Information & Communication Technologies Authority (ICTA)

ICTA Level 12, The Celicourt - 6, Celicourt Antelme Street, Port Louis, Republic of Mauritius
Tel: (230) 211 5333/4 - Fax: (230) 211 9444 - E-mail: icta@intnet.mu - Website: www.icta.mu

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

Licence No. B.01/2015/002

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

NETWORKING SERVICES PROVIDER (NATIONAL) LICENCE – B.01 Licence [as per the Information and Communication Technologies (Amendment of Schedule) Regulations 2003]

to

LES RELAIS LTD

(Registrar of Companies file no. 3866)

having its registered office at Dr Lucien De Chazal Lane, John Kennedy Avenue, Floreal **to provide networking services for national traffic, such as provision of bandwidth to service providers and not to the public, subject to the terms and conditions set out in this Licence**

Effective Date: 19 January 2015

Validity Period: ***15 years (from Effective Date)***

Issued by the Information and Communication Technologies Authority on the 16th day of **June** in the year **2015** in two originals.

Information & Communication Technologies Authority
Level 12
The Celicourt
6, Sir Celicourt Antelme St
Port Louis

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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

NETWORKING SERVICES PROVIDER (NATIONAL) LICENCE – B.01

Terms and Conditions

Definitions; Interpretation

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

"Act" means the Information and Communication Technologies Act 2001 as amended;

"Authority" means the Information and Communication Technologies Authority established under section 4 of the Act;

"Bandwidth" means the amount of resource (e.g. octets per second) available to users to ensure the transmission of information with an agreed quality;

"Effective Date" means – 19 January 2015;

"Infrastructure" means such physical logistic(s) as required to provide services allowed under this Licence;

"ITU" means the International Telecommunication Union;

"Licence" means this Licence and includes the terms and conditions and any Annex thereto;

"Licensee" means the person/body/company to whom this Licence is granted;

"Network" means a communication transmission system that provides interconnection among a number of local or remote devices;

"PLMN" refers to Public Land Mobile Network;

"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;

"Regulation" means any regulation made under the Act;

"Service Provider" means any person who provides an information and communication service, including telecommunication;

"Services" means the services which the Licensee is authorised to provide under this Licence;

"Subscriber" means any service provider contracting with the Licensee to receive Service(s);

"Subsidiary" means a Subsidiary as defined in sections 3 and 4 of the Companies Act 2001 (as amended);

"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;

"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 provide networking services for national traffic such as the provision of bandwidth to service providers and not to the public, on a non-exclusive basis, throughout the territory of the Republic of Mauritius.

2.2 The Licensee may either setup the physical infrastructure itself or take infrastructure from network infrastructure providers.

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 (19 January 2015) 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; 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 1,000,000/- (one million rupees) and an annual fee of Rs 1,000,000/- (one million rupees), subject to clause 3.2.

3.2 The annual Licence fee may be modified by the Authority in accordance with the Act and shall be payable 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 the Licensee fails to pay the annual fee 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.

3.4 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.

3.5 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 with Licence conditions including timely payment of Licence fee and other dues and fees for the provision of services under this Licence.

3.6 The bank guarantee/performance bond submitted to the Authority shall be renewed at least one month before expiry.

3.7 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.

3.8 The Licensee shall forfeit the bank guarantee/performance bond in the event that:

(a) the Licensee has failed to comply with any of the terms of this Licence, or any provision of the Act or any Regulation thereunder, or

(b) the Licence is revoked pursuant to clause 16 below.

4 Provision of Networking Services

4.1 The Licensee shall within 18 (eighteen) months from the effective date, make the Service(s) 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), 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 its 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 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. Frequency authorisation

8.1 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.

8.2 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.

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.

10.2 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.

10.3 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.

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 co-ordinate 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.