



BERMUDA

REGULATORY  
AUTHORITY

## **Integrated Communications Operating Licence**

Licensee: FKB Net Ltd.

Address: The Rose Bank Building  
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Hamilton HM 11

Licence Number: ICOL201311Rev1-760

Date: 29 April 2013

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The Regulatory Authority of Bermuda, in the exercise of the authority conferred upon it by the Electronic Communications Act 2011, hereby grants to FKB Net Ltd. a licence to establish, construct and operate Electronic Communications Networks and provide Electronic Communications Services on an integrated basis within the territorial limits of Bermuda and between Bermuda and other countries, subject to the terms of this Licence, any associated Spectrum licences, the Electronic Communications Act 2011, the Regulatory Authority Act 2011, and any Regulations, General Determinations, Adjudicative Decisions, Orders, and Directions made or issued in accordance with these Acts.

## 1 DEFINITIONS

In this Licence, unless the context otherwise requires:

“**Authority**” means the Regulatory Authority;

“**Condition**” means a condition, including a Transitional Condition set forth in Annex A, of this Licence.

“**Directory**” means a printed or electronic directory containing the name, address and Number of the Subscriber to an Electronic Communications Service;

“**Directory Enquiry Service**” means the provision by a live operator or on an automated basis of the Number of a Subscriber to an Electronic Communications Service;

“**ECA**” means the Electronic Communications Act 2011;

“**Licence**” means this Integrated Communications Operating Licence granted to FKB Net Ltd.;

“**Licensee**” means FKB Net Ltd. and, for the avoidance of doubt, does not include any Affiliates of the Licensee;

“**Mast**” means a tower or similar structure upon which Radiocommunication Equipment is installed;

“**Number**” means a number assigned to the Licensee by the Authority in accordance with the Numbering Plan;

“**Other Licensee**” means another licensee that holds an Individual Licence;

“**Operator Service**” means an Electronic Communications Service, including domestic and international voice calls, provided by the Licensee from any fixed or mobile telephone, either with the assistance of a human operator or on an automated basis, payment for which may be made with a commercial credit card or calling card, if service is not provided on a subscription basis;

“**Person**” means a natural person or any company or association or body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued in its own name or in the name of an officer or other person;

**“Public Pay Telephone Service”** means an Electronic Communications Service, including domestic and international voice, data and teletext calls, provided by the Licensee from stationary pay telephones situated in public locations, available to all Users, payment for which may be made by coins, a commercial credit card or calling card;

**“RAA”** means the Regulatory Authority Act 2011;

**“Residential Subscriber”** means an End-User or Subscriber who is a natural person, who uses the Licensee’s Electronic Communications Services, and who contracts at a place of residence;

**“Slamming”** means a practice whereby a Subscriber is switched from an Other Licensee to the Licensee without the express knowledge and consent of the Subscriber;

**“Small Business Subscriber”** means an End-User or Subscriber that is a Bermudian-owned and owner-operated business enterprise with gross annual sales of less than one million dollars or an annual payroll of less than five hundred thousand dollars and that uses the Licensee’s Electronic Communications Services at its place of business; and

**“Transitional Condition”** means a Condition set forth in Annex A of this Licence.

## **2 INTERPRETATION**

For the purpose of interpreting this Licence:

- (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them in the Licence, the ECA, RAA and Interpretation Act 1951;
- (b) where there is any conflict between the provisions of this Licence and the ECA or RAA, the provisions of the ECA or RAA, as the case may be, shall prevail;
- (c) terms defined herein and in the ECA and RAA have been capitalised;
- (d) references to Conditions and Annexes are to Conditions and Annexes of the Licence, as modified from time to time in accordance with the Licence and the ECA;
- (e) a document referred to in this Licence shall be incorporated into and form part of the Licence and a reference to a document is to the document as modified from time to time;
- (f) headings and titles used in this Licence are for reference only and shall not affect its interpretation or construction;
- (g) references to any law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;

- (h) expressions cognate with those used in this Licence shall be construed accordingly;
- (i) use of the word “include” or “including” is to be construed as being without limitation; and
- (j) words importing the singular shall include the plural and vice versa, and words importing the whole shall be treated as including a reference to any part unless explicitly limited.

### **3 SCOPE OF THE LICENCE**

**3.1** This Licence grants the Licensee the right to establish, construct and operate one or more Electronic Communications Networks and to provide Electronic Communications Services, on an integrated basis, within the territorial limits of Bermuda and between Bermuda and other countries.

**3.2** Notwithstanding the provisions of Condition 3.1, this Licence does not grant the Licensee the right to establish, construct and operate an Electronic Communications Network or provide an Electronic Communications Service if the Authority has made an Administrative Determination that:

- (a) such Electronic Communications Network or such Electronic Communications Service is exempt from the obligation to hold a communications operating licence; or
- (b) such Electronic Communications Network or such Electronic Communications Service should be authorized pursuant to a Class Licence.

