

*LICENCE ISSUED UNDER SECTION 24 OF
THE INFORMATION AND COMMUNICATION TECHNOLOGIES ACT 2001 (AS AMENDED)*

Licence No. C.04/2003/001

The Information and Communication Technologies Authority, in exercise of the powers conferred upon it under Section 24 of the Information and Communication Technologies Act 2001 (as amended) and of all other powers exercisable by this Authority for that purpose, hereby grants an

**INTERNATIONAL LONG DISTANCE (ILD) NETWORK
LICENCE – C.04 Licence [as per the Information and Communication
Technologies (Amendment of Schedule) Regulations 2003]**

to

Emtel Limited

(Registrar of Companies file no. 6174)

having its registered office at 1 Boundary Road, Rose Hill to establish, install, operate and maintain, on a non-exclusive basis an International Long Distance (ILD) Network for the supply of ILD service to the public, subject to the terms and conditions set out in the Licence.

Effective Date: 15 December 2003

Validity Period: 15 years (from Effective Date)

Issued by the Information and Communication Technologies Authority on the **15th** day of **December** in the year **2003** in two originals.

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Director of Engineering and Licensing
Information and Communication Technologies Authority

**INFORMATION AND COMMUNICATION TECHNOLOGIES
AUTHORITY
LICENCE**

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**INFORMATION AND COMMUNICATION TECHNOLOGIES
AUTHORITY**

INTERNATIONAL LONG DISTANCE (ILD) NETWORK LICENCE – C.04

Terms and Conditions

1. Definitions; Interpretation

1.1 The following terms shall have the meanings set forth below:

- (a) “Access Provider” means a licensed local PSTN and/or PLMN Service provider which has direct access with the Subscribers;
- (b) “Act” means the Information and Communication Technologies Act 2001 as amended;
- (c) “Authority” means the Information and Communication Technologies Authority established under section 4 of the Act;
- (d) “Bandwidth” means the width of the frequency band in the electromagnetic spectrum which is just sufficient to ensure the transmission of information at the rate, and with the quality required, under specified conditions set out in the Licence;
- (e) “Carrier provider” means a licensed corporate entity which provides the necessary network, to which the Subscriber is not directly connected and which enables communication between local and foreign Access Providers
- (f) “Effective Date” means - 15 December 2003;
- (g) “Information” means data, text, images, sounds, codes, computer programmes, software, databases or the like;

- (h) “Information and communication network” means a network for the transmission of messages and includes a telecommunication network;
- (i) “Information and Communication Service” means any Service involving the use of information and communication technologies including any telecommunication Service;
- (j) “Information and Communication Technologies” means technologies employed in collecting, generating, storing, using or sending out information including those involving the use of computers or any telecommunication system;
- (k) “Infrastructure” means such physical logistic(s) as required to provide Services allowed under the type of Licence granted;
- (l) “Interconnection” means the linking up of two information and communication networks, including telecommunication networks, so that users of either network may communicate with users of, or utilise Services provided by means of, the other network or any other information and communications network including telecommunication network;
- (m) “ILD” means International Long Distance;
- (n) “ILD Service” means a network carriage Service providing International connectivity and Services, including:
 - (i) calls originating from Mauritius to another country;
 - (ii) calls terminating in Mauritius from another country;
 - (iii) transit of calls from one country to another through Mauritius; and
 - (iv) provision of International Bandwidth.
- (o) “ITU” means the International Telecommunication Union;
- (p) “Licence” means this Licence and includes the Terms and conditions and any Annex thereto;
- (q) “Licensee” means the person/body/company to whom the Licence is granted;

- (r) “Network” means a communication transmission system that provides interconnection among a number of local or remote devices;
- (s) “PLMN” refers to Public Land Mobile Network;
- (t) “PSTN” (Public Switched [fixed] Telephone Network) means a Telecommunication Network which is used, in whole or in part, to provide Telecommunication Service, to the public, between stationary network connecting points, including the switching and transmission equipment and other infrastructure intended for interconnection to Telecommunication Networks inside the boundaries of the Republic of Mauritius;
- (u) “Regulation” means any regulation made under the Act;
- (w) “Service Provider” means any company licensed to provide an information and communication service;
- (v) “Services” means the Services which the Licensee is authorised to provide pursuant to clause 2 of the terms and conditions to this Licence;
- (w) “Subscriber” means any individual person or body corporate contracting with the Licensee to receive the Service(s);
- (x) “Subsidiary” means a Subsidiary as defined in sections 3 and 4 of the Companies Act 2001 (as amended);
- (y) “Telecommunication” means a transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception;
- (z) “Telecommunication network” means a system, or a series of systems, operating within such boundaries as may be prescribed for the transmission or reception of messages by means of guided or unguided electromagnetic energy or both.

