

LICENCE

**GRANTED BY THE MINISTER UNDER THE
TELECOMMUNICATIONS ACT No 8 of 2000**

TO

[NEW ENTRANT]

FOR

**THE ESTABLISHMENT AND OPERATION OF A
FIXED PUBLIC TELECOMMUNICATIONS NETWORK**

AND

**THE PROVISION OF CERTAIN FIXED
TELECOMMUNICATIONS SERVICES**

IN

[ECTEL Member States]

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FIXED PUBLIC ELECTRONIC COMMUNICATIONS NETWORK AND SERVICES LICENCE

THE MINISTER in accordance with the Telecommunications Act [No.- of 200-], as amended, and acting upon the recommendation of ECTEL, hereby grants this Licence to [NEW ENTRANT] (hereinafter referred to as the Licensee) to establish and operate a Fixed Public Telecommunications Networks and Service within the [ECTEL Member States] as specified herein.

PART I - THE LICENCE

1. NAME OF LICENCE

- 1.1 This Licence shall be known as the [NEW ENTRANT] Fixed Public Telecommunications Networks and Services Licence 20.....

2. INTERPRETATION

- 2.1 In this Licence:

“**Act**” means the Telecommunications Act No: [-] of 200[-] and Regulations made thereunder;

“**Affiliate**” means, in relation to this Licensee, anybody corporate that is a subsidiary of this Licensee or if this Licensee and another body corporate are subsidiaries of the same body corporate or if each of them is controlled by the same person; and if the Licensee and another body corporate are affiliated with the same body corporate at the same time, they are affiliated with each other;

“**Annex**” means one or more attachments to this Licence, all of which constitutes a part of and is unique to this Licence;

“**Annual Licence Fee**” means the fee payable by the Licensee to the Commission on each anniversary of the Effective Date;

“**Authorised Frequency**” means the radio frequency that the Licensee is authorized to use pursuant to its frequency authorisation issued under this Act.

“**Broadcasting Services**” means either sound broadcasting or television broadcasting or both and includes subscriber television services;

“**Build-Out Obligations**” means the requirements to build out the Licensed Networks as set out in **Annex C** to this Licence; or as amended;

“**Change of control**”, in relation to a licensee, means when a person, alone or with other persons, takes charge of the licensee or frequency authorization holder

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- (a) by acquiring directly or indirectly including by merger –
 - (i) 50% or more of the licensee’s voting share;
 - (ii) rights or contracts which confer decisive influence on the composition, voting or decisions of organs of the licensee or frequency authorization holder;
 - (iii) while not holding the rights or entitled to the rights under a contract under subparagraph (ii), has the power to exercise the rights deriving from such right or contract;
 - (iv) through the licensee or frequency authorization holder divesting its shares;
 - (b) by any direct or indirect sale or transfer of substantially all of the assets of the licensee;
 - (c) by an approved and completed plan of liquidation of the licensee or an agreement for the sale on liquidation of the licensee;
 - (d) by the licensee determining and declaring that a change of control has occurred;

“**Commission**” means the National Telecommunications Regulatory Commission established under the Telecommunications Act as amended;

“**Conditions**” mean the conditions contained in the Licence as modified or varied from time to time;

“**Control**” means, in the case of a body corporate that a person directly or indirectly, except by way of security only, holds the shares of the body corporate carrying out voting rights sufficient to elect a majority of the directors of the body corporate.

“**Coverage obligations**” mean the geographical coverage obligations to provide the Licensed services according to the geographical coverage set out in Annex [-] to this licence.