In such cases, the Licensee’s Electronic Communications Network or Electronic Communications Service shall be subject to the terms and conditions of the relevant exemption or Class Licence. In cases where the Licensee’s Electronic Communications Network or Electronic Communications Service may appear to be authorized by both this Licence and the exemption or Class Licence, as the case may be, the terms and conditions of this Licence shall apply unless and until the Authority makes an Administrative Determination to the contrary. Nothing in any exemption or Class Licence shall be interpreted to relieve the Licensee of the obligation to comply with any Ex Ante Remedy or obligation imposed on the Licensee by the Authority pursuant to Sections 23 and 24 of the ECA.

**3.3** This Licence does not grant the Licensee, and shall not be construed as an entitlement on the part of the Licensee to, any licences or permits for the use of Radio Spectrum, Radio Stations or Radio Apparatus.

**3.4** Nothing in this Licence shall relieve the Licensee of the obligation to comply with any other requirement at law or practice to obtain any additional consents, permissions, authorizations, licences or permits as may be necessary to establish, construct or operate Electronic Communications Networks, provide Electronic Communications Services or exercise the Licensee’s rights or discharge its obligations under the Licence,

including obtaining any licences or permits required by the ECA for the use of Radio Spectrum, Radio Stations or Radio Apparatus.

#### **4 GRANT AND DURATION OF THE LICENCE**

**4.1** The Licence is valid and effective from the date hereof and shall remain in effect until the earlier of:

- (a) 28 April 2033;
- (b) the date on which the Licensee surrenders the Licence in accordance with Condition 18.2; or
- (c) the date on which the Licence is revoked or terminated pursuant to Sections 18(5) or 18(6) of the ECA or Section 93 of the RAA.

**4.2** The Licence may be renewed for an additional term or terms pursuant to Section 18(4) of the ECA.

#### **5 FEES, CONTRIBUTIONS AND PENALTIES**

**5.1** The Licensee shall pay to the Authority such Government Authorization Fees as may be prescribed pursuant to Section 52 of the RAA and the Government Fees Act 1965.

**5.2** The Licensee shall pay to the Authority such Regulatory Authority Fees as may be prescribed pursuant to Section 11 of the ECA and Section 44 of the RAA.

**5.3** The Licensee shall make such contributions to support the provision of Universal Service as may be specified in Regulations made by the Minister pursuant to Section 34 of the ECA.

**5.4** The Licensee shall make such payments to support the establishment and provision of number portability, or the equivalent, as may be specified in Regulations made by the Minister pursuant to Section 47 of the ECA.

**5.5** The Licensee shall pay to the Authority any penalties and interest that may be imposed on the Licensee by the Authority for failure to make any payment due under this Licence and for any other contraventions of this Licence or the Applicable Regulatory Framework.

#### **6 COMPLIANCE**

The Licensee shall comply with:

- (a) the terms of this Licence, including the Annexes;
- (b) the terms of any associated licences, authorizations and permits issued to the Licensee for the use of Radio Spectrum, Radio Stations and Radio Apparatus;

- (c) the Applicable Regulatory Framework, including, but not limited to, any:
  - (i) Regulations made by the Minister;
  - (ii) Administrative Determinations made by the Authority pursuant to Section 9(2)(c) of the ECA;
  - (iii) Universal Service obligations imposed in accordance with Part 6 of the ECA;
  - (iv) obligations imposed by the Authority to interconnect with the Electronic Communications Networks of other ICOL holders and any Other Licensees that may be designated by the Authority for this purpose by the Authority, promptly and on reasonable terms and conditions;
  - (v) Ex Ante Remedies imposed by the Authority in accordance with Part 4 of the ECA;
  - (vi) obligations imposed by the Authority in respect of emergency call services;
  - (vii) obligations imposed by the Authority in respect of Public Pay Telephones and Operator Services;
  - (viii) obligations imposed by the Authority in respect of Directory information and Directory Enquiry facilities;
  - (ix) obligations imposed by the Authority to provide performance bonds in respect of compliance with any of the Conditions of the Licence, associated licences, authorizations and permits, or other requirements specified by the Authority;
- (d) the Convention and any other international agreements relating to Electronic Communications to which Bermuda is a party; and
- (e) the ECA, the RAA and any other applicable law, enactment, regulations or order in effect in Bermuda to which the Licensee is subject.

Where there is an irreconcilable conflict among any of the instruments identified above, the following order of precedence shall apply: Acts of Parliament, Regulations and Orders made by the Minister, international agreements that apply to Bermuda, General or other Administrative Determinations made by the Authority, and this Licence.

## **7 OPERATION OF NETWORKS AND PROVISION OF SERVICES**

- 7.1** The Licensee shall establish, construct and operate the Electronic Communications Networks and provide the Electronic Communications Services authorized by the Licence in a manner that:



- (a) does not prejudice or obstruct, or is likely to prejudice or obstruct, navigation by ships at sea or aircraft on the ground or in the air;
- (b) does not interfere with the operation of Electronic Communications Networks and the provision of Electronic Communications Services by Other Licensees; and
- (c) complies with the terms and conditions of any associated licences or permits for the use of Radio Spectrum, Radio Stations and Radio Apparatus that the Authority may grant to the Licensee.