- 1.2 For the purpose of interpreting this Licence, the Interpretation and General Clauses Act shall apply as if this Licence were an Act of Parliament. Headings and titles shall be disregarded.

Any term(s) defined or contained in this Licence shall be interpreted in a manner not inconsistent with the Act.

- 1.3 Where this Licence provides for any power of the Authority to give any direction or make any decision, it implies, unless the contrary intention appears and except for the power to revoke set forth in clause 17 below, a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or give or make again any such direction or decision.

2. Scope and Term

- 2.1 This Licence authorises the Licensee to provide, on a non-exclusive basis, an ILD Service, which is a network carriage service, providing International connectivity to the network operated by foreign Carrier Providers.

The Licensee shall be entitled to provide carriage services so that end-to-end tele-services, including voice, data, fax, video, multi-media and international bandwidth, can be provided by the latter to its Subscribers through a licensed Access Provider.

- 2.2 The Licensee shall provide Service(s) to Subscribers by establishing physical Point(s) of Presence (POP) within the territory of the Republic of Mauritius.

- 2.3 The Licensee may either set up the physical infrastructure itself or take infrastructure from network infrastructure providers (category A Licence holders) and take bandwidth from Networking Services Providers – National (category B.01 Licence holders) for connecting its Point of Interconnection (POI) with other Access Providers.

- 2.4 The Licensee shall not offer direct access to its Subscribers or connect its Subscribers directly to its network, for the provision of the Service. Subscribers' Access to an ILD network for its Services, shall necessarily be through a licensed Access Provider.

- 2.5 The Licensee shall not offer any Services not authorized under this Licence.

- 2.6 This Licence shall come into force on the Effective Date (15 December 2003) and,

unless earlier revoked or terminated pursuant to clause 17 below, shall remain in effect for a period of fifteen (15) years.

The Authority shall renew the Licence for a period not to exceed ten (10) years on such terms and conditions as may be decided by the Authority if, at least one (1) year prior to the date on which the Licence is to expire, the Licensee submits a written request for its renewal and has complied with the terms of this Licence, the Act and any Regulation made thereunder and under any other relevant law.

2.7 The Licensee shall seek and obtain approval of the Authority for its network design, configuration and scope of Service, before setting up the said network.

2.8 The Licensee shall not cause any alteration, addition or modification to be made to its approved network, without the prior express authorisation of the Authority.

3 Fees; Performance Bond

3.1 The Licensee shall pay such Licence fees to the Authority as may be prescribed. Such Licence fees include an initial fee of Rs 3,000,000/- (three million rupees) and an annual fee of Rs 2,000,000/- (two million rupees), subject to paragraphs 3.2 and 3.3.

3.2 Subject to clause 3.3, the annual Licence fee may be modified by the Authority in accordance with the Act and shall be payable, for the first time, on the date of issue of the Licence, and thereafter not later than 15 days before the anniversary date of the Licence.

3.3 Where an annual fee is in excess of Rs 100,000/- (one hundred thousand rupees), the Authority may authorise that the fee be paid in twelve (12) monthly equal instalments, the first instalment being payable upon issue of the Licence and each remaining instalment being payable at latest on the first day of each subsequent month.

3.4 Where the Licensee fails to pay the annual fee, or any instalment, as the case may be, within the time specified in clause 3.2, he shall in addition to the amount due, pay a surcharge of 10% or such other percentage as may be prescribed from time to time, under the Act or any regulation made thereunder.

3.5 Where the annual fee remains unpaid for a period of ninety (90) days as from the date the fee is due, the Authority may revoke the Licence in accordance with the Act or any regulation made thereunder or in accordance to the terms of this Licence.

