



INFORMATION AND COMMUNICATION TECHNOLOGIES AUTHORITY (ICTA)

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AMENDED ISP LICENCE/SURRENDER OF LICENCE

1. Whereas the former Mauritius Telecommunications Authority issued to the licensee, **MAURITIUS FREEPORT DEVELOPMENT COMPANY LTD.**, an ISP Licence under the Telecommunications Act 1998;
2. Whereas the said licence was issued for a period of 15 years with effect from **09 April 2001**;
3. Whereas the Telecommunications Act 1998 has been repealed and replaced by the Information and Communication Technologies Act (Act no. 44 of 2001);
4. Whereas section 51(1) of the Information and Communication Technologies Act provides that every act done by, or in relation to, the Mauritius Telecommunications Authority established under the Telecommunications Act 1998 shall be deemed to have been done, or commenced, as the case may be, by or in relation to the ICT Authority established under the Information and Communication Technologies Act.
5. Whereas section (51)(2)(a) of the Information and Communication Technologies Act enacts a presumption that every person licensed under the Telecommunications Act 1998 shall be deemed to have been licensed for 3 months after the coming into operation of the said Act (Act no. 44 of 2001) and further casts on such licensee the duty to surrender his license after the said period of 3 months;
6. Whereas the said licensee, **MAURITIUS FREEPORT DEVELOPMENT COMPANY LTD.** has surrendered the license issued to it by the former Mauritius Telecommunications Authority;

NOW THEREFORE

The ICT Authority, in the exercise of the powers conferred on it by section 24 of the ICTA (Act no. 44 of 2001) hereby issues to the said **MAURITIUS FREEPORT DEVELOPMENT COMPANY LTD.** the following licence subject to the conditions set out hereunder.

INFORMATION AND COMMUNICATION TECHNOLOGIES AUTHORITY

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**INFORMATION AND COMMUNICATION TECHNOLOGIES
AUTHORITY**

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

Licence No. SL6/2003/03

The Information and Communication Technologies Authority, in exercise of the powers conferred upon it by 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

INTERNET SERVICES PROVIDER LICENCE

to

MAURITIUS FREEPORT DEVELOPMENT COMPANY LTD.

having its registered office at *Freeport Zone 5, Mer Rouge, Port Louis* to offer Internet Services, subject to the terms and conditions set out in the Schedule hereto.

This Licence shall be deemed to have come into force on the Effective Date, and unless earlier revoked or terminated pursuant to section 17 of the Schedule, shall remain in effect until **08 April 2016**.

Issued by the Information and Communication Technologies Authority on the **07th** day of **May** in the year **2003** in two originals.

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For Director of Engineering/Licensing
Information and Communication Technologies Authority

INFORMATION AND COMMUNICATION TECHNOLOGIES AUTHORITY

INTERNET SERVICES PROVIDER LICENCE

SCHEDULE

Terms and Conditions

1. Definitions; Interpretation

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

- (a) “Act” means the Information and Communication Technologies Act 2001 as amended.
- (b) “Affiliate” means any entity:
 - (i) of which the Licensee is a Subsidiary; or
 - (ii) in whose share capital the Licensee, or any other entity of which the Licensee is a Subsidiary, or any of their respective Subsidiaries has a direct or indirect interest exceeding twenty (20) percent;
- (c) “Authority” means the Information and Communication Technologies Authority;
- (d) “Cyber Laws” means laws which regulate the Cyberspace;
- (e) “Cyberspace” means the non-physical terrain created by computer systems including anything related to the Internet;
- (f) “Effective Date” means *09 April 2001*
- (g) “Infrastructure” means the physical logistic required to provide Internet Services;

- (h) “Internet Service” means a service that provides Subscribers with a means of accessing the Internet and does not include Internet Telephony or VoIP services;
- (i) “IP address” means an identifier for a computer or device connected to the Internet, which according to the **IPv4** standard, consists of a 32-bit numeric address written as a dotted quad, that is four numbers separated by periods. Each number can take values between 0 and 255;
- (j) “Internet Protocol” (IP) means a standard consisting of a set of rules governing digital data communication on the Internet;
- (k) “Internet Service Provider” (ISP) means a person who provides other persons with access to the Internet;
- (l) “ITU” means the International Telecommunication Union;
- (m) “Licence” means this Licence and includes the Schedule thereto and its Annex;
- (n) “Licensee” means the person/body/company described in the licence as the person/body/company to whom the licence is granted;
- (o) “Multi-homed” means a feature between ISPs which are interconnected for the benefit of the Internet subscriber and enables an interconnected ISP to take over and to ensure a continued service in the event of a failure of another such ISP;
- (p) “Non portable IP address” means an IP address which is not understood by an ISP other than the one which has issued the IP address, unless the latter is re-addressed;
- (q) “Public Telecommunication Service” means a Telecommunication Service provided to the public;
- (r) “Regulation” means any regulation made under either the Telecommunications Act 1998 or the Act;