**7.2** The Licensee shall, where technically feasible, share with Other Licensees that may be designated by the Authority Masts and other support structures suitable for the placement of Radiocommunication Equipment in an efficient manner that allows for the sharing of such facilities on terms and conditions that are fair, reasonable and transparent. The Licensee shall not enter into any leases, covenants or other agreements that restrict, or have the effect of restricting, the Licensee's ability to comply with the foregoing requirement. The Licensee shall provide the Authority with advance notice of its intent to construct new Masts or other support structures and such information as the Authority may require to determine the Licensee's compliance with this Condition.

**7.3** The Licensee shall:

- (a) provide the Authority with information, in such manner and format as the Authority may require, that separately identifies the personnel, Electronic Communications Network facilities, Associated Facilities and Associated Services relating to the provision of the Electronic Communications Services authorized by this Licence that are located in Bermuda and those that are located outside of Bermuda; and
- (b) comply with any General Determinations or Directions made by the Authority requiring the Licensee to locate in Bermuda some or all of the personnel, Electronic Communications Network facilities, Associated Facilities and Associated Services relating to the provision of any or all of the Electronic Communications Services authorized by this Licence.

**7.4** The Licensee shall maintain in Bermuda the original files of all Personal Data relating to the provision of the Electronic Communications Services authorized by this Licence. The Licensee shall ensure that all such Personal Data are capable of being accessed by the Government of Bermuda in real time. The Authority may, with the approval of the Minister, waive this Condition in whole or in part if, and to the extent that, the Authority determines that:

- (a) appropriate inter-governmental arrangements are in place that provide the Government of Bermuda and the Authority with access to such Personal Data on the same terms and conditions and within the same timeframes as if such Personal Data were located in Bermuda; and

- (b) a waiver would be in the public interest, not unduly discriminatory in respect of other similarly situated licensees, and consistent with requirements of Schedule 2 of the ECA.

**7.5** The Licensee shall report planned and unplanned outages of the Electronic Communications Networks and Electronic Communications Services authorized by this Licence in accordance with any requirements established by the Authority.

**7.6** The Licensee shall procure such insurance or post such performance bonds as the Authority may reasonably require to ensure that any works undertaken by the Licensee are completed and that any property abandoned by the Licensee or that has fallen into disrepair is removed from public property.

**7.7** Upon the revocation or termination of the Licence, the Licensee shall make reasonable efforts to sell the Licensee's Electronic Communications business and assets, and facilitate the transfer of the Licensee's Bermudian staff employed in Bermuda, to another provider of Electronic Communications in Bermuda.

## **8 EMERGENCY CALL SERVICES**

If the Licensee has been assigned Numbers under the Numbering Plan, the Licensee shall:

- (a) make available to Users, free of charge, access to the national three-digit number or numbers for emergency purposes from any fixed or mobile terminal connected to the Licensee's network, and provide any User possessing a fixed or mobile terminal or using a pay telephone with automatic access to the Licensee's network for the purpose of making emergency calls by means of the three-digit national number or numbers, without regard to whether such User is the Licensee's Subscriber;
- (b) to the extent technically feasible, provide Location Data for all calls to the national three-digit number or numbers for emergency purposes; and
- (c) comply with such technical and other requirements relating to the provision of emergency call services as the Authority may adopt.

## **9 NUMBERING**

**9.1** The Licensee shall be eligible to participate in, and shall comply with, the Numbering Plan. The Licensee shall use only those Numbers assigned to it by the Authority and those Numbers assigned to Subscribers that elect to transfer from Other Licensees to the Licensee.

**9.2** The Licensee shall manage any Numbers that it has been assigned by the Authority in a manner that ensures the efficient use of those Numbers.

**9.3** The Licensee shall not charge its Subscribers for the assignment of Numbers, except as otherwise permitted by the Authority.

**9.4** The Licensee shall comply with any General Determinations made by the Authority in respect of the Numbering Plan and the allocation, reclamation, re-assignment, sale and use of Numbers.

## **10 NATIONAL SECURITY, EMERGENCIES AND LAW ENFORCEMENT**

**10.1** The Licensee shall cooperate with, and at the lawful Direction of the Governor, Minister or Authority shall provide assistance to, the relevant Government ministries responsible for national security and emergency services.

**10.2** The Licensee shall, at the Direction of the Governor, Minister or the Authority, give Telecommunications of the relevant Government ministries responsible for national security and emergency services priority over all other Telecommunications.

**10.3** The Licensee shall comply with the Authority's Directions regarding the location and concealment of the Licensee's Electronic Communications Networks to protect them from accidental or malicious injury.

**10.4** If the Licensee receives distress signals and requests for assistance from ships, aircraft and light stations, the Licensee shall re-transmit them, as promptly as possible, to the relevant Government bodies.

**10.5** The Licensee shall comply with the requirements of Schedule 2 of the ECA.

## **11 SIGNIFICANT MARKET POWER**

**11.1** If the Authority determines that the Licensee possesses Significant Market Power in a relevant market, the Licensee shall promptly comply with each Ex Ante Remedy or obligation imposed on the Licensee by the Authority pursuant to Sections 23 and 24 of the ECA, until the remedy or obligation is removed pursuant to Section 25 of the ECA.