- 3.6 The Licensee shall submit a valid and enforceable performance bond/bank guarantee from any registered bank in the Republic of Mauritius, for an amount of Rs. 500,000 (Five hundred thousand rupees), and for a minimum period of three years, before the signing of the Licence agreement for ensuring full compliance of Licence conditions including timely payment of Licence fee and other dues, fees and royalty for the provision of Services under this present Licence.
- 3.7 The bank guarantee/performance bond submitted to the Authority, shall be renewed at least one month before expiry.
- 3.8 The Licensee shall ensure that a valid and enforceable bank guarantee/performance bond remains effective at all material times during the validity of the Licence.
- 3.9 The Licensee shall forfeit the bank guarantee/performance bond in the event that:
- (a) the Licensee has failed to comply with the terms of this Licence, or the provisions of the Act or any Regulation thereunder, or
 - (b) the Licence is revoked pursuant to clause 17 below.

4 Provision of Services to Subscribers

- 4.1 The Licensee shall within 12 (twelve) months from the effective date, make the Service(s) available.
- The Authority may upon good cause shown extend the said period of twelve months.
- 4.2 Nothing done under or in virtue of this Licence, whether by the Licensee or its agents or proxy or any of its Subscribers, shall render the Authority liable in any manner whatsoever, towards any party.
- 4.3 The Licensee shall not refuse to satisfy any request for Service(s), by any person who is willing to accept and comply with the Licensee's terms and conditions of service and who has not previously failed to comply with such terms and conditions of service.
- 4.4 The contract between the Subscriber and the Licensee shall be governed by the laws of the Republic of Mauritius and shall be subject to the terms and conditions of this Licence.

4.5 The Licensee shall not discontinue the provision of any Service(s), either permanently or temporarily:

- (i) without the prior authorisation of the Authority; and
- (ii) without providing at least fifteen (15) days' notice to the Subscriber(s).

The Authority shall act on any request to discontinue the provision of any Service(s) within sixty (60) days of the date on which the request is made.

In the event of a temporary discontinuation or interruption of Service(s), the Licensee shall restore Service(s) as promptly as possible and shall, where any such interruption lasts for a period of time exceeding twenty four (24) hours, provide Subscribers with a credit that is at least equal to the pro rata amount that would otherwise have been due for the period during which the Licensee's Service was discontinued or interrupted.

4.6 Notwithstanding clause 4.5 above, the Licensee may discontinue the provision of any Service to any Subscriber, without the prior authorisation of the Authority, in the following circumstances only:

- (a) if the Subscriber fails to pay any amount then due and owing, or fails to comply with the terms and conditions, contractual or otherwise, pursuant to which the Service is provided;
- (b) if it is reasonably believed, that the Service is being, or is intended to be, used for a purpose that contravenes the Act or any Regulation or any other law or any regulation made under any such law or the terms of this Licence or any other applicable Licence or authorisation;
- (c) to prevent any fraud.

Where the Licensee disconnects the supply of Services to a Subscriber, the decision of the Authority in relation thereto, shall be binding.

4.7 The Licensee shall not materially modify the technical and other parameters of any Service if such modification will detrimentally affect the ability of Subscribers to use the Service(s), without the prior authorisation of the Authority, and without providing reasonable advance notice to the Subscribers.

4.8 The Licensee shall be bound by all the obligations imposed on a public operator under the Act.

5. Tariffs

- 5.1 The Licensee shall obtain the prior approval of the Authority regarding the tariffs for the supply of Services.
- 5.2 The Licensee shall make its tariffs, available for inspection at each of its business offices.

6. Billing

- 6.1 The Licensee shall, either by itself, or through an Access Provider, provide billing services to its Subscribers. For this purpose, suitable technical/commercial arrangements may be mutually agreed upon with the Access Provider.
- 6.2 The Licensee shall make provision for itemised billing.
- 6.3 The Licensee shall also maintain the necessary records for the billing cycles as may be specified by the Authority from time to time.
- 6.4 The Licensee's network shall provide for an inter-carriage charge billing system based on the generation of call data records.
- 6.5 All complaints of Subscribers in regard to billing shall be addressed/handled in accordance with such guidelines, orders, regulations or directives as may be issued by the Authority from time to time.

