

LICENCE

**GRANTED BY THE MINISTER
UNDER THE
TELECOMMUNICATIONS ACT No [-] of 201[-]**

TO

[LICENSEE]

FOR THE

**LANDING OF A SUBMARINE CABLE
AND THE ESTABLISHMENT AND OPERATION
OF A
SUBMARINE CABLE TELECOMMUNICATIONS NETWORK
AND THE PROVISION OF
CERTAIN TELECOMMUNICATIONS SERVICES**

IN

[Member State]

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SUBMARINE NETWORKS 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 [Submarine Cable LICENSEE] (hereinafter referred to as the Licensee) to establish and operate a Submarine Cable Landing Telecommunications Network and Service within [ECTEL Member State] as specified herein.

PART I - THE LICENCE

1. LICENCE

- 1.1 This Licence shall be known as [Submarine Cable Landing Licensee] Submarine Landing, Networks and Services Licence [20--].

2. INTERPRETATION

- 2.1 In this Licence:

“**Act**” means the Telecommunications Act 200[-] and Regulations made thereunder as amended by superseding legislation;

“**Affiliate**” means, in relation to this Licensee, any body 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;

“**Backhaul Circuit**” means a high capacity inland circuit representing the connection between a Cable Landing Point and the existing domestic infrastructure of an Electronic Communications Provider in [Member State];

“**Cable Landing Point**” means the point at which the international submarine telecommunications cable arrives and terminates;

“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

- (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” means the conditions contained in the Licence, as supplemented or amended 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.

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

‘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 State];

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

“**Interconnection Services**” means services relating to the interconnection of the Licensee’s Licensed Networks to the network of another Electronic Communications Provider;

“**Interconnection Obligations**” means the obligations relating to the provision of Interconnection Services as set out in **Annex C**;

“**International Service**” means an electronic communications service between points in the Licensed Area and points outside the Licensed Area 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;

“**Leased Line Services**” means the provision of a part of the Licensed Networks reserved for the exclusive use of a customer without inter-exchange switching arrangements;

“**Leased Line Obligations**” means the obligations relating to the provision of Leased Line Services as set out in **Annex C**;

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

“**Licence Term**” means twenty (20) years from the Effective Date;

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

“**Licensed Networks**” means domestic and international Submarine Cable Telecommunications Networks.

“**Licensed Services**” means those Electronic Communications Services detailed in **Annex B**;

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

“**Market**” means a market in [ECTEL Member State] and when used in relation to an electronic communications service, means a market for those electronic communication 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.

“**Meet-Me-Room**” means a secure area, cage or room located in or in close proximity to the Cable Landing Point where licensed electronic communications providers may install interconnection equipment and apparatus for the purpose of interconnecting their network to the network of the licensee.

“**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.

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

“**Reference Interconnection Offer**” means a document containing the terms and conditions of access facilitation and co- location services at a submarine cable landing station for specified levels of capacity;

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

“**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) 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

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

“**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 the Customer;

“**Submarine Cable Telecommunications Network**” means an Electronic communications Network consisting of submarine electronic communications cables and terminating in a Cable Landing Point;

“**Technical Specifications**” means the full description of the Licensed Network including the location and technical specifications of the submarine electronic communications cables and Cable Landing Points, and all related facilities, the type and number of channels and the capacity thereof in [Member State], the landing points in other countries, the Backhaul Circuit in [Member State], and the Wet Link, as set out in **Annex A**;

“**Universal Service Obligation**” means the obligation to provide Universal Service as set out in Part II, Clause 3.1 of this Licence and outlined in **Annex C** or as amended in Regulations issued by the Minister.

“**Wet Link**” means that portion of the submarine electronic communications cable that is submerged and the associated equipment.

- 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.

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

3. SCOPE

3.1 The Licensee is hereby authorized 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 authorized to provide the Licensed Services by means of the Licensed Networks.

3.3 The Licensee shall have the right to provide the following Licensed Services on a non-exclusive basis by means of the Licensed Networks:

3.3.1 Access and Interconnection Services; and

3.3.2 Co-location Services;

3.3.3 Backhaul Services

3.4 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 twenty (20) years.