**11.2** With regard to any market in which the Licensee has been determined to possess Significant Market Power, the Licensee shall comply with the following requirements unless they are specifically waived by an Administrative Determination of the Authority:

(a) not to unduly discriminate in relation to the provision of Interconnection or Access, in particular, by applying equivalent conditions in equivalent circumstances to Other Licensees providing equivalent services, and providing them with services and information (including technical specifications and network-related information) under the same conditions and of the same quality as it provides for its own services or those of its Affiliates, subsidiaries or partners;

(b) not to adopt any technical specifications that would unreasonably or unnecessarily obstruct or impede the ability of Other Licensees to interconnect with the Licensee's facilities or Access parts of the Licensee's network that are subject to Ex Ante Remedies imposed on the Licensee pursuant to Sections 23 and 24 of the ECA;

- (c) enter into an Interconnection agreement with an Other Licensee within 90 days of receipt of a reasonably detailed written request for Interconnection or within such other time frame as may be required by the Authority or any Ex Ante Remedy imposed on the Licensee by the Authority pursuant to Sections 23 and 24 of the ECA; provided, however, that the Licensee shall not be required to enter into an Interconnection agreement or provide Interconnection service if the Authority determines that Interconnection would be technically infeasible, could reasonably be expected materially to impair the quality of any of the Licensee's Electronic Communications Services, or would threaten the integrity, security or interoperability of the Licensee's Electronic Communications Network; and
- (d) not to unreasonably bundle services subject to ex ante price controls with any other services.

For purposes of Condition 11.2, "Access" shall have the meaning ascribed to it by Section 24(8) of the ECA.

## **12 PRIVACY OF COMMUNICATIONS**

- 12.1** The Licensee shall take all reasonable measures to ensure the privacy of all Telecommunications.
- 12.2** Except as otherwise provided in the ECA or any other applicable enactment, the Licensee may not intercept, or wilfully divulge the content of, any Telecommunications.

## **13 CONFIDENTIALITY OF PERSONAL DATA**

- 13.1** Subject to Conditions 13.2 and 13.3 and Section 31 of the ECA, the Licensee:
  - (a) may not without an End-User's or Subscriber's informed consent collect, use, maintain or disclose Personal Data about an End-User or Subscriber for any purpose; and
  - (b) shall apply appropriate security safeguards to prevent the collection, use, maintenance or disclosure of such Personal Data.
- 13.2** The Licensee shall comply with any General Determinations made by the Authority requiring the Licensee to retain, or prohibiting the Licensee from retaining, specified Personal Data relating to End-Users and Subscribers, including information about billing, beyond a specified period.
- 13.3** The Licensee shall take reasonable steps to ensure that any Personal Data it discloses or retains concerning an End-User or Subscriber is accurate and complete for its intended use.
- 13.4** The Licensee shall permit an End-User or Subscriber to inspect its records regarding Electronic Communications provided to that End-User or Subscriber and shall respond promptly to requests to correct or remove information that is shown to be incorrect, unless the Authority determines that such inspections or requests are unreasonable.

- 13.5** The Licensee shall disclose to End-Users and Subscribers, in a clear and transparent manner, the purpose for requesting or collecting any information about the End-User or Subscriber and may not use or maintain information about the End-User or Subscriber for any undisclosed purposes.
- 13.6** The Licensee shall take appropriate steps to transfer relevant Personal Data relating to End-Users or Subscribers to an Other Licensee that has been selected by an End-User or Subscriber, as the case may be, to replace the Licensee as the provider of an Electronic Communications Service where necessary to facilitate the change in providers, in accordance with any procedures that may be established by the Authority.
- 13.7** The Licensee shall not make use of any End-User or Subscriber information, network and traffic data, or any other information obtained from Other Licensees as a result of entering into Interconnection and other agreements with such Other Licensees, other than for the purpose for which such information and data were provided. The Licensee shall implement reasonable internal measures, including by limiting access to physical records, systems and processes where appropriate, to safeguard and maintain the confidentiality of any such data that is commercially or competitively sensitive.

#### **14 CONSUMER PROTECTION**

- 14.1** The Licensee shall, in offering to provide, or providing, Electronic Communications Services, publish clear, transparent and up-to-date information regarding its rates, terms and conditions. Publication shall be effected by:
- (a) placing such information on any relevant website operated by the Licensee or, if no such website exists, placing a copy of such information in every major office of the Licensee such that it is readily available for inspection free of charge by members of the general public during normal office hours; and
  - (b) sending a copy of such information or any appropriate parts of it to any Subscriber who requests such information.
- 14.2** The Licensee shall ensure that the standard terms and conditions of any contract between the Licensee and a Residential Subscriber or Small Business Subscriber include the following minimum requirements:
- (a) the identity and address of the Licensee;
  - (b) the services provided, details of the service quality levels offered and the time required to initiate service;
  - (c) the details of maintenance services offered;
  - (d) the means by which up-to-date information on all applicable price lists, tariffs, discounts and maintenance charges may be obtained;

- (e) the duration of the contract, provided that Subscribers shall have the option of entering into a contract with a fixed term of no more than 12 months on fair and reasonable terms;
- (f) the conditions, including any charges, for the renewal and termination of services and of the contract;
- (g) compensation and refund arrangements if quality of service levels to which the Licensee has committed are not met;
- (h) the procedures for initiating and resolving disputes in respect of the contract; and
- (i) any other information that may be required by the Authority.