- (s) “Routing table” means the list of routes available at each node of a network which contains status information on each such route;
- (t) “Service Provider” means any person who is in the business of providing the Services to the public;
- (y) “Services” means the services authorised pursuant to section 2.1 of the schedule;
- (v) “Subscriber” means a natural or legal person who has entered into a contract with the Licensee for the Services;
- (w) “Terminal Equipment” means any equipment or device, directly or indirectly connected to a network termination point on a Public Telecommunication Network, and which is used to send, process or receive communications services, or objects.

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. With the exception of the terms defined specifically in section 1.1 above, which are intended to supplement and add further specificity to the definitions contained in the Act, any other capitalised terms used in this Licence shall have the same meaning as they have in the Act or in any Regulation.

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 below and except for the power to revoke set forth in section 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 offer to supply Internet Services, as morefully described in Section 1.1(h), throughout the entire territory of the Republic of Mauritius.

- 2.2 In exercising these rights the Licensee may, subject to section 3.6 below, contract with Service Providers to supply the Services.
- 2.3 The licensee shall not offer any telecommunication services not authorized under this licence including internet telephony or VoIP Services.
- 2.4 This Licence shall come into force on the Effective Date and, unless earlier revoked or terminated pursuant to section 17 below, shall remain in effect for a period of fifteen (15) years.

Subject to section 5.5 below, 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 on such term, contract as the Authority may determine.

- 2.5 The Licensee shall provide the Services over the Public Telecommunication Network and may use any technology, or combination of relevant technologies, protocols or procedures that the Licensee deems appropriate.

3. Provision of Services to Subscribers

- 3.1 The Licensee shall:
- (a) within 12 (twelve) months from the effective date or such later date as may be specified by the Authority, make the service(s) available to the public, and
 - (b) inform the Authority, in writing and on the same day, of the start of operations of the Service(s) whereby the Services are available to the public.
- 3.2 Nothing done under or in virtue of this licence shall render the Authority liable in any manner whatsoever. The Licensee shall execute contracts with Subscribers in standard form. The contract between the subscriber and the Licensee shall be governed by the law and provisions of this Licence.

- 3.3 Subject to section 3.4 below, the Licensee shall not permanently discontinue the provision of any Service without providing advance notice of 15 days to affected Subscribers. In the event of a temporary discontinuation or interruption of any Service, the Licensee shall restore service as promptly as possible.
- 3.4 The Licensee may discontinue the provision of any Service to any individual Subscriber:
- (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 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; or
 - (c) to prevent any fraud.
- 3.5 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, without the prior authorisation of the Authority, which authorisation shall not be unreasonably withheld, and without providing reasonable advance notice to the Subscribers.
- 3.6
- (a) Where the Licensee contracts with Service Providers to supply the Services, the Licensee shall enter into a written agreement with such Service Providers.
 - (b) The Service Providers shall be made aware of and shall be required, by the Licensee in any agreement with such Service Providers, to comply with the terms of this Licence, and the provisions of the Act and any Regulation.
 - (c) Subject to paragraph (d) below the Licensee shall assume full responsibility for any act or omission of any Service Provider in relation to the supply of the Services by that Service Provider.

- (d) The liability of the Licensee in relation to any Service Provider shall be limited to acts or omissions which constitute a breach of the terms of this Licence, or the provisions of the Act or any Regulation or other provision of the law.
- (e) The Licensee shall, upon becoming aware of any act or omission in breach of the terms of this Licence, or the provisions of the Act or any Regulation or law, by any Service Provider, immediately notify the Authority and take immediate remedial action.

4. Tariffs

- 4.1 The Licensee shall be free to fix its own tariffs for the supply of the Services and shall communicate such tariffs and any changes thereto, to the Authority, at least 5 working days before the date on which such tariffs become effective.
- 4.2 The Authority, may, where it considers any tariff to be anti-competitive, investigate the matter and give directions in accordance with the Act.
- 4.3 No tariff shall be applicable where it has been expressly disallowed by the Authority;
- 4.4 The Licensee shall make its tariffs, and all amendments thereto, available for inspection at each of its business offices.

