

**Annex B – Conditions of a Class Operating Licence
Requiring Registration**

DATED

200[9]

**CLASS OPERATING LICENCE REQUIRING
REGISTRATION (the "Licence")**

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DEFINITIONS AND INTERPRETATION

1.1 In this Licence, except in so far as the context otherwise requires:

“Access” is the making available of Facilities and/or Carriage Services, to an Other Operator, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing Electronic Communications Services;

“Communication” means a communication for transmission by a Network;

“Communications Act” means the Communications Act 2009;

“Communications Data” means Signals other than Traffic Data;

“Communications Licence Fee” means the fee payable under section 91 of the Communications Act;

“Condition” means a condition in this Licence;

“End-User” in relation to a publicly-available Carriage Service, means: (a) a person who, otherwise than as a Licensee, is a Subscriber for that service; (b) a person who makes use of the service otherwise than as a Licensee; or (c) a person who may be authorised, by a person falling within sub-paragraph (a), so to make use of the service;

“Equipment” includes any equipment, machinery or device and any wire or cable and the casing or coating for any wire or cable;

“Financial Year” means the Financial Year of URCA, as defined in the URCA Act;

“Free Broadcast Service” means Broadcasting that is intended for reception in an unencrypted, intelligible form and free of charge;

“Material Change” means any significant change to the Licensee or the Electronic Communications Services provided by the Licensee, as may be detailed by URCA in any guidelines or other Documents;

“Other Operator” means a person other than the Licensee who is authorised to operate a Network or provide a Carriage Service under a licence awarded or an exemption granted by URCA;

“Public Pay Telephone” means a telephone available to the general public, for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes;

“Public Service” means any Carriage Service that is provided so as to be available for use by members of the public;

“Radiocommunications” means the transmission, emission or reception of messages, sound, visual images or Signals using electromagnetic waves which are propagated in space and having frequencies of lower than 3,000 GHz;

“Records” means data or information showing the extent of any Network or service actually provided to an End-User and any data or information used in the creation of a bill for an End-User;

“Register” means the register of persons granted this Licence and maintained by URCA pursuant to section 28 of the Communications Act;

“Regulatory and Other Measure” means any Document issued by URCA that sets out rules or procedures with which the Licensee must comply, including but not limited to any determination, adjudication, regulation, order, direction, decision, statement, instruction, notification; and technical rules and standards;

“Residential Customer” means, in relation to the Licensee, a Subscriber of that Licensee who is a natural person who uses the Licensee’s services and who contracts at a place of residence;

“Small Business Customer” means, in relation to the Licensee, a Subscriber of that Licensee who is: (a) not an Other Operator; and (b) a Subscriber in respect of an Undertaking carried on by him which has an annual turnover that does not exceed two hundred and fifty thousand dollars;

“UAT Act” means the Utilities Appeal Tribunal Act; and

“URCA Act” means the Utilities Regulation and Competition Authority Act 2009.

1.2 For the purpose of interpreting the Conditions in this Licence:

1.2.1 except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in:

- (a) the Licence, and otherwise
- (b) the Communications Act, and otherwise
- (c) the URCA Act, and otherwise
- (d) the UAT Act;

1.2.2 for ease of reference, in this Licence terms defined in the Communications Act have been capitalised;

1.2.3 subject to Condition 1.2.1, where there is any conflict between the provisions of this Licence and the Communications Act, the provisions of the Communications Act shall prevail;

1.2.4 references to Conditions, paragraphs, subparagraphs and appendices are to Conditions, paragraphs, subparagraphs of and to the appendices to the

Licence, as modified from time to time in accordance with this Licence and the Communications Act;

- 1.2.5 a Document will be incorporated into and form part of the Licence if it is referred to in this Licence and a reference to a Document is to a Document as modified from time to time;
- 1.2.6 headings and titles used in this Licence are for reference only and shall not affect its interpretation or construction;
- 1.2.7 references to any law or statutory instrument include any modification re-enactment or legislative provisions substituted for the same;
- 1.2.8 use of the word “include” or “including” is to be construed as being without limitation;
- 1.2.9 expressions cognate with those referred to in this Licence shall be construed accordingly;
- 1.2.10 words importing: (i) the singular only shall include the plural and vice versa; (ii) the whole shall be treated as including a reference to any part; and (iii) any gender shall include all other genders; and
- 1.2.11 reference to persons shall include firms or companies.