**14.3** Subject to any Ex Ante Remedies imposed on the Licensee pursuant to Sections 23 and 24 of the ECA and any other alternative requirements that may be established by the Authority, if the Licensee intends to modify the terms and conditions of a contract with a Residential Subscriber or Small Business Subscriber, the Licensee shall:

- (a) provide the Subscriber with at least one month's notice of its intention detailing the proposed modification; and
- (b) inform the Subscriber of the ability to terminate the contract without penalty if the proposed modification is materially adverse to the Subscriber;

provided, however, that Condition 14.3(a) shall not apply to proposed modifications that reduce the prices of the Licensee's Electronic Communications Services; and provided further that Condition 14.3(b) shall not, in cases where the Authority so determines, relieve a Subscriber of the obligation to pay specific charges that would otherwise have been due if the Subscriber had not terminated the contract.

**14.4** The Licensee shall not render any bill to a Subscriber in respect of the provision of any Electronic Communications Services unless every amount stated in that bill represents and does not exceed the true extent of the service actually provided to the Subscriber. The Licensee shall retain such records as may be necessary for the purpose of establishing the Licensee's compliance with this requirement for at least one year or such other period determined by the Authority.

**14.5** The Licensee may only charge a Subscriber for the specific Electronic Communications Services or equipment that the Subscriber has ordered, and the Subscriber shall have no liability to pay for any Electronic Communications Service or equipment that it has not ordered.

**14.6** In the case of Residential Subscribers and Small Business Subscribers who have contracted for Electronic Communications Services for which the Licensee submits bills subsequent to the provision of service, the Licensee shall provide such Subscriber with bills:

- (a) in writing, which may be transmitted electronically if the Subscriber consents;

- (b) on a regular basis no less than monthly;
- (c) in a plain and simple format;
- (d) that provide accurate information about the Electronic Communications Services provided and the amounts due for each Electronic Communications Service; and
- (e) that clearly indicate the method of calculation of prices for any Electronic Communications Service for which bills are based on the duration of calls or other measure of usage.

**14.7** The Licensee shall provide Residential Subscribers and Small Business Subscribers, on request, and either at no extra charge or for a reasonable fee, a basic level of itemised billing. The Licensee shall ensure that each itemised bill contains a sufficient level of detail to allow the Subscriber to:

- (a) verify and control the charges incurred by the Subscriber in using the Licensee's Electronic Communications Services; and
- (b) monitor the Subscriber's usage and expenditure and thereby exercise a reasonable degree of control over the Subscriber's bills.

The Licensee shall ensure that calls which are made from a Residential Subscriber's telephone which are free of charge, including calls to distress hotlines, are not included in the Subscriber's itemised bill. The requirements of this Condition shall not apply to Electronic Communications Services provided to Subscribers for a flat monthly or other periodic fee.

**14.8** The Licensee shall not be obligated to comply with Condition 14.7 when:

- (a) the Licensee provides Electronic Communications Services to the Subscriber on a pre-paid basis; and
- (b) the Subscriber has an alternative means, free of charge, to monitor the Subscriber's usage and expenditure.

**14.9** The Licensee shall, as determined by the Authority, publish up-to-date information regarding the quality of its Electronic Communications Services in a format that may be used by Residential Subscribers and Small Business Subscribers to make industry comparisons.

**14.10** Prior to any planned interruption to or suspension of service, the Licensee shall give reasonable advance notice to any Subscriber that will be affected by the interruption or suspension.

**14.11** Subject to any General Determinations, including codes of practice, that the Authority may adopt pursuant to Section 26 of the ECA, the Licensee shall establish, publish and thereafter maintain fair and reasonable procedures for the handling of complaints made

by Residential Subscribers or Small Business Subscribers in relation to the provision of the Licensee's Electronic Communications Services.

**14.12** When a Residential Subscriber or Small Business Subscriber has not paid the Licensee all or part of a bill for the Electronic Communications 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 prior warning to the Subscriber of any consequent service interruption or disconnection; and
- (c) except in cases of fraud, persistent late payment or non-payment, confine any service interruption to the Electronic Communications Service concerned, as far as technically feasible.

**14.13** The Licensee shall publish the details of measures it may generally take against Residential Subscribers and Small Business Subscribers to effect payment or disconnection in accordance with Condition 14.12 by:

- (a) placing such information on any relevant website operated by the Licensee or, if no such website exists, placing a copy of such information in every major office of the Licensee such that it is readily available for inspection free of charge by members of the general public during normal office hours; and
- (b) sending a copy of such information or any appropriate parts of it to any Subscriber who requests such information.

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

**14.15** Subject to any General Determinations, including codes of practice, made by the Authority pursuant to Section 26 of the ECA, the Licensee shall not engage in any Slamming activities and shall obtain each Subscriber's authorization and verification of the authorization prior to executing any change from an Other Licensee to the Licensee. Where the Authority prescribes any form or manner for verification of a Subscriber's authorization for the prevention of Slamming, the Licensee shall maintain records of verification in such a form or manner for a minimum period of 12 months.