5.2 The Minister shall renew the Licence upon request 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 a Licensee wishes to renew the Licence, it shall apply to the Minister in writing one year (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 conditions then prevailing require such variation and it is reasonable 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 prescribed 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 [-] 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.
- 8.3 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 all 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. TECHNICAL SPECIFICATIONS AND EMERGENCIES

- 2.1 The Licensee shall comply with the Technical Specifications set out in **Annex A**.
- 2.2 The Licensee shall obtain the Commission's prior written approval together with the approvals, licences and permits required under the Laws of [Member State] in relation to any of the following changes to be made to any portion of the Licensed Network within the territorial waters of [Member State].
 - 2.2.1 any change in the location of that portion of the Licensed Network within the territory of [Member State] when such relocation involves a change in the geographic co-ordinates of latitude or longitude by as much as one second; or
 - 2.2.2 any change in the location of the Cable Landing Point when such relocation involves a change in the geographic co-ordinates of latitude or longitude by as much as one second, or when such relocation involves a change in street address.
- 2.3 The Licensee shall provide access to emergency services by means of the Licensed Networks.
- 2.4 In the event of hurricanes, earthquakes, floods and similar emergencies, the Minister may require the Licensee to provide free of charge to Government or to such Institutions or Person, such Electronic Communications 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. PROVISION OF ACCESS AND INTERCONNECTION, INFRASTRUCTURE SHARING AND CO-LOCATION

- 3.1 The Licensee shall provide access and interconnection and Infrastructure Sharing and co location in relation to its Licensed Networks on the request of any Electronic Communications Provider according to the Access and Interconnection Service Obligations set out in **Annex C** and the Act; or as amended in regulations issued by the Minister.
- 3.2 The Licensee shall provide co-location on the request of any licensed Electronic Communications Provider according to the Co-Location Services Obligations set out in **Annex C** and the Act as amended, or in Regulations issued by the Minister.

4. NON-DISCRIMINATION AND FAIR TRADING

- 4.1 Licensed Networks shall be established and operated and the Licensed Services shall be provided, by the Licensee on arm's length commercial basis with respect to all Affiliates of the Licensee.
- 4.2 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.
- 4.3 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.
- 4.4 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 relation to the Licensed Services as specified in Regulations issued by the Minister.
- 4.5 Without limiting the generality of Condition 4.3 above, any such act or omission shall include:
 - 4.5.1 any abuse by the Licensee, either independently or with others, of a dominant position; or of significant market power; or
 - 4.5.2 entering into any contract or engaging in any concerted practice with any other party;

- 4.5.3 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 Services; or
- 4.5.4 Where the effect of the conduct defined in Conditions 4.5.1, 4.5.2 or 4.5.3 is, or is likely to be, a substantial lessening of competition in that or any other market.
- 4.6 For the purposes of Condition 4.5.1 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 pursuant to Condition 4.8 hereafter.
- 4.7 An Electronic Communications provider shall be considered dominant or having significant market power in respect of a particular electronic communications market or markets in [Member State] in accordance with the terms of this licence and the governing Act.
- 4.8 A Licensee may make an application for a declaration on non-dominance in accordance with the Act. Or where it has been declared as having significant market power, apply to the Commission to have its status reviewed.

5. PRIVACY AND CONFIDENTIALITY

- 5.1 The Licensee shall ensure the privacy and confidentiality of information and business secrets obtained in the course of its business from any Person to whom it provides Licensed Services by establishing and implementing procedures for maintaining confidentiality of such information as set out in the Act.

6. INFORMATION REQUIREMENTS

- 6.1 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 or 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.

7. PRE-NOTIFICATION OF CHANGES IN SHAREHOLDING

- 7.1 The Licensee shall obtain the Minister's prior written consent to any acquisition of shares 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 that 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 License (where such shareholding did not already exceed 20 per cent prior to that change or acquisition).
- 7.2 The Licensee shall notify the Minister in writing ninety (90) days prior to the taking effect of such change or acquisition stated above.
- 7.3 Upon receipt of the notification under clause 7.2, 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.
- 7.4 The Minister shall, before issuing a certificate under Clause 7.3 take into account the public interest or national security, the purposes of the Treaty establishing ECTEL and the purpose of ECTEL.
- 7.5 A licence who failure to comply with Clause 7 (notification of change in shareholding) shall be in breach of this licence.