7. Telecommunication Facilities

- 7.1 The Licensee shall ensure that all facilities which it uses for the provision of Services meet such standards as may be prescribed from time to time by the Authority.
- 7.2 The Licensee shall ensure that no facilities which it uses for the provision of Services, interfere with facilities that are part of, or attached to, any other telecommunication networks.
- 7.3 The Licensee shall comply with the National Numbering Plan prescribed by the Authority at its own costs and within such delay as may be prescribed by the Authority.
- 7.4 The Licensee shall ensure that the equipment it uses for the provision of its Service(s) is capable of supporting selection facilities (such as call by call selection or pre-selection), as may be prescribed by the Authority.

7.5 The Licensee must obtain the approval of the Authority before commissioning the network. The Licensee shall extend all facilities, including provision of test equipment, to the Authority for testing the network.

8. Roll-out Obligation

The Licensee shall within three years of the Effective date of this Licence, provide direct connectivity to international traffic hubs abroad, in order to facilitate the termination of traffic to any connectable global destination.

9. Quality of Service

The Licensee shall maintain quality of service in accordance with best-specified international practices and shall comply with any direction of the Authority in this respect.

10. Interconnection

The Licensee shall establish interconnection between its Point of Interconnection – POI - (Gateway), with all Access Providers, PSTN and PLMN Licensees under the Act, to make its Service(s) available to all telecommunication Subscribers in Mauritius.

11. Frequency authorisation

11.1 The Licensee shall obtain the necessary clearance from the Authority for the use of frequency for the provision of its Service(s) and shall be liable to payment of all related charges and fees.

11.2 The Licensee shall at no time use or encroach upon any frequency not assigned to it by the Authority and shall not cause any interference to any Service on any frequency bands.

12. Universal Service Fund

The Licensee shall, pursuant to Section 21 of the Act, contribute to the Universal Service Fund such amount by such date as may be prescribed by the Authority.

13. Records and Reports

13.1 Without prejudice to any other provision of this Licence, the Licensee shall:

- (a) maintain records; and
- (b) furnish information,

in such manner and form and at such times as the Authority may reasonably require for the purpose of verifying the Licensee's compliance with this Licence, the Act and any Regulation, as well as for statistical purposes.

13.2 The Licensee shall permit any Officer of the Authority to inspect:

- (a) any written or oral data or records or such other material as may be necessary; and
- (b) any installation, apparatus or premises at any reasonable time

for the purpose of verifying whether or not the Licensee is supplying Services which it is duly licensed to provide, in accordance with the Act and the terms and conditions of this Licence.

13.3 Except in the case of confidential data such as commercially sensitive or proprietary information or trade secrets which have clearly been marked as confidential by the Licensee, information furnished by the Licensee to the Authority may be made available to the public at the discretion of the Authority.

The Authority may make available to the public, information that has been marked as confidential by the Licensee if, after providing the Licensee with notice and an opportunity to object, the Authority determines that such information does not constitute commercially sensitive or proprietary information or trade secrets.

14. Competitive Conduct of the Licensee

14.1 The Licensee shall not abuse any dominant position that it may have, whether directly or indirectly, in the provision of the Services, or engage in anti-competitive practices:

- (a) to eliminate or substantially injure another Licensee supplying any Telecommunication Service in a market in which the Licensee supplies or offers to supply the Services;

- (b) to prevent or attempt to prevent the entry of another Licensee into a market in which the Licensee supplies or offers to supply the Services or any other related market; or
 - (c) to prevent another Licensee from competing in a market in which the Licensee supplies or offers to supply the Services or any other related market.
- 14.2 The Licensee shall not unjustly or unreasonably discriminate between or extend any unjust or unreasonable preferences to Subscribers, including its own Subsidiaries.
- 14.3 The rates, terms and conditions pursuant to which the Licensee provides the Services or other Services and facilities to a Subsidiary shall be the same as those which it offers to other Subscribers.
- 14.4 The Licensee shall not enter into or give effect to any agreement, arrangement or understanding which has the purpose, or which has or is likely to have the effect, of significantly lessening competition in any market for the supply of the Services.
- 14.5 The Licensee shall not enter into or give effect to any agreement, arrangement or understanding with another Licensee which is anti-competitive in nature.

15 Confidentiality

Subject to the Act or any Regulation or any other relevant law or regulation made under such law, the Licensee shall institute effective procedures, and shall use its best efforts, to guarantee the inviolability and confidentiality of communications. The Licensee shall institute procedures to maintain the confidentiality of business secrets and personal data concerning third parties, which the Licensee acquires in the course of its business, and shall provide to the Authority, on request, information with respect to its procedures regarding the maintenance of the confidentiality of such information.