5. Fees; Performance Bond

- 5.1 The Licensee shall pay such licence fees to the Authority as may be prescribed. Such licence fees shall include an annual fee of Rs 50,000/-.
- 5.2 The annual licence fee may be modified by the Authority in accordance with the Act and shall be payable on or before the **24th March** of each year. Any payment effected after this date shall be subject to a penalty of 10% or such other percentage as may be prescribed from time to time.

- 5.3 Notwithstanding the above, the Licensee shall pay such other fees of general applicability as may be prescribed or specified in the Act or any Regulation.
- 5.4 The Licensee's failure to pay any fee due under this Licence or the Act or any Regulation in a timely manner shall be subject to such penalties and compensating interest as may be prescribed or specified in any relevant law or regulation.
- 5.5 If this Licence is renewed pursuant to section 2.4 above, the Licensee shall pay a renewal fee (the "Renewal Fee") as prescribed by the Authority. The Renewal Fee shall be paid in Mauritian Rupees.
- 5.6 The performance bond submitted to the Authority on *05 May 2003* shall be renewed for consecutive periods of 3 years 15 days before expiry.
- 5.7 The Licensee shall forfeit the performance bond in the event that:
- (a) the Licensee has not started operating the Services within the period specified in section 3.1, or
 - (b) the Licensee has failed to comply with the terms of this Licence, or the provisions of the Act or any Regulation, or
 - (c) the Licence is revoked pursuant to section 17 below.

6. Competitive Conduct of the Licensee

- 6.1 The Licensee shall not abuse any dominant position that it may have in the provision of the Services, or in any other relevant market, 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 or any other related market; or

- (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.

For the purpose of this section, anti competitive practices shall be deemed to include but not limited to cross subsidisation and technological manipulation.

6.2 Where the Authority determines that the Licensee has a dominant position in any relevant market:

- (a) the Licensee shall not unjustly or unreasonably discriminate between, or extend any unjust or unreasonable preferences to, similarly situated licensees, including its own Affiliates; and
- (b) the rates, terms and conditions pursuant to which the Licensee provides the Services or other services and facilities to an Affiliate shall be the same as those which it offers to other Licensees.

6.3 The Licensee shall not enter into to give effect to any agreement, arrangement or understanding which has the purpose, or has, or is likely to have, the effect, of significantly lessening competition in any market for the supply of the Services or of any product used in connection with Telecommunication Services.

6.4 The Licensee shall not enter into or give effect to any agreement, arrangement or understanding with another licensee which has the purpose, or has, or is likely to have, the effect of fixing, controlling or maintaining the prices for, or any discount, allowance, credit or rebate for, the Services or any product used in connection with the Services.

7. Non-discrimination

7.1 Unless otherwise authorised or compelled by law or this Licence, the Licensee shall not:

- (a) unreasonably discriminate between or among similarly situated Subscribers; or
- (b) make the provision of the Services to any Subscriber conditional on the acquisition of other Services, unless necessary for technical or operational reasons.

7.2 For the purposes of section 7.1(a) above, the Licensee may make reasonable allowances for the differing costs of providing the Services where the difference results from:

- (a) the different quantities of the Services supplied; or
- (b) the different transmission capacities of the Services supplied; or
- (c) the different lengths of time for which the Services are supplied; or
- (d) the different performance characteristics of the Services supplied; or
- (e) the different times of day or days of the week during which the Services are supplied.

8. Access to Telecommunication Networks

8.1 The Licensee shall be entitled to enter into Access agreements with entities entitled to interconnect pursuant to Section 29(1) of the Act, as interpreted by the Authority from time to time.

Subject to the requirements of the Act and any Regulation, the Licensee and the other party shall negotiate between themselves the technical and commercial conditions pursuant to which Access shall be provided.

The Licensee shall advise the Authority of the initiation of such negotiations and, if the negotiations are successful, shall, provide the Authority with a copy of the Access agreement and such information relating to the Access agreement as the Authority may require within fourteen (14) days of the signature of the Access agreement.

8.2 Where either party to the negotiations referred to in section 8.1 above requests the Authority to attend or assist in the Access negotiations, the Authority shall comply with such request in accordance with the Act.

9. Records and Reports

9.1 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.

9.2 The Licensee shall permit any Authorised Officer of the Authority to inspect any installation, apparatus or premises at any reasonable time for the purpose of verifying whether the Licensee is supplying Internet Services in accordance with the Act and this Licence.

