

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

Licence No. A/2009/001

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 a

**NETWORK INFRASTRUCTURE PROVIDER LICENCE – A
Licence [as per the Information and Communication Technologies (Amendment of
Schedule) Regulations 2003]**

to

NATIONAL COMPUTER BOARD

having its registered office at *7th floor, Stratton Court, La Poudrière Street, Port Louis*, **to own and provide network infrastructure facilities to service providers and not to the public, subject to the terms and conditions set out in this Licence.**

Effective Date: 22 May 2009

Validity Period: 15 years (from Effective Date)

Issued by the Information and Communication Technologies Authority on the **22nd** day of **June** in the year **2009** in two originals.

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Executive Director

Information and Communication Technologies Authority

INFORMATION AND COMMUNICATION TECHNOLOGIES AUTHORITY
LICENCE
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INFORMATION AND COMMUNICATION TECHNOLOGIES AUTHORITY

NETWORK INFRASTRUCTURE PROVIDER LICENCE – A

Terms and Conditions

1. Definitions; Interpretation

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

- (a) “Access” means access by a person to the facilities and services of a licensee excluding his network for the purpose of providing information and communication services. It covers, under this Licence access to physical infrastructure including buildings, ducts, towers and masts, etc.;
- (b) “Access agreement” means an agreement which sets out the terms and conditions pursuant to which a licensee grants access to a person where the services operated by the latter do not require the interconnection of physical networks.
- (c) “Act” means the Information and Communication Technologies Act 2001 as amended;
- (d) “Authority” means the Information and Communication Technologies Authority established under section 4 of the Act;
- (e) “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;
- (f) “Effective Date” means – 22 May 2009;
- (g) “Infrastructure” means such physical logistic(s) as required to provide services allowed under this Licence;
- (h) “ITU” means the International Telecommunication Union;
- (i) “Licence” means this Licence and includes the terms and conditions and any Annex thereto;

- (j) “Licensee” means the person/body/company to whom this Licence is granted;
- (k) “Network” means a communication transmission system that provides interconnection among a number of local or remote devices;
- (l) “PLMN” refers to Public Land Mobile Network;
- (m) “PSTN” (Public Switched [fixed] Telephone Network) means a Telecommunication Network which is used, in whole or in part, to provide Telecommunication Services, 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;
- (n) “Regulation” means any regulation made under the Act;
- (o) “Service Provider” means any person licensed to provide an information and communication service;
- (p) “Services” means the services which the Licensee is authorised to provide under this Licence;
- (q) “Subscriber” means any duly licensed service provider contracting with the Licensee to receive Service(s);
- (r) “Subsidiary” means a Subsidiary as defined in sections 3 and 4 of the Companies Act 2001 (as amended);
- (s) “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;
- (t) “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 16 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 own and provide access to network infrastructure facilities or services, other than its network, to duly licensed service providers and not to the public, on a non-exclusive basis, throughout the territory of the Republic of Mauritius.

- 2.2 The network infrastructure facilities shall include earth stations, cables, wireless equipment, towers, posts, ducts, and pits used in conjunction with other communication infrastructure and distribution facilities including facilities for broadcasting distributions.

- 2.3 This Licence does not authorise the Licensee to offer any of the other services covered by the first Schedule to Section 24 of the ICT Act 2001 (as amended), including the provision of bandwidth.

- 2.4 The Licensee shall not offer any services/facilities not authorized under this Licence.

- 2.5 This Licence shall come into force on the Effective Date (22 May 2009) and, unless earlier revoked or terminated pursuant to clause 16 below, shall remain in effect for a period of fifteen (15) years.

The Authority shall renew this Licence for a period not to exceed ten (10) years on such terms and conditions as it may decide where, 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 Regulations made thereunder and under any other relevant law.

- 2.6 The Licensee shall seek and obtain the approval of the Authority for its network infrastructure design and scope of service, before setting up the network infrastructure facilities. The Authority shall convey to the Licensee its decision within sixty (60) days of receipt of a complete application.
- 2.7 The Licensee shall not cause any alteration, addition or modification to be made to its approved network infrastructure facilities, without the prior express authorisation of the Authority.

3 Fees

The Licensee has been exempted from payment of licence fees by the Honourable Minister of Information and Communication Technologies in accordance with section 3(2) of the Act.

4 Provision of Network Infrastructure Facilities

- 4.1 The Licensee shall within 18 (eighteen) months from the effective date, make the Service(s)/facilities available.

The Authority may upon good cause shown extend the said period of eighteen (18) 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)/ Facilities, by any duly licensed Service Provider 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 law and shall be subject to the terms and conditions of this Licence.
- 4.5 The Licensee shall not discontinue the provision of access to its network infrastructure facilities or services, either permanently or temporarily:
- (i) without the prior authorisation of the Authority; and

(ii) without providing at least fifteen (15) days' notice to its Subscribers.

The Authority shall act on any request to discontinue the provision of access any network infrastructure facilities or service within sixty (60) days of the date on which the request is made.

In the event of a temporary discontinuation or interruption of service, the Licensee shall restore service as promptly as possible.

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 an unlawful;
- (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, 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

The Licensee shall obtain the prior approval of the Authority regarding the tariffs for the supply of Services.

6. Facilities

- 6.1 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.
- 6.2 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.
- 6.3 The Licensee shall comply with all the requirements of the Annexes to the Convention on International Civil Aviation.
- 6.4 The Licensee shall ensure that it obtains the necessary approval, rights of ways and clearances applicable under the Town and Country Planning Act.
- 6.5 The Licensee shall observe all governing provisions of the Occupational Health and Safety Act, as applicable.
- 6.6 The Licensee must obtain the approval of the Authority before commissioning the network infrastructure facilities.
- 6.7 The Licensee shall ensure that no technical impediments, especially with regard to radio engineering, exist before allowing joint utilisation of its infrastructure and facilities.
- 6.8 Every antenna system shall comply with such identification directive as may be issued by the Authority.