**14.16** The Licensee shall comply with such other determinations made by the Regulatory Authority to protect the interests of consumers pursuant to Part 5 of the ECA.

## **15 INFORMATION, AUDITS AND INSPECTION**

**15.1** In addition to the information required by Section 53 of the RAA, the Licensee shall promptly provide the Authority with any documents, accounts, reports, returns, estimates or other information required by the Authority to carry out its responsibilities under the



RAA and ECA, including information regarding (a) the services or equipment provided to Users, Other Licensees and Persons with Class Licences, (b) the rates and charges for such services and equipment, (c) copies of contracts with Other Licensees, (d) statistics regarding usage of the Licensee's Electronic Communications Networks and Electronic Communications Services, (e) relevant activities, operations, or shareholdings of any Related Persons, and (f) any arrangements or relationships between the Licensee and any Related Persons that the Authority determines to be relevant to competition in the sector. For purposes of Condition 15.1, "Related Person" shall mean any entity that directly or indirectly owns, is directly or indirectly owned by, or is under common ownership with, the Licensee, as evidenced by the ownership of five per cent or more of the shares, stock or other securities or voting rights of the owned entity, including through an arrangement of any type.

- 15.2** The Licensee shall permit the Authority or Persons designated by the Authority to examine, investigate or audit, or procure such assistance as the Authority may require to conduct an examination, investigation or audit of, any aspect of the Licensee's business.
- 15.3** Subject to the provisions of Section 92 of the RAA, the Licensee shall permit the Authority or Persons designated by the Authority to enter the Licensee's premises, and shall facilitate access by them to premises used by the Licensee, to conduct an inspection, examination, investigation or audit of the Licensee.
- 15.4** The Licensee shall place a complete copy of this Licence and any associated Radio Spectrum licences on the Licensee's website or, if no such website exists, in a conspicuous place in the Licensee's principal place of business such that it is readily available for inspection free of charge by members of the general public during normal office hours.

## **16 MODIFICATION OF THE LICENCE**

The Licence may be modified:

- (a) with the mutual consent of the Licensee and the Authority;
- (b) by the Authority pursuant to the provisions of Section 51 of the RAA and Section 9(2)(c)(i) of the ECA; and
- (c) by the Authority following an enforcement proceeding, pursuant to the provisions of Section 93 of the RAA.

## **17 ENFORCEMENT AND REVOCATION**

- 17.1** The Authority may initiate enforcement proceedings pursuant to Section 93 of the RAA and Section 18(5) of the ECA if there is reason to believe that the Licensee has contravened the terms of this Licence or the Applicable Regulatory Framework. The Licensee shall participate in good faith in such enforcement proceedings. Upon finding that the Licensee has contravened this Licence or the Applicable Regulatory Framework, the Authority may, among other things, issue a warning, direct the Licensee to remedy the contravention or make restitution, impose financial penalties up to ten per cent of the

Licensee's total annual turnover, or modify or suspend this Licence and the associated Spectrum licences.

- 17.2** The Authority may revoke or terminate this Licence in accordance with the provisions of Sections 18(5) and 18(6) of the ECA. If this Licence is revoked or terminated, the Licensee shall make reasonable efforts to transition affected Subscribers and Other Licensees to alternative providers of Electronic Communications Service.

## **18 DISCONTINUATION OF SERVICE; SURRENDER OF LICENCE**

- 18.1** Subject to any Ex Ante Remedies imposed on the Licensee pursuant to Sections 23 and 24 of the ECA, the Licensee shall not discontinue the general provision of any Electronic Communications Service unless the Licensee first provides the Authority and affected Subscribers and Other Licensees with no less than 60 days advance notice, or such other greater or lesser notice as the Authority may determine, of the discontinuation of service. The Licensee shall make such reasonable efforts as the Authority may require to transition affected Subscribers and Other Licensees from the discontinued Electronic Communications Service to a reasonable alternative service provided by either the Licensee or an Other Licensee.

- 18.2** The Licensee may surrender the Licence, with the agreement of the Authority. The Licensee shall submit a request to surrender the Licence no less than 180 days, or such lesser period as the Authority may allow, in advance of the date on which the Licensee proposes to surrender the Licence. If the Authority agrees to the surrender of the Licence, the Licensee shall make such reasonable efforts as the Authority may require to transition affected Subscribers and Other Licensees to alternative providers of Electronic Communications Services.

## **19 ASSIGNMENT**

The Licensee shall not sub-license, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other Person, including an Affiliate of the Licensee, without the prior written authorization of the Authority acting with the written consent of the Minister.

## **20 CHANGE OF CONTROL**

The Licensee shall not complete any proposed change in control of the Licensee without first obtaining the prior written authorization of the Authority, acting with the written consent of the Minister, in accordance with Sections 18(6) and 18(7) of the ECA.