GRANT AND DURATION OF THE LICENCE

- 1.3 The Licensee is granted this Licence from the earlier of the following:
 - 1.3.1 the date that they are added by URCA to the Register;
 - 1.3.2 the date that they are deemed to be added to the Register under section 23(4) of the Communications Act.
- 1.4 No person that is a Licensee under an Individual Operating Licence, whether as a Named Licensee or a Subsidiary Undertaking notified to URCA under section 21(1) of the Communications Act, or is entitled to be a Licensee under an Individual Operating Licence, shall be a Licensee under this Licence.
- 1.5 This Licence shall continue in force in respect of each Licensee until the earlier of the following events:
 - 1.5.1 the Licensee is removed from the Register by URCA;
 - 1.5.2 the Licence is revoked pursuant to section 27 of the Communications Act.

SCOPE OF THE LICENCE

- 1.6 URCA grants to the Licensee:
 - 1.6.1 a right to provide any Carriage Services; and
 - 1.6.2 the rights to establish, maintain and operate one or more Networks,

within, into, from and through The Bahamas, subject to the Conditions of this Licence, Regulatory And Other Measures of and the provisions of the Communications Act.

- 1.7 Subject to all other applicable laws and regulations of The Bahamas at the time being in force, the Licensee undertakes to comply with the Conditions of this Licence, Regulatory And Other Measures and the provisions of the Communications Act. Conditions 1.9 and 1.10 below list the restrictions that apply to the Licensee under operating under this Licence.
- 1.8 Nothing in this Licence shall relieve the Licensee of any legal requirement to obtain any additional consents, permissions, authorisations or licences that are necessary for the establishment, operation, maintenance or improvement of the Network, the provision of the Carriage Services or the exercise of the Licensee's rights or discharge of its obligations under the Licence, including obtaining any licences required under the Communications Act for the use of Radiocommunications.

RESTRICTIONS

- 1.9 In accordance with section 84 and Schedule 2 of the Communications Act, the Licensee shall not have the benefit of land access set out in Part XIV of the Communications Act.
- 1.10 The Licensee shall not offer an Electronic Communications Service to End-Users for which a corresponding Access or Interconnection service to an Other Operator, including but not limited to call termination, is required.

PAYMENT OF FEES AND CONTRIBUTIONS

- 1.11 The Licensee shall pay to URCA the following fees and contributions notified by URCA from time to time in accordance with the Communications Act:
 - 1.11.1 any URCA Fees;
 - 1.11.2 the communications licence fees notified by URCA on behalf of the Minister;
 - 1.11.3 the contribution to the Universal Service Fund set by URCA from time to time in accordance with the Communications Act; and
 - 1.11.4 the Tribunal Fee payable pursuant to Schedule 3 of the UAT Act.
- 1.12 For each Financial Year of the Licence, any annual fees payable by the Licensee under section 92(1)(c) of the Communications Act shall be based upon:
 - 1.12.1 the last available audited accounts of the Licensee; or
 - 1.12.2 if the Licensee does not have any available audited accounts or those accounts do not include any Relevant Turnover, accounts certified by an accountant in possession of a practising certificate issued by the Bahamas Institute of Chartered Accountants; or
 - 1.12.3 if the Licensee does not have any available accounts certified by an accountant in possession of a practising certificate issued by the Bahamas

Institute of Chartered Accountants, the expected Relevant Turnover in the Licensee's business plan.

- 1.13 The annual fees calculated in accordance with Condition 1.12 shall be paid in advance on the first day of the Financial Year, with any adjustment due as a result of the audited accounts for that Financial Year becoming available being paid to URCA (or deducted from any other payment due to URCA) on the first day of the next Financial Year.
- 1.14 Without prejudice to Condition 1.320, in the event of a default by the Licensee in the payment of any fees when due under this Licence:
- 1.14.1 the Licensee shall pay to URCA interest under section 94 of the Communications Act; and
- 1.14.2 URCA may revoke this Licence under the terms of the Communications Act.