7. 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.

8. Access

- 8.1 The Licensee shall provide access to its infrastructure and facilities to duly licensed telecommunication service providers under the Act, in accordance with the law.

8.2 Pursuant to and Subject to section 29 of the Act, the Licensee shall enter into Access Agreements with duly licensed service providers requesting such access, no later than sixty (60) days after the date on which a request for access is received and where the requested access is technically feasible.

The Licensee and the party requesting access shall, in accordance with the requirements of the Act and any Regulation, negotiate the technical and commercial conditions pursuant to which access shall be granted, between themselves.

The Licensee shall advise the Authority of the initiation of such negotiations and shall, if the negotiations are successful, 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.

8.3 Either party to the negotiations referred to in clause 8.2 above may request the Authority to attend or assist in the Access negotiations.

8.4 If no Access Agreement has been executed within sixty (60) days of the commencement of negotiations, either party to the negotiations may request the Authority to intervene. The Authority shall act as arbitrator in settling the terms of the Access Agreement. The arbitration shall be conducted in accordance with the Act. The costs of the arbitration shall be borne equally by the parties.

8.5 The Licensee shall deal with all Service Providers entitled to request for access under the Act, including its own Subsidiaries, on a non-discriminatory basis with respect to the terms and conditions pursuant to which access is provided, and with respect to installation, maintenance and repair.

8.6 The Licensee shall provide physical co-location for the network equipment of those entities entitled to request access under the Act, as determined by the Authority in the absence of mutual agreement between the parties.

The Licensee shall have the right to recover the reasonable costs (including a reasonable margin) of providing such physical co-location from the service provider requesting for access.

8.7 The Licensee shall not be required to grant a request for access if it can demonstrate that the requested access is being or is intended to be used for a purpose that contravenes the Act or

any Regulations made thereunder, or any other law or regulation made under any such law, or the terms of this Licence or any other applicable Licence or authorisation.

9. 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.

10. Records and Reports

10.1 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.

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

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

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

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.

11. Competitive Conduct of the Licensee

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

- (a) to eliminate or substantially injure another Licensee supplying network infrastructure facilities in a market in which the Licensee supplies or offers to supply such facilities;
- (b) to prevent or attempt to prevent the entry of another Licensee into a market in which the Licensee supplies or offers to supply its facilities 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 its facilities or any other related market.

11.2 The Licensee shall not unjustly or unreasonably discriminate between, or extend any unjust or unreasonable preferences to Subscribers, including its own Subsidiaries, where applicable.

11.3 The rates, terms and conditions pursuant to which the Licensee provides the Services or other services and facilities to any of its Subsidiary, where applicable, shall be the same as those which it offers to other Subscribers.

11.4 The Licensee shall not enter into or 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 network infrastructure facilities.

11.5 The Licensee shall not enter into or give effect to any agreement, arrangement or understanding with another Licensee which is anti-competitive in nature.

12. 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.

13. Natural Disasters; Emergencies

- 13.1 The Licensee shall develop, under the direction of the Authority, a national emergency and preparedness plan. In developing such a national emergency and preparedness plan, the Licensee shall co-operate, as directed, with other Licensees.
- 13.2 In the event of a natural disaster, the Licensee shall give priority, as directed by the Authority, to services needed by Government and relief agencies.

14. Rights of Way and Access to Land

- 14.1 The Licensee shall, pursuant to Section 27 of the Act, have the right to enter property and establish Facilities on, over, under and across any land, structure or road.
- 14.2 The Licensee shall co-operate with other Public Operators to the extent necessary to coordinate the installation of Facilities on, over, under and across any public or private land or road.
- 14.3 If any part of the Licensee's physical infrastructure crosses above or falls or is blown onto any overhead power wire or power apparatus, the Licensee shall take all reasonable steps to secure such infrastructure to the satisfaction of the owner of the power wire or power apparatus concerned.

15. Liability

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

16. Revocation; Termination

- 16.1 The Authority may, in accordance with the Act and any governing Regulation revoke this Licence if the Licensee has failed to comply with any provision of the Act or any regulation under the Act or any of the terms of this Licence.
- 16.2 Before revoking this Licence pursuant to clause 16.1 above, the Authority shall provide the Licensee with ninety (90) 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 present evidence disputing the grounds for the proposed revocation as identified by the Authority.

16.3 This Licence shall terminate:

- (a) upon expiry of the term set out in clause 2.5 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 16.1 above.

16.4 The expiry or termination of this Licence for any of the reasons set out at clause 16.3 shall not preclude the Authority from recovering any fees, charges, penalties, or other dues, arising under this Licence, prior to such termination or revocation.

17. Modification of Licence

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

18. 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 by the Authority, without prejudice to the Licensee's rights to seek review under the law.

19. Excused Non-Performance

The Licensee shall be excused from performance under this Licence only to the extent, 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.

20. Assignment; Transfer; Other Changes

- 20.1 This Licence shall not be assigned, transferred, mortgaged, encumbered or sold without the express approval of the Authority.
- 20.2 The Licensee shall not transfer, assign, mortgage, encumber, sell or otherwise dispose of 20% or more, any of its interests or shares, without the prior approval of the Authority.
- 20.3 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.

21. Surrender of Licence

- 21.1 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 16 above or as may be provided by law.
- 21.2 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.

22. 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.