“**Customer**” means any Person who is, or who wishes to be, provided with the Licensed Services by the Licensee;

“**Customer Equipment**” means the equipment used by the Customer for the purpose of accessing the Licensed Services;

‘**ECTEL**’ means the Eastern Caribbean Telecommunications Authority;

“**Effective Date**” means [DATE OF LICENCE]

“**Electronic Communications**” means -

a) any type of transmission and receipt of symbols, signals, writing, images and sounds, or any sort of communication on lines, by radio optical, wire, or other electromagnetic systems;

b) Includes telecommunications;

“**Electronic Communications network**” means transmission system and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, radio, optical signals, electricity distribution systems, high-voltage lines or other electromagnetic means, including networks for radio and television broadcasting and cable television networks;

“**Electronic Communication Service**” means a service provided wholly or partially by the conveyance of signals on an electronic communications network;

“**Emergency Services**” means in respect of the Licensed Area, the relevant public, police, fire and ambulance services for that territory;

“**Government**” means the Government of [ECTEL Member States];

“**Fixed Service**” means an electronic communications service that is not provided over a mobile network;

“**International Electronic Communications Service**” means an electronic communications service including telecommunications between points in the Licensed Territory and points outside the Licensed Territory or with ships at sea and vessels in coastal waters;

“**Internet**” means a global information system, consisting of high speed circuits connecting routers that transmit data in the form of Internet Protocol packets, that is logically linked together by a globally unique address, based on Internet Protocol; is able to support communications using the Transmission Control Protocol/Internet Protocol; and provides, uses or makes accessible, either publicly or privately, high level services on an electronic communications Network;

“**Internet Access**” means the provision of access to the Internet;

“**Licence**” means this Licence together with the Annexes;

“**Licence Term**” means fifteen (15) years from the Effective Date;

“**Licensed Area**” means the territory of [ECTEL Member State];

“**Licensed Networks**” means those networks detailed in **Annex B** or as operated pursuant to a licence granted under the Act;

“**Licensed Services**” means those Electronic Communication Services detailed in **Annex A**;

“**Licensee**” means [Insert name of Licencee];

“**Market**” means a market in [ECTEL Member State] of and when used in relation to an electronic service, means a market for those electronic communications services or other services that are substitutable for, or otherwise competitive with, the first-mentioned electronic communications services;

“**Merger**” means the cessation of two or more persons, at least one of which is or controls a licensee or frequency authorization holder from being distinct, whether by purchase or lease of share, amalgamation, combination, joint venture or any other method through which influence over the policy of another licensee or frequency authorization is acquired.

“**Net Neutrality**” means the principle that an electronic communications network and licensees permit all data over the internet by not interrupting, throttling, blocking or degrading such data.

“**Numbering Plan**” means the National Numbering Plan established and managed by the Commission in accordance with the Regional Plan established by ECTEL;

“**Order**” means an order issued by the Minister under the Act;

“**Quality of Service Obligation**” means the quality of service obligations set out in **Annex D to this Licence, as issued or amended** in Regulations by the Minister;

“**Regional Spectrum Management Plan**” means the spectrum plan to be developed by ECTEL in accordance with the Regulations;

“**Regulations**” means regulations issued by the Minister pursuant to Section [-] of the Act as amended;

“**Renewal Fee**” means a fee payable by the Licensee on the renewal of this Licence;

“**Retail Customer**” means a consumer other than a licensee, who is –

- (a) obliged to pay periodically or on demand for an electronic communications service; or
- (b) has entered into an agreement for the provision of an electronic communications service; any Person who is, or who wishes to be, provided with the Licensed Services by the Licensee;

“**Significant market power**”, in relation to a licensee, means that a licensee individually or jointly with others enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by affording the licensee the power to behave to an appreciable extent independently of its competitors and users;

“**Significant interest**”, in relation to an incorporated body, means a holding or interest in the company or in any holding company of the company held or owned by a person, alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly –

- (a) to control [20%] or more of the voting rights of that company at a general meeting of the company;
- (b) to a share of [20%] or more in dividends declared and paid by the company;
- (c) to a share of [20%] or more in any distribution of the surplus assets of the company;

“**Standard Customer Agreement**” means the terms and conditions on which a particular Licensed Service is provided to Customers;

“**Universal Service Obligation**” means the obligation to provide Universal Service as set out in Part II, Clause 3 of this Licence and outlined in **Annex E** or as amended in Regulations issued by the Minister.

2.2 Any word, phrase or expression used in the Licence shall, unless the context requires otherwise have the same meaning as it has in the Act or in any superseding legislation.