9.3 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.

9.3 The Licensee shall provide to the Authority such information as it may require for any purpose under the ICT Act within 14 days or by such later date as may be specified by the Authority.

10. 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.

11. 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 persons, which the Licensee acquires during the course of its business, and shall provide to the Authority information regarding its procedures with respect to maintaining the confidentiality of such information on request.

12. Telecommunication Facilities

12.1 The Licensee shall ensure that all facilities which it uses for the provision of, and all Facilities used by Subscribers to access its Services meet such standards as may be prescribed from time to time by the Authority, or standards recommended by the ITU or any other international body, for which the standards are homologated by the Authority.

12.2 The Licensee shall ensure that no facilities which it uses for the provision of, or which its Subscribers use to access its Services, interfere with facilities that are part of, or attached to, Telecommunication Networks.

12.3 The Licensee shall not restrict or subject to any conditions, the right of Subscribers to use any and all Terminal Equipment that has been authorised (type-approved) by the Authority to access the Licensee's Services, except to protect the integrity of its Services or to prevent fraud or similar conduct.

12.4 The Licensee shall co-operate with the Authority in preventing the use of unapproved Terminal Equipment.

13. IP Address; Routing Management

- (a) It shall be the responsibility of the Licensee to obtain its required IP addresses, and register its corresponding domain names with the competent authorities as specified by the law.
- (b) The Licensee shall provide access to its facilities, to other similarly situated licensees on mutually agreed conditions.
- (c) The Licensee shall exchange routing information with other similarly situated licensees by implementing appropriate protocols to allow its customers to be Multi-homed.
- (d) The Licensee shall facilitate the routing of Non portable IP addresses.
- (e) The Licensee shall collaborate with other similarly situated licensees to constantly update and facilitate the updating of Routing tables.
- (f) The Licensee shall facilitate the local routing of Internet traffic to the facilities operated by similarly situated licensees.

14. Cyber Laws

- 14.1 The Licensee shall take all the necessary measures to discourage and prevent the flow of content which is grossly offensive or of an indecent, obscene, or menacing character or infringing intellectual property rights and international and domestic cyber laws.
- 14.2 The Licensee shall be liable and assume the sole responsibility for any claim or damage arising out of default of the licensee or any breach of section 14.1 above.

15. 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 on the matter.

16. 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.

17. Revocation; Termination

17.1 The Authority may, in accordance with the Act and any governing Regulation revoke this Licence if the Licensee has failed to comply with the provisions of the Act or the terms of this Licence.

17.2 Before revoking this Licence pursuant to section 17.1 above, the Authority shall provide the Licensee with fifteen (15) days' written notice of its intention to do so, specifying in detail 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 present evidence disputing the grounds for the proposed revocation as identified by the Authority.

17.3 This Licence will terminate:

- (a) upon expiry of the term set forth in section 2.4 above or any renewal thereof; or
- (b) upon the dissolution or bankruptcy or winding up of the legal person 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 section 17.1 above.

18. Compliance with Directions and Decisions

The Licensee shall comply with all directions issued and decisions made by the Authority under the Act, without prejudice to the Licensee's rights to seek review under the Act and such other laws as may be applicable.

19. Excused Non-Performance

The Licensee shall be excused from performance under this Licence only to the extent, and only 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 which would be a justified reason beyond the reasonable control of the Licensee. The Licensee shall notify the Authority in writing of such an occurrence within seven (7) days of the commencement of such occurrence and within twenty-four (24) hours of the end of such occurrence.

20. Assignment; Transfer; Other Changes

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

A substantial ownership interest in, or control (whether *de jure* or *de facto*) of the Licensee shall not be transferred, assigned, mortgaged, encumbered or sold without the prior approval of the Authority. An ownership interest of more than twenty (20) percent of the stock of the Licensee shall be deemed substantial.

The Licensee shall ensure that any participation by a non citizen, in its shareholding, is in accordance with the relevant laws of Mauritius.

The Authority shall issue a decision with respect to all such requests to transfer, assign, mortgage, encumber or sell within thirty (30) days of the date on which the request is initially made.

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.

21. Exceptional monitoring for state security reasons

The Authority reserves the right to exercise such monitoring of the services 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 his own cost.

22. Surrender of licence

- (a) The Licensee shall surrender this Licence to the Authority within four (4) weeks of its termination or any extension thereof or its revocation pursuant to section 17 above.

- (b) 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.