Part shall, produce to the Licensee any of the following documents—
 - (a) the receipt given to the sender at the time the postal article was registered;
 - (b) the envelope or cover of the registered article in as nearly as possible the condition in which it was delivered by the licensee.
- (2) A Licensee may refuse to consider an application for compensation —
 - (a) unless the sender and the addressee make such affidavits or affirmations as may be required by the licensee;

- (b) if the application is made after the expiration of 12 months from the date of registration of the postal article.

34. Amount of compensation

A Licence shall pay the amount of compensation prescribed in the Third Schedule for loss of a postal article or the contents thereof.

35. Damaged postal article to be retained for inspection

In any application for compensation which relates to damage to a postal article, or to damage to, or loss of, any article contained therein, the postal article shall be retained for inspection as nearly as possible in the state in which it was delivered.

36. Verification of contents when damage apparent

Where a postal article at the time of delivery is found to have signs of damage, the recipient shall call attention to the fact of such damage and, if possible, open the article in the presence of an employee of the licensee, and, in such a case, the contents of the article shall be verified and entered in an inventory, which shall be prepared in duplicate and signed by the addressee.

37. Disposal of compensated articles

A Licensee may retain or dispose any postal article in respect to which it has paid compensation under this Part .

38. Person to whom compensation may be given

A Licensee shall pay compensation under this Part to the sender of the postal article in respect of which compensation is claimed or to the addressee of a postal article upon the production of proof that the sender has waived any claim to compensation.

39. Repayment of postage charges

A Licensee shall repay the sender any charge for postage of a postal article which is lost or the contents of which are completely destroyed and compensation has been paid for.

PART VII - MISCELLANEOUS

40. Complaints handling procedure

- (1) A licensee shall conform to complaints handling requirements as provided for in Consumer Protection Regulations made under the Act and in complaints handling guidelines issued by the Authority from time to time.
- (2) Without limiting the generality of sub-regulation (1), a licensee shall file with the Authority, its complaint handling procedures, providing a mechanism by which a consumer may make a complaint concerning its services in accordance with applicable Regulations made under the Act and its licence.

41. Enforcement

- (1) Where the Authority is satisfied that a licensee is contravening or has contravened the Act, or Regulations made under the Act or any condition of its licence, it shall commence investigations for the purpose of securing compliance with the Act, Regulation or condition in question.
- (2) Where the investigations under sub regulation (1) indicate that there is likely breach of a condition of the Act, Regulation or licence, the Authority shall make its determination on the matter.
- (3) In making its determination, the Authority—
 - (a) may provide an opportunity for public comment on the material issues, through a public consultation;
 - (b) shall, where there is a public consultation, give full consideration to the public comments received;
 - (c) shall not be bound by technicalities, legal forms or rules of evidence;
 - (d) shall act as expeditiously as a proper consideration of the matter may allow, having regard to the need to carefully and quickly inquire into and investigate a dispute and all matters affecting the merits and fair settlement of the dispute;and

- (e) shall accord an opportunity to the licensee to respond to any allegation of breach after giving it sufficient notice not less than seven days.
- (4) Notwithstanding sub-regulation (3), the Authority may at any time issue an interim order directing a licensee to stop a specific conduct or to take a specific act where the Authority is satisfied that—
- (a) there is prima facie evidence that the operator contravened the Act, Regulations made there-under or the licence;
 - (b) continuation of the operator's conduct is likely to cause serious harm to other operators, consumers or the general public; or
 - (c) the potential harm in allowing a licensee to continue its conduct outweighs the burden on the licensee.
- (5) Where the Authority determines that a licensee has contravened any conditions of a licence, the Act or Regulations made there-under, the Authority reserves the right to impose any of the following regulatory sanctions :
- (a) issue a compliance order;
 - (b) issue a cease and desist order;
 - (c) Impose a fines;
 - (d) issue warnings;
 - (e) suspend a licence;
 - (f) revoke the licence ;or
 - (g) Make any other order considered appropriate.
- (6) In imposing a fine, under sub regulation (5), the Authority shall consider any aggravating factors, including—

- (a) the gravity of the contravention;
 - (b) the duration of the contravention;
 - (c) whether the contravention resulted in injury to a person or property;
 - (e) whether the licensee acted knowingly, recklessly, or in a negligent manner;
 - (f) whether the licensee has a previous history of contraventions; or
 - (g) Whether the licensee is a repeated offender.
- (7) In imposing a fine the Authority may, in addition consider any mitigating factors including—
- (a) whether the contravention is minor;
 - (b) whether the consequence from the violation is minor;
 - (c) whether the licensee took prompt action to correct the contravention;
 - (d) whether the contravention was accidental; or
 - (e) whether the licensee voluntarily disclosed the contravention to the Authority.
- (8) The Authority shall in all cases of enforcement impose sanctions that give a significant deterrent to impermissible conduct, but the sanctions shall be proportionate to the severity of the contravention.