2.3 Words importing the singular shall include the plural and vice versa.

3. SCOPE

3.1 The Licensee is authorised subject to connect the Licensed Networks to:

- 3.1.1 any other Electronic Communications Network operated under a licence granted by the Minister in accordance with the Act;
 - 3.1.2 any Electronic Communications Network outside [ECTEL Member State];
 - 3.1.3 any earth-orbiting apparatus in accordance with applicable requirements; and
 - 3.1.4 any Terminal Equipment approved for connection in accordance with Section [-] of the Act.
- 3.2 The Licensee is hereby authorised to provide the fixed licensed services by means of the Licensed Networks using Authorised Frequency as required.
- 3.3 The Licensee is hereby authorised to establish and operate the licensed networks and to provide the licensed services to any person within the Licensed Area.
- 3.4 The Licensee is authorized to sell or lease Customer Equipment to the public and provide maintenance and repair services in connection with any such Customer Equipment provided that such Customer Equipment is of type approved under section [-] of the Act.
- 3.5 This Licence is non-exclusive and is not intended to convey proprietary rights.

4. PRECONDITION

- 4.1 The rights of the Licensee set out herein shall not take effect until the Licensee pays the Fees set out in the Act

5. DURATION AND RENEWAL

- 5.1 This Licence is granted from the Effective Date for a period of fifteen (15) years.
- 5.2 The Minister shall renew the Licence upon application by the Licensee for an additional period determined by the Minister, upon expiration of the Licence Term provided that none of the provisions of section [-] of the Act would cause the Minister to refuse a request for renewal.
- 5.3 Where the Licensee wishes to renew the Licence, the Licensee shall make a written application to the Minister, in the prescribed form, twelve (12) months prior to the expiry date of the Licence or at a later date if the Minister so determines.

- 5.4 On granting a renewal of the Licence the Minister may vary the terms of the Licence if the Minister considers it necessary to do so.
- 5.5 The provisions of section [-] of the Act relating to suspension, revocation, etc. shall apply *mutatis mutandis* to the renewal of a Licence.
- 5.6 Renewal of the Licence shall not take effect until the Licensee has paid the Renewal Fee and any other fees owed under the Licence.

6. ASSIGNMENT

- 6.1 The Licensee shall not assign or otherwise transfer this Licence or any of its rights or obligations under this Licence without the prior written consent of the Minister, subject to Clause 6.2 below.
- 6.2 The prior written consent of the Minister shall not be required by the Licensee where the assignment or transfer results from an internal reorganization of a body corporate that involves no change in the beneficial ownership thereof. The Licensee shall give prior notification to the Minister of the nature and extent of such assignment or transfer.

7. CHANGE OF CONTROL

The Licensee shall not enter into a merger agreement or any agreement which results in the change of control of the licensee, without the prior written consent of the Minister, acting on the recommendation of ECTEL. The Minister shall not unreasonably withhold his consent and shall give reasons for refusal.

8. MODIFICATION, SUSPENSION AND REVOCATION

- 8.1 This Licence is subject to modification, revocation, suspension and variation according to Sections [-] and [-] of the Act.
- 8.2 In deciding whether to agree to an amendment proposed by the Licensee, the Minister shall give due consideration to any submissions received from the Licensee and other interested parties in relation to the proposed amendment.
- 8.2.1 If after 18 months from the date of issuance of this licence the licensee does not provide full customer service for which this licence has been granted, the licensee shall forfeit this licence. Upon forfeiture of this licence under this clause, there shall be no refund of any fees, bonds payments or charges whatsoever that have been paid in respect of this granting of the licence

PART II - LICENCE CONDITIONS

1. LICENCE FEES AND MONIES OWED

- 1.1 The Licensee shall pay fees prescribed under the Act.
- 1.2 If the Licensee owes money to the Government or ECTEL in relation to fees payable in respect of this Licence, the Licensee shall be in breach of this Licence if the Licensee fails to pay that money within ninety (90) days after receiving a written notice from the Minister indicating that payment is due.