## **21 INDEMNIFICATION**

- 21.1** The Licensee shall indemnify the Regulatory Authority against all actions, claims and demands which may be brought or made by any Person in respect of any injury or death of any Person or damage to any property arising from any act of the Licensee permitted or authorized by the Licence. The Authority shall provide the Licensee with notice of any such actions, claims and demands, but the Authority's failure to do so shall not relieve the Licensee of any obligations imposed on the Licensee by this Condition.
- 21.2** The Licensee shall indemnify the Government of Bermuda for the reasonable costs of repairing, restoring or replacing any Electronic Communications Networks or Electronic Communications Services used by the Government that are damaged, interrupted or otherwise interfered with, either directly or indirectly, by the Licensee.

## **22 FORCE MAJEURE; OTHER EVENTS**

- 22.1** If the Licensee is prevented from complying with the Licence by acts of God, war, warlike operations, civil commotion, major strikes or any other significant or protracted industrial action, fire, tempest or any other causes beyond the Licensee's control:
- (a) the Licensee shall notify the Authority, as promptly as reasonably practicable, of the obligations of the Licence with which the Licensee cannot comply, the expected duration of the event of force majeure, and the measures the Licensee is taking to overcome the consequences of the event of force majeure; and
  - (b) the Authority may suspend such obligations of the Licence as the Authority concludes the Licensee cannot comply with for as long as the event of force majeure continues.
- 22.2** In addition to events of force majeure, the Licensee shall notify the Authority of any fact or event likely to affect materially the Licensee's ability to comply with any Condition of this Licence, or an insolvency-related fact or event in respect of the Licensee or any Affiliate, or any preparatory steps being taken that might lead to an insolvency-related event, immediately upon becoming aware of such fact or event.

## **23 NOTICES**

- 23.1** Unless the Authority determines otherwise, notices to the Licensee under the Licence shall be in writing and sent by registered letter to the address shown on the cover page of the Licence to the attention of the Chief Executive Officer.
- 23.2** Unless the Authority determines otherwise, notices to the Authority under the Licence shall be in writing and sent by registered letter to the Chief Executive of the Authority at the business address of the Authority.

# **ANNEX A**

## **TRANSITIONAL CONDITIONS**

The Licensee shall comply with each of the Transitional Conditions set forth below until such time as the Authority makes an Administrative Determination in respect of the subject matter of each such Transitional Condition.

### **A1 SCOPE OF LICENCE; CHANGE OF OWNERSHIP; TRANSFER OF ASSETS**

**A1.1** Notwithstanding the provisions of Condition 3.1, the Licensee may not establish, construct or operate any Electronic Communications Networks or provide any Electronic Communications Services that were not authorized by the Licensee's pre-existing Public Telecommunications Licence as at the date of commencement of Part 12 of the ECA, pending a determination by the Authority whether:

- (a) the Licensee has Significant Market Power in one or more relevant markets and, if so, until such time as the Authority determines that the Licensee has satisfactorily complied with any Ex Ante Remedies imposed on the Licensee by the Authority; or
- (b) the Licensee has failed to pay any fees due and payable under its pre-existing licence and, if so, until such time as the Authority determines that all amounts in arrears, including any applicable interest and penalties, have been paid in full to the Authority.

**A1.2** Notwithstanding the provisions of Condition 20, the Licensee shall obtain the prior approval of the Authority, acting with the written consent of the Minister, for (i) any increase in the ownership of the shares, stocks or other securities or voting rights of, or (ii) any transfer of assets relating to the provision of Electronic Communications Services to, another ICOL holder in which the Licensee has a direct or indirect ownership interest, which has a direct or indirect ownership in the Licensee, or which is under common ownership with the Licensee:

- (a) until such time as the Authority determines that the Licensee does not possess Significant Market Power in one or more relevant markets; and
- (b) if the Authority determines that the Licensee possesses Significant Market Power in one or more relevant markets, until such time as the Authority determines that the Licensee has satisfactorily complied with any Ex Ante Remedies imposed on the Licensee by the Authority.

### **A2 COMPLIANCE**

**A2.1** The Licensee shall comply with the provisions of Sections 21 and 23A of the Telecommunications Act 1986, which are reproduced in Annex B, until the later of the following events:

- (a) the Authority determines that the Licensee does not possess Significant Market Power in one or more relevant markets; or

- (b) if the Authority determines that the Licensee possesses Significant Market Power, the Authority determines that the Licensee has complied with any Ex Ante Remedies imposed on the Licensee by the Authority.

For purposes of this Transitional Condition, references in Annex B to “Carrier” shall mean the Licensee and references to “the Commission,” “the Department” and “the Minister” shall mean the Authority.

**A2.2** If the Licensee was designated as a Specified Carrier in the First Schedule of the Telecommunications Act 1986, the Licensee may not, without the prior written approval of the Authority, initiate new Electronic Communications Services or modify the tariffs or prices of Electronic Communications Services in effect as at the commencement date of the Licence, and shall otherwise comply with the provisions of Section 23 of the Telecommunications Act 1986, which is reproduced in Annex B, until the later of the following events:

- (a) the Authority determines that the Licensee does not possess Significant Market Power in one or more relevant markets; or
- (b) if the Authority determines that the Licensee possesses Significant Market Power, the Authority determines that the Licensee has complied with any Ex Ante Remedies imposed on the Licensee by the Authority.