Made this day of 2021

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Minister of Information and
Communications Technology

First Schedule

reg. 10(2)

PERFORMANCE BANK GUARANTEE

To: The Director General

Malawi Communications Regulatory Authority

P/Bag 261

BLANTYRE

In consideration of Malawi Communications Regulatory Authority (hereinafter referred to as the "AUTHORITY") having agreed to grant Licences to

.....of

P. O. Box (hereinafter referred to as "LICENSEE") to provide (hereinafter referred to as "Licensed Services") on the terms and conditions contained in the said Licences, which inter alia provides for production of a Bank Guarantee to the extent of USD (United States DollarsOnly) (GUARANTEED AMOUNT) for provision of the services by way of security for the due observance and performance of the terms and conditions of the said Licences.

1. We.....(indicate the name and address and other particulars of the BANK) (hereinafter referred to as "the Bank") at the request of the LICENSEE hereby irrevocably and unconditionally guarantee to pay the AUTHORITY a sum of USD(United States DollarsOnly) or any part of this guaranteed amount against any loss or damage caused to or suffered or would be caused to or suffered by the AUTHORITY by reason of any breach by the said LICENSEE of any of the terms and conditions contained in the said Licences.

2. We,("the BANK"), hereby undertake to pay the guaranteed or any part thereof due and payable under this guarantee without any demur, on a written demand from the AUTHORITY stating that the amount claimed is due by way of loss or damage caused or would be caused to or suffered by the AUTHORITY by reason of breach by the said LICENSEE of any of the terms or conditions contained in the said Licences or by reason of the Licensee's failure to perform any of its obligations under the said Licences.

3. We,("the BANK"), do hereby agree that the decision of the Authority as to whether the LICENSEE has failed to or neglected to perform or discharge his duties and obligations under the terms and conditions of the said Licences and as to the amount payable to the AUTHORITY by the Bank hereunder shall be final and binding on the Bank.

4. We,("the BANK"), **DO HEREBY DECLARE AND AGREE** that:-

(a) the Guarantee herein contained shall remain in full force and effect up to -----
-----, 20..... or shall expire on the date that the full GUARANTEED AMOUNT has been paid to the AUTHORITY under the terms and conditions of this guarantee;

(b) the AUTHORITY shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Licences or to extend time of performance of any obligations by the said LICENSEE from time to time or to postpone for any time or from time to time any of the powers exercisable by the AUTHORITY against the said LICENSEE and to forbear or to enforce any of the terms and conditions relating to the said Licences and we shall not be relieved from our liability by reason of any variation or extension being granted to the said LICENSEE or forbearance act or omission on the part of the AUTHORITY or any indulgence by the AUTHORITY

to the said LICENSEE or to give such matter or thing whatsoever which under the law relating to sureties would but for this provision, have effect of so relieving us.

(c) any claim which we have against the LICENSEE shall be subject and subordinate to the prior payment and performance in full of all the obligations of us hereunder and we will not without prior written consent of the AUTHORITY exercise any legal right or remedy of any kind in respect of any such payment or performance so long as the obligations of us hereunder remain owing and outstanding.

5. We,(the BANK) undertake to pay the AUTHORITY the amount demanded within thirty days after receipt of the demand.

6. The guarantee is neither negotiable nor transferable, is restricted to the payment of the sum of money only and is limited to the GUARANTEED AMOUNT.

7. We,(the BANK) undertake not to revoke this Guarantee during its currency except with the previous consent in writing of the AUTHORITY.

8. This guarantee shall be governed by and construed in accordance with the laws of Malawi Issued by:

.....(The BANK)

Name

Qualification:

Signature:

Second Schedule**Reg.****Mass and Weight Limits**

Article	Weight	
Letters	2 kg	
Postcards		
Newspapers	2 kg	
Printed papers	2 kg	
Literature for the blind	7 kg	
Parcels	20 kg	

Third Schedule

reg. 25(3)

AMOUNT OF COMPENSATION

	Amount
In the case of a registered postal article or declared contents of a postal addressed to a place within Malawi	The registered or declared value
in the case of a registered postal article or declared contents addressed to a place outside Malawi	The actual value thereof or the maximum compensation payable therefor under the Universal Postal Convention, whichever is less.

Made this day of , 2022.

(FILE NO.)

GOSPEL KAZAKO
Minister of Information