2. NETWORK BUILD-OUT AND EMERGENCIES

- 2.1 The Licence shall comply with the Build-Out Obligations as stated in **Annex C**, or as amended.
- 2.2 The Licensee shall provide access to emergency services by means of the Licensed Networks.
- 2.3 In the event of, earthquakes, floods, hurricanes and similar emergencies, the Minister may require the Licensee to provide free of charge to the Government or to any other Institution or person specific Telecommunications Services as the Minister reasonably determines are necessary in the public interest, provided that if the emergency extends beyond thirty (30) days, the Government will compensate the Licensee for any days in excess of thirty (30) days.

3. UNIVERSAL SERVICE

- 3.1 The Licensee shall fulfill the Universal Service Obligation pursuant to Section [-] of the Act, and in accordance with **Annex E** or as amended in Regulations Issued by the Minister.
- 3.2 The Licensee shall make and receive payments into and from the Universal Service Fund in accordance with Regulations or Orders issued by the Minister pursuant to Section [-] of the Act.

4. LICENSEE'S OBLIGATIONS TO CUSTOMERS

- 4.1 The Licensee shall, in accordance with the Act take such steps as are necessary to ensure that in relation to its Licensed Services each customer can reasonably and reliably have access to information services to assist Customers with queries

- relating to the Licensed Services, including installation, fault reporting, freedom of customer migration, billing and directory assistance.
- 4.2 The Licensee shall comply with the principle of net neutrality as set out in this Licence, save as is necessary for reasonable network management and in accordance with the Act.
- 4.3 The Licensee shall meet the Quality of Service Obligations as amended in Regulations issued by the Minister.
- 4.4 The Licensee shall, no later than three months after the Effective Date, establish an efficient procedure for the resolution of disputes with Customers, in accordance with the Act.
- 4.5 The Licensee shall, no later than three months after the Effective Date, submit to the Commission for approval, a form of Standard Customer Agreement containing the terms and conditions for the provision of Licensed Services to Customers.
- 4.6 The Licensee shall notify all customers of the approved terms and conditions of the Standard Customer Agreement and shall thereafter provide Licensed Services based upon the Standard Customer Agreement.
- 4.7 The Licensee may from time to time modify the Standard Customer Agreement subject to obtaining prior written approval of the Commission and shall notify the Commission and customers of such modification.
- 4.8 The Standard Customer Agreement and any modifications made under Clause 4.7 shall be compliant with the Act and other applicable laws. In the event that the Standard Customer Agreement or modifications do not comply with the Act and other applicable laws, the Commission shall instruct the Licensee to make the appropriate amendments. Such amendments shall be notified to the Customer in accordance with Clause 4.6 and shall not have retroactive effect.
- 4.9 The Licensee shall offer number portability to Customers.

5. NUMBERING AND FREQUENCY

- 5.1 The Licensee shall operate in accordance with the Numbering Plan.
- 5.2 The Licensee shall configure its network to facilitate number portability between similar networks, as and when directed by the Commission, acting on the recommendation of ECTEL.

- 5.3 Nothing in this Licence empowers the Licensee to use radio frequency spectrum that has not been granted in accordance with the Act.
- 5.4 The Licensee shall use the authorised frequency in accordance with the Regional Spectrum Management Plan and only for the purposes of providing the Licensed Services.

6. NON-DISCRIMINATION AND FAIR TRADING

- 6.1 The Licensed Networks shall be established and operated and the Licensed Services shall be provided, by the Licensee on an arm's length commercial basis with respect to all Affiliates of the Licensee.
- 6.2 In providing the Licensed Services, the Licensee shall not discriminate as between similar types of customers in relation to Licensed Services provided to those customers in the Licensed Area and shall offer the Licensed Services on the same terms and conditions to similar types of customers.
- 6.3 The Licensee shall not discriminate against any Customer using Customer Equipment, in connection with the Licensed Networks, which are not sold or leased by the Licensee, provided that any such Customer Equipment is of a type approved under the Act.
- 6.4 The Licensee shall not engage in any activities, whether by act or omission, which have, or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in any market for the Licensed Services.
- 6.5 Without limiting the generality of Clause 6.4, any such act or omission shall include:
- 6.5.1 Any abuse by the Licensee, either independently or with others, of a dominant position or of significant market power; or
 - 6.5.2 Entering into any contract or engaging in any concerted practice with any other party;
 - 6.5.3 Failing to comply with any written direction of the Commission to act or to refrain from acting in a particular manner where the effect of the act or omission has been deemed by the commission as likely to have the effect of unfairly preventing, restricting or distorting competition in the Licensed Service; or