CONSUMER PROTECTION

1.15 Minimum terms and conditions

- 1.15.1 The Licensee shall, in offering to provide, or providing, Public Services other than Free Broadcast Services, ensure that it offers contracts with terms that at least include applicable prices and tariffs (which for the avoidance of doubt shall not include customised or individual prices and tariffs), and on its standard terms and conditions, in respect of access to and use of Public Services by End-Users, except Public Pay Telephones, are published.
- 1.15.2 Where the Licensee intends to modify a condition in a contract with a Residential Customer or a Small Business Customer which is likely to be of material detriment to the Residential Customer or the Small Business Customer, the Licensee shall:
- (a) provide the Residential Customer or the Small Business Customer, as appropriate, with at least one month's notice of its intention detailing the proposed modification; and
- (b) inform the Residential Customer or the Small Business Customer of the ability to terminate the contract without penalty if the proposed modification is not acceptable to the Residential Customer or the Small Business Customer.

1.16 Code of Practice for Complaints

Without prejudice to any regulations that URCA may issue under section 45(2) of the Communications Act, as soon as practicable and in any event within six (6) months of the Commencement Date, the Licensee shall establish and thereafter maintain procedures for the handling of complaints made by its Residential Customers or its Small Business Customers in relation to the provision of Public Services.

1.17 **Non-Payment of Bills**

1.17.1 Where the Licensee's Subscriber has not paid the Licensee all or part of a bill for Carriage Services provided by the Licensee, any measures taken by the Licensee to effect payment or disconnection shall:

- (a) be proportionate and not unduly discriminatory;
- (b) give due warning to the Subscriber beforehand of any consequent service interruption or disconnection; and except in cases of fraud, persistent late payment or non-payment, confine any service interruption to the Carriage Service concerned, as far as technically feasible.

1.17.2 The Licensee shall publish details of generic measures it may take against Subscribers generally to effect payment or disconnection in accordance with Condition 1.17.1 above by:

- (a) sending a copy of such information or any appropriate parts of it to any Subscriber who may request such a copy; and
- (b) placing a copy of such information on any relevant website operated or controlled by the Licensee.

1.18 **Metering and Billing**

The Licensee shall not render any bill to a Subscriber in respect of the provision of any Public Services unless every amount stated in that bill represents and does not exceed the true extent of any such service actually provided to the Subscriber or its End-Users.

1.19 **Quality of Service**

The Licensee shall use reasonable endeavours to provide Carriage Services to a standard that could be reasonably expected by Subscribers, having regard to the nature of the services and any advertising or sales information provided by the Licensee.

1.20 **Fair dealing**

1.20.1 The Licensee must only charge a Subscriber for the specific Carriage Services or Equipment that the Subscriber has ordered, and a user shall have no liability to pay for any Carriage Service or Equipment that it has not ordered.

1.20.2 The Licensee must permit Subscribers on request to review his expenditures relating to Carriage Services provided by the Licensee.

1.20.3 The Licensee shall not make or cause to be made any claim or suggestion regarding the availability, price or quality of its Electronic Communications Carriage Services or Equipment or that of an Other Operator if the Licensee knows or reasonably ought to know that the statement or claim is false or misleading.

- 1.20.4 The Licensee shall ensure that all standard terms and conditions and codes of practice are drafted in plain English that is easy to understand and copies of the codes of practice shall be provided on request and free of charge to any Residential Customer or Small Business Customer and be prominently available on the Licensee's public website.