16. Liability

The Authority shall in no case be liable in respect of any claim or damage arising out of any act done or any omission on the part of the Licensee.

17. Revocation; Termination

17.1 The Authority may, in accordance with the Act and any governing Regulation, revoke this Licence where the Licensee has failed to comply with any provision of the Act or any regulation under the Act or any of the terms and conditions of this Licence.

17.2 Before revoking this Licence pursuant to clause 17.1 above, the Authority shall provide the Licensee with sixty (60) days' written notice of its intention to do so, specifying the grounds for the proposed revocation. The Licensee shall be given the opportunity to show cause why the Licence should not be revoked and shall have the right of representation and be afforded the right to adduce evidence.

17.3 This Licence shall terminate:

- (a) upon expiry of the term set out in clause 2.6 above; or
- (b) upon the dissolution or bankruptcy or winding up of the Licensee; or
- (c) on the effective date of a new Licence or authorisation replacing this Licence; or
- (d) on the revocation of this Licence pursuant to clause 17.1 above.

17.4 The expiry or termination of this Licence for any of the reasons set out at clause 17.3 shall not preclude the Authority from recovering any fees, charges, penalties, or other dues, arising under this Licence, prior to such termination or revocation.

18. Modification of Licence

The Authority reserves the right to modify this Licence as may be required for the safeguard of public interest or national security.

19. Compliance with the Act, Directions and Decisions

The Licensee shall comply with all directions issued and decisions made by the Authority under the Act, forthwith or within such delay as may be specified, without prejudice to the Licensee's rights to seek review under the law.

20. Excused Non-Performance

The Licensee shall be excused from performance under this Licence only to the extent that, and for so long as, such performance is substantially hindered or prevented by war, civil disturbances, strikes, natural disasters, fire, explosion, other public emergencies or any other occurrence beyond the reasonable control of the Licensee. The Licensee shall notify the Authority in writing of such non-performance within seven (7) days of the commencement of such occurrence and within twenty-four (24) hours of the end of such occurrence.

21. Assignment; Transfer; Other Changes

21.1 This Licence shall not be assigned, transferred, mortgaged, encumbered or sold without the express approval of the Authority.

21.2 The Licensee shall not transfer, assign, mortgage, encumber, sell or otherwise dispose of twenty per cent (20%) or more, any of its interests or shares, without the prior approval of the Authority.

21.3 The Licensee shall notify the Authority of any change in its registered address or address for correspondence within seven (7) days of the date of such change. In default, correspondence addressed at the last known address shall be deemed to have been properly and validly addressed.

22. Exceptional monitoring for state security reasons

22.1 The Authority reserves the right to exercise such monitoring of the Services, at all material times, as may be required for national security reasons or in the public interest. The Licensee shall, in such a case, make available to the Authority all monitoring facilities at its own cost.

22.2 The Licensee shall make available on demand to the Authority, full access to the gateways, switching centres, transmission centres, servers and routers for technical scrutiny and for visual and/or operational inspection.

22.3 The Licensee shall ensure protection of privacy of communication and ensure that unauthorized interception of messages does not take place.

22.4 In case any confidential information is divulged to the Licensee for proper implementation of the Licence, it shall be binding on the Licensee and its employees, servants and/or préposes to maintain its secrecy and confidentiality.

22.5 The Licensee shall provide to the Authority location details of gateways, switching centres, transmission centres, servers and routers and other devices, as may be required. The location of these centres shall not be changed, without prior approval of the Authority.

22.6 The Licensee shall maintain all records including called and calling numbers, date, duration and time, with regard to the communications exchanged on its network for a period of one year or such other period as directed by the Authority.

23. Surrender of Licence

23.1 The Licensee shall surrender this Licence to the Authority within two (2) weeks of its termination or any extension thereof or its revocation pursuant to clause 17 above or as may be provided by law.

23.2 The Licensee may surrender this Licence at any time with the express approval of the Authority and subject to the settlement of any outstanding dues.

24. Compliance with other Legal Provisions

The Licensee shall, at all times, during the term of this Licence, including any renewals thereof, comply with all applicable laws and regulations.

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