- 6.5.4 Where the effect of the conduct defined in Clauses 6.5.1, 6.5.2 and 6.5.3 is, or is likely to be, a substantial lessening of competition in that or any other market.
- 6.6 For the purposes of Clause 6.5.1 of this Part, a Licensee may be considered as having a dominant position if the Commission has designated the Licensee as a dominant electronic communications provider. Further for the purposes of Condition 6.5.1 of this Part, a licensee may be considered to have significant market power where as a result of a market analysis the Commission comes to that conclusion.
- 6.7 A Licensee shall be considered dominant or having significant market power in respect of a particular electronic communications market or markets in [ECTEL Member State] in accordance with the terms of this licence or the governing Act.
- 6.8 A Licensee may make an application for a declaration on non-dominance in accordance with the Act.
- 6.9 A Licensee shall be considered as having significant market power in respect of a particular electronic communications market or markets in [ECTEL Member State] in accordance with this Licence after the Commission has conducted a market analysis.
- 6.10 A Licensee may where it has been declared as having significant market power, apply to the Commission to have its status reviewed.

7. INFORMATION REQUIREMENTS

- 7.1 The Licensee shall provide the Minister, the Commission and ECTEL with any relevant agreements (including agreements with any Affiliate of the Licensee) and such relevant accounting, financial, costs, technical and other information (including but not limited to a complete audited financial report) reasonably required to enable the Minister, the Commission and ECTEL to carry out their functions under the Act in the manner and at the times that the Minister, the Commission and ECTEL may request.

8. PRIVACY AND CONFIDENTIALITY

- 8.1 The Licensee shall ensure the privacy and confidentiality of information and business secrets obtained in the course of its business from any customer by establishing and implementing procedure for maintaining confidentiality of such information as set out in the Act.

9. PRE-NOTIFICATION OF CHANGES IN SHAREHOLDING

- 9.1 Subject to Clause 7, the Licensee shall notify the Minister's of any acquisition of shares, voting rights or distribution of surplus assets or change in shareholding of the Licensee by any Person if, by reason of that acquisition or change, the total number of shares in the Licensee held by the Person, together with any shares held by any nominee or trustee for that Person, immediately after the change or acquisition exceeds 20 per cent of the total number of shares in the Licensee (where such shareholding did not already exceed 20 per cent prior to that change or acquisition).
- 9.2 The Licensee shall notify the Minister in writing ninety (90) days prior to the taking effect of such change or acquisition stated above.
- 9.3 Upon receipt of the notification under clause 9.2, the Minister shall on the recommendation of ECTEL, issue in writing within 80 days, a certificate of non-objection without conditions, a certificate of non-objection with conditions or a certificate of objection.
- 9.4 The Minister shall before issuing a certificate under Clause 9.3 take into account the public interest or national security, the purposes of the Treaty establishing ECTEL and the purpose of ECTEL.
- 9.5 A licence who failure to comply with Clause 9 (notification of change in shareholding) shall be in breach of this licence.

10. RIGHTS OF ACCESS

- 10.1 The Licensee shall have the rights of access that are necessary to permit the installation and maintenance of the Licensed Networks on public rights-of-way, in public buildings and other public property, and in respect of similar works necessary for the provision of the Licensed Services as specified in Section [-] of the Act.
- 10.2 In the course of constructing or maintaining any Licensed Network of the Licensee, the Licensee may, by its offers or agents duly authorised in writing and on production of the authority, cut or remove from any street, high way or land, any tree or branch or other parts of a tree, tending to interfere with, endanger, or otherwise prejudicially affect such Licensed Networks.
- 10.3 In exercising this right, no person shall enter any land without the consent of the owner or occupier until after the expiration of fifteen days notice in writing given to the owner or occupier or posted up conspicuously upon the property.