CONFIDENTIALITY OF SUBSCRIBER'S INFORMATION

- 1.21 Subject to Conditions 1.22 and 1.23, any other provision of this Licence or any provision of the Act or another enactment, the Licensee –
- 1.21.1 must not without a Subscriber's consent collect, use, maintain or disclose information about a Subscriber for any purpose; and
- 1.21.2 must apply appropriate security safeguards to prevent the collection, use, maintenance or disclosure of such information.
- 1.22 The Licensee may disclose a Subscriber's name, address and listed Telephone Number in a printed or electronic telephone Directory except where a Subscriber specifically requests that his details should be excluded from the Directory.
- 1.23 The Licensee may be required by URCA (by determination under the Communications Act) to retain or to be prohibited from retaining specified information relating to Subscribers, including information about billing, beyond a specified period.
- 1.24 The Licensee must ensure that information it discloses or retains concerning a Subscriber is accurate and complete for its intended use.
- 1.25 The Licensee must permit a Subscriber to inspect its Records regarding a Carriage Service provided to that Subscriber and to require correction or removal of information that is shown to be incorrect.
- 1.26 The Licensee must disclose to Subscribers the purpose of requesting or collecting any information about the Subscriber and must not use or maintain information about the Subscriber for undisclosed purposes.

CONFIDENTIALITY OF COMMUNICATIONS

- 1.27 The Licensee must take all reasonable steps to ensure the confidentiality of its End-Users' Communications.
- 1.28 The Licensee must not intercept, monitor, alter or modify the content of a message unless required to do so by the Communications Act or any other enactment.

INFORMATION, AUDIT, INSPECTION AND ACCESS

- 1.29 URCA may require:
- 1.29.1 an audit of any aspect of the business of the Licensee and the Licensee shall or shall procure assistance to URCA as it may reasonably require;

- 1.29.2 the Licensee to provide it with such information, Documents, accounts, returns, estimates, reports or other information required by URCA in the manner and at the times specified by URCA. URCA may use this information for purposes of compiling statistics and publishing periodical reviews of the Electronic Communications industry, and as required or permitted by the Communications Act or other laws or legal process;
- 1.29.3 the Licensee to permit a person authorised by URCA to carry out an inspection.
- 1.30 At the time when the Licensee pays its annual fee under Conditions 1.11 - 1.14 or, if earlier, prior to the end of each Financial Year, the Licensee shall either:
 - 1.30.1 provide URCA with confirmation in writing that its business has not undergone any Material Change over the previous Financial Year; or
 - 1.30.2 provide URCA in writing details of the Material Changes to its business.
- 1.31 Without prejudice to Condition 1.32, in the event that the Licensee does not provide URCA with either a written statement of no Material Change or details of any Material Changes, URCA may revoke this Licence under the terms of the Communications Act.

BREACH OF LICENCE

- 1.32 If URCA has reason to believe that any Licensee has failed to comply with any Condition it may exercise all such powers and duties as are afforded to or required of it under the Communications Act or any other relevant law and may take all such action as is permitted to it under those sections against the Licensee.

REVOCATION AND MODIFICATION

- 1.33 URCA may deregister a Licensee or revoke or modify this Licence or the Conditions applicable to any specified Licensee or Licensees in accordance with the procedures set out in section 27 of the Communications Act.

CHANGE IN CONTROL

- 1.34 The Licensee shall obtain URCA's approval of any change in control of the Licensee prior to the change in control occurring.
- 1.35 Without limiting URCA's ability and duty to apply the merger control provisions in sections 70 to 78 of the Communications Act, URCA may object to a change in control if in URCA's view the acquirer would not meet any qualification criteria set by URCA pursuant to section 23 of the Communications Act.

ASSIGNMENT

- 1.36 The Licensee shall not, without the prior written consent of URCA, sub-license, assign or grant any right, interest or entitlement in the Licence to any person or transfer or dispose of any of its assets that are necessary to provide any Carriage Service that the

Licensee is obliged to provide under this Licence unless such assets have been adequately replaced.

- 1.37 Condition 1.36 shall not apply to a mortgage, charge or other transaction entered into for the purpose of securing borrowings of the Licensee, being borrowings for the purposes of establishing, operating or maintaining the Licensee's Network or providing the Carriage Services or the provision of anything incidental to the Network or the Carriage Services.

NOTICES

- 1.38 Notices to the Licensee under the Conditions shall be in writing and sent by post or hand to the address shown at the front of this Licence or any other relevant address known to URCA or sent by facsimile if the parties agree beforehand that they will use facsimile for transmission of specific notices.
- 1.39 Notices to URCA under the Conditions shall be in writing and sent to the Chief Executive Officer of URCA by post or hand to the business address of URCA or by facsimile.