



**INFORMATION AND COMMUNICATION  
TECHNOLOGIES AUTHORITY (ICTA)**

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

**Licence No. D/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

**VALUE ADDED SERVICES LICENCE – D Licence [as per the Information and Communication Technologies (Amendment of Schedule) Regulations 2003]**

to

**PLAYSMS LTD.**

**(Registrar of Companies file no. 080024)**

having its registered office at 112 Brown Squard Avenue, Vacoas **to provide value added network application services to the public.**

**Effective Date: 10 March 2009**

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

Issued by the Information and Communication Technologies Authority on the **10<sup>th</sup>** day of **March** 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

## VALUE ADDED SERVICES LICENCE – D

### 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) “Authority” means the Information and Communication Technologies Authority established under section 4 of the Act;
- (c) “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 the quality, required under specified conditions set out in the Licence;
- (d) “Cyber Laws” means laws which regulate the Cyberspace and includes international laws applicable in the Republic of Mauritius;
- (e) “Cyberspace” means the non-physical terrain created by computer systems including anything related to the Internet;
- (f) “Effective Date” means **10 March 2009**;
- (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) “ITU” means the International Telecommunication Union;
- (l) “Licence” means this Licence and includes the Terms and conditions and any Annex thereto;
- (m) “Licensee” means the person/body/company to whom the Licence is granted;
- (n) “Network” means a communication transmission system that provides interconnection among a number of local or remote devices;
- (o) “PLMN” refers to Public Land Mobile Network;
- (p) “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 the interconnection to Telecommunication Networks inside the boundaries of the Republic of Mauritius;
- (q) “Regulation” means any regulation made under the Act;
- (r) “Service Provider” means any company licensed to provide an information and communication service;
- (s) “Services” means the Services which the Licensee is authorised to provide pursuant to clause 2 of the terms and conditions of this Licence;
- (t) “Subscriber” means any individual person or body corporate contracting with the Licensee to receive the Service(s);
- (u) “Subsidiary” means a Subsidiary as defined in sections 3 and 4 of the Companies Act 2001 (as amended);
- (v) “Value Added Services” means enhanced telecommunication services that act on the format, or content, or code or protocol of information, and that are provided over public or private networks which, in one way or another, add value to the basic carriage, usually through the application of computerized intelligence, for instance,

reservation systems, bulletin boards and information services. “Value Added Network Services” shall have the same meaning as “Value Added Services”.

- 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, on a non-exclusive basis, Value Added Services to the public.

- 2.2 The Licensee shall not offer any Service(s) not authorised under this Licence.

- 2.3 This Licence shall come into force on the Effective Date (10 March 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 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.

- 2.4 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.

- 2.5 The Licensee shall not cause any alteration, addition or modification to be made to its approved network, without the prior express written 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 shall include an initial fee of Rs 50,000/- (fifty thousand rupees) and an annual fee of Rs 50,000/- (fifty thousand 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, 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 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 or any regulation made thereunder or in accordance with the terms of this Licence.
- 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 of Licence conditions including timely payment of Licence fee and other dues, fees and royalty for the provision of Services under this present Licence.
- 3.6 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 the terms of this Licence, or the provisions of the Act or any Regulation thereunder, or
  - (b) the Licence is revoked pursuant to clause 16 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 to the public.

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 reasonable 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 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.

4.6 Notwithstanding clause 4.5 above, the Licensee may discontinue the provision of any Service(s) 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 maintain the necessary records for the billing as may be specified by the Authority from time to time.

6.2 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 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. 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.

## **9. Access to Telecommunication Networks**

9.1 Subject to the requirements of the Act and any Regulation, where the Licensee proposes to enter into an access agreement with other party, the parties 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.

9.2 Either party to the negotiations referred to in Clause 9.1 may request the Authority to attend or assist in the Access negotiations in accordance with the Law.

## **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 determined by the Authority.

## **11. Records and Reports**

11.1 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.

11.2 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;
- (b) any installation, apparatus or premises at any reasonable time

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

11.3 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.

## **12. Competitive Conduct of the Licensee**

12.1 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 any anti competitive practices:

- (a) to eliminate or substantially injure another Licensee supplying Data Services 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.

- 12.2 The Licensee shall not unjustly or unreasonably discriminate between, or extend any unjust or unreasonable preferences to Subscribers, including its own Subsidiaries.
- 12.3 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.
- 12.4 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 the Services.
- 12.5 The Licensee shall not enter into or give effect to any agreement, arrangement or understanding with another Licensee which is anti-competitive in nature.

### **13. 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 in 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.

### **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 which infringes intellectual property rights of third parties or applicable international and domestic cyber laws.
- 14.2 The Licensee shall be solely liable for any claim or damage arising out of default of the licensee or any breach of section 14.1 above.

## **15. Liability**

The Authority shall in no case be liable in respect of any claim or damage arising out of any act done by, or any 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 at least fourteen (14) 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.

16.3 This Licence shall terminate:

- (a) upon expiry of the term set out in clause 2.3 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 or national security.

**18. Compliance with Directions and Decisions**

The Licensee shall comply with all directions issued and decisions made by the Authority under the Act, as 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 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**

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 ensure that any change of ownership regarding its equity share holding or interest is effected in accordance with the laws of Mauritius and shall notify the Authority within 14 days of the occurrence of any such change in ownership.

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. Exceptional monitoring for state security reasons**

21.1 The Authority reserves the right to exercise such monitoring of the Service(s), 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 his own cost.

- 21.2 The Licensee shall ensure protection of privacy of communication and ensure that unauthorized interception of messages does not take place.
- 21.3 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.
- 21.4 The Licensee shall provide to the Authority location details of Point of Presence and the location of these centres shall not be changed, without prior approval of the Authority.
- 21.5 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 as directed by the Authority.

**22. Surrender of licence**

- 22.1 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.
- 22.2 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.

**23. 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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