- 10.4 If such owner or occupier, within seven days from the service or posting up of such notice, gives written objection thereto, the Licensee may not enter upon the private land in question without first having obtained the necessary Court Order.
- 10.5 Where any condition exists which is dangerous and relates to the provision of the licensed services by the Licensee, the Licensee may immediately enter upon land and take whatever reasonable action is necessary and expedient to establish safe conditions thereon.
- 10.6 Where the Licensee takes action under Clause 10.5 above, the Licensee must within three (3) days thereof, inform the owner or occupier of the land in question (either by service of a written notice on him or by posting up conspicuously a notice on such land) of the action taken.
- 10.7 In the exercise of any powers under this Clause, the Licensee shall cause as little inconvenience and damage to other persons as is reasonably practicable and the Licensee is liable to pay compensation to any person who suffers damage to this property in consequence of the exercise of such powers by the Licensee. For the avoidance of doubt, this Clause shall also apply to public lands, public buildings and other public property.

11. FORCE MAJEURE

- 11.1 Force Majeure refers to an event or accident which is beyond the control of the Licensee and includes:
- (a) acts of God, action by or against enemies of the State, riot or civil commotion;
 - (b) strikes, lock-outs and other industrial disturbances;
 - (c) wars, blockades or insurrection;
 - (d) earthquake, hurricane, flood, fire or explosion;
 - (e) outbreak of pestilence or epidemics;
 - (f) government rationing of electricity or other wartime or emergency controls imposed by Government;
 - (g) embargoes or trade restrictions;
- 11.2 The Licensee shall not be in breach of this Licence if and to the extent that it is prevented from fulfilling its obligations be reason of Force Majeure.

12. COMPLIANCE

- 12.1 The Licensee shall comply with all applicable Acts, Regulations, Directions, Orders and Recommendations, including but not limited to the Act as amended by

superseding legislation, Directions, Orders and Recommendations issued by the Minister and the Commission.

Granted by the Minister on theday of2017

Signed by:

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Minister of Telecommunication.

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ANNEX A – LICENSED SERVICES

- 1.1 The Licensee is authorized pursuant to this Licence to provide the following electronic communications services to the public:
 - (a) Domestic fixed electronic communications services
 - (b) International fixed electronic communications services
 - (c) Information services

- 1.2 For the avoidance of doubt, nothing in this Licence grants a person any rights to provide Broadcasting Services, Internet Access Services or Mobile Services unless such rights have been granted under appropriate licences in accordance with the Act or any other legislation.

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ANNEX B – LICENSED NETWORKS

- 1.1 The Licensee is authorised pursuant to this Licence to establish, own and operate all electronic communications facilities necessary for a electronic communications network or networks, whether:
- (a) domestic or international;
 - (b) using wireline or wireless technology, or any combination thereof, and
 - (c) using switched or packet technology, or any other form of transmission, or any combination thereof; or
 - (d) such facilities as are used in the provision of Licensed services by the Licensee or any other person.
- 1.2 For the avoidance of doubt, nothing in this Licence grants a person the rights to own or operate a Mobile Network that have not been granted in accordance with the Act and any other legislation.

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ANNEX C – BUILD-OUT OBLIGATIONS

1. Build Out Obligation

A Licensee shall adhere to the, build out and geographic coverage obligations set out below:

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6 +
Population coverage	10%	20%	30%	40%	50%	>60%
Geographic coverage	30%	40%	50%	60%	70%	>80%

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ANNEX D – QUALITY OF SERVICE OBLIGATIONS

The Licensee shall comply with Quality of Service Obligations as set out in Regulations governing the Quality of Service in [ECTEL Contracting State] as amended from time to time.

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ANNEX E – UNIVERSAL SERVICE OBLIGATION

The Licensee shall comply with Universal Service Obligations as set out in Regulations governing the Universal Service Obligations in [ECTEL Contracting State] as amended from time to time.

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