8. RIGHTS OF ACCESS

- 8.1 Subject to Section [-] of the Act, 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.
- 8.2 In the course of constructing or maintaining any Licensed Network of the Licensee, the Licensee may, by its officers or agents duly authorized 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. In exercising this right, no person shall enter any land without the consent of the owner or occupier until after a fifteen days notice in writing given to the owner or occupier or posted conspicuously upon the property.
- 8.3 If such owner or occupiers, after the service or posting up of such notice does not give written consent thereto, the Licensee may not enter upon the private land in question without first having obtained the necessary Court Order.
- 8.4 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.

8.5 Where the Licensee takes action under Condition 8.4 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.

8.6 In the exercise of any powers under this Clause, the Licensee shall cause as little inconvenience or damage as is reasonably practicable and the Licensee is liable to pay compensation to any person who suffers damage to his property in consequence of the exercise of such powers by the Licensee. For the avoidance of doubt, this Condition shall also apply to public lands, public buildings and other public property.

9. FORCE MAJEURE

9.1 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;

9.2 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.

10. UNIVERSAL SERVICE OBLIGATION

10.1 The Licensee shall fulfill the Universal Service Obligations pursuant to section [-] of the Act.

10.2 The Licensee shall make and receive payments into and from the Universal Service Fund in accordance with the Act or Regulations issued by the Minister pursuant to Section [-] of the Act.

11. COMPLIANCE

11.1 The Licensee shall comply with all applicable Acts, Regulations, Directions, Orders and Recommendations, including but not limited to the Act and shall comply with the Directions, Orders and Recommendations issued by the Minister and the Commission.

Granted by the Minister on theday of201[-]

Signed by

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Minister of Telecommunications

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ANNEX A

TECHNICAL SPECIFICATIONS

The licensee is authorised pursuant to this licence to land, install and operate a Submarine Cable and Submarine Cable Network, as described and specified, including the 'Wet Link', the Cable Landing Point, Technical Points of Interconnection, and Backhaul System.

Adherence to relevant standards as outlined by the International Telecommunications Union (ITU), including but not limited to, Series G Recommendations for Optical Submarine Cable Systems is required.

The licensee is to provide a detailed system description, system design, technical specifications, and system configuration including network redundancy plans for review and insertion in Annex A.

- 1) Terminating Point Interface Data Rates:
 - a. Technical Points of interconnection of the following specifications:-
 - i. SONET/SDH interfaces: T1 and E1, OC-3/STM-1, OC-48/STM-4, OC-192/STM-64, OC-768/STM-256.
 - ii. Gigabit Ethernet: 10 Mbit/s, 100 Mbit/s, 1 Gbit/s, 2.5 and 5 Gbit/s, 10 Gbit/s, 25 and 50 Gbit/s, 40 and 100Gbit/s, 200 and 400 Gbit/s.
- 2) Using the following interfacing technologies:-
 - i. Optical connectivity
 - ii. Streaming IP (Internet Protocol)
 - iii. Asynchronous Transfer Mode (ATM)
 - iv. Gigabit Ethernet
 - v. Electrical-to-optical connectivity
 - vi. Optical-to-wireless connectivity
- 3) Access for interconnection parties facilitated by the provision of a 'Meet-me Room' located at the Cable Landing Point facility. This room must have air-conditioning with temperature set to that desirable for optical equipment working.
- 4) Backup power is to be provided at the cable landing facility with a capacity for coverage of a minimum period of 72 hours continuously.

ANNEX B

LICENSED SERVICES

- 1.1 For the avoidance of doubt, nothing in this Licence grants a person the right to establish or operate an international electronic communications network or to provide international electronic communications services that have not been granted in accordance with the Act and Regulations

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ANNEX C

INTERCONNECTION AND OBLIGATIONS

1) Access and Interconnection Obligations

- a. Subject to the Act, the Licensee shall provide access and interconnection to any licensed electronic communications operator.
- b. The Licensee shall provide access to facilities and equipment to any licensed electronic communications operator requesting access and interconnection.
- c. The Licensee shall provide access and interconnection that is at least equal in quality provided to itself.
- d. The Licensee shall provide the access and Interconnection using interfacing as provided for in Annex-A subject to all applicable international technical standards and regulations.

2) Reference Interconnection Officer

- a. The holder of a submarine Cable License shall provide a reference interconnection Offer.

3) Co-Location

- a. A Licensee shall provide co-location at the submarine cable landing station, if the co-location is required by the requesting licensee to access international submarine cable capacity on any submarine cable system from the submarine cable landing station licensee,

ANNEX D

UNIVERSAL SERVICE OBLIGATIONS

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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