Notwithstanding the foregoing, the Authority may eliminate the prior approval requirement for individual Electronic Communications Services provided by the Licensee.

For purposes of this Transitional Condition, references in Annex B to “Carrier” shall mean the Licensee, references to “the Commission” shall mean the Authority, and references to “Section 24” shall mean the Authority’s Administrative Rules.

**A2.3** Until such time as the Authority makes a General Determination to the contrary, the Licensee shall:

- (a) not increase the rates for Wholesale termination of domestic and international calls on its Electronic Communications Network; and
- (b) if the Licensee has been assigned Numbers under the Numbering Plan, provide End-Users with Carrier Pre-selection for international calls.

**A2.4** The Licensee shall comply with all statutory instruments, administrative determinations, authorizations and adjudicative decisions and orders or their equivalent that relate to Electronic Communications that were made or given effect in accordance with the Telecommunications Act 1986 and that were in operation as at the date of commencement of the ECA, until such time as their disposition is determined by the Minister or the Authority. Notwithstanding the foregoing, in the case of an irreconcilable conflict between the ECA and any such legal instruments, the Licensee shall comply with the requirements of the ECA.

### **A3 PAY TELEPHONES AND OPERATOR SERVICES**

**A3.1** The Licensee may provide Public Pay Telephone Service, provided, however, that the Licensee:

- (a) shall conspicuously post on or near each pay telephone:
  - (i) the charges, including surcharges, that will be incurred by Users for all domestic and international voice and data calls, including operator-assisted calls and access to toll-free numbers; and
  - (ii) the name, business address, email address and toll-free number of the Licensee;
- (b) may not knowingly charge for unanswered calls; and
- (c) shall immediately connect all calls to emergency services without charge.

If the Licensee is providing Pay Telephone Service as at the date of commencement of the ECA, the Licensee shall continue to provide such service until such time as the Authority approves the discontinuation of such service.

**A3.2** The Licensee may provide Operator Services, provided, however, the Licensee:

- (a) shall identify itself to the User, verbally for voice calls and otherwise for non-voice calls, at the beginning of each call before the call is connected and billed;
- (b) shall provide a mechanism to inform the User of the price of each call, including any surcharges, before the call is connected and billed;
- (c) may not knowingly charge for unanswered calls; and
- (d) shall immediately connect all calls to emergency services without charge.

If the Licensee is providing Operator Services as at the date of commencement of the ECA, the Licensee shall continue to provide such service until such time as the Authority approves the discontinuation of such service.

### **A4 DIRECTORIES AND DIRECTORY ENQUIRY SERVICE**

**A4.1** The Licensee may publish Directories and provide Directory Enquiry Service, provided, however, that the Licensee shall provide Subscribers, including Subscribers of Other Licensees, with the option to be excluded from a Directory and Directory Enquiry Service; and provided further that if the Licensee obtains Subscriber data from Other Licensees pursuant to Transitional Condition A4.2 below, the Licensee may not use that data for any purpose other than providing Directories or Directory Enquiry Services.

**A4.2** Subject to the requirements of Condition 13 of this Licence, the Licensee shall, at its own expense, maintain a complete and accurate database of its Subscribers' Numbers and make that data (including and clearly identifying Numbers that Subscribers have asked be excluded from Directories and Directory Enquiry Services) available to Other Licensees, designated by the Authority, that wish to provide Directories and Directory Enquiry Services on reasonable terms and conditions, in a format agreed between the Licensee and the Other Licensee requesting the data. Subscribers to mobile telephone services shall be presumed to have asked to be excluded from Directories and Directory Enquiry Services in the absence of written evidence to the contrary.

**A4.3** If the Licensee is providing Directories or Directory Enquiry Service as at the date of commencement of the ECA, the Licensee shall continue to provide such service until such time as the Authority approves the discontinuation of such Directories and service.

## **A5 PERSONNEL, FACILITIES AND SERVICES**

**A5.1** Until such time as the Authority makes a General Determination to the contrary, the Licensee shall maintain in Bermuda all of the personnel, Electronic Communications Network facilities, Associated Facilities and Associated Services relating to the provision of the Electronic Communications Services authorized by this Licence that were located in Bermuda as at the date of this Licence. The Authority may, with the approval of the Minister, waive this Transitional Condition in whole or in part if, and to the extent that, the Authority determines that:

- (a) there are insufficient human or other resources available in Bermuda to enable the Licensee to continue to comply with this Transitional Condition; or
- (b) continued compliance with this Transitional Condition would be economically impractical, deprive Bermuda of new and innovative services or result in higher prices for Bermudian consumers; and
- (c) a waiver would be in the public interest and not unduly discriminatory in respect of other similarly situated licensees.

**A5.2** Until such time as the Authority makes a General Determination to the contrary, the Licensee shall provide the Authority with no less than 120 days advance notice, or such other notice as the Authority may determine, before employing outside of Bermuda any personnel, Electronic Communications Network facilities, Associated Facilities and Associated Services relating to the provision of the Electronic Communications Services authorized by this Licence.



# **ANNEX B**

## Excerpts from Telecommunications Act 1986

### Duties of Carriers

- 21 (1) Subject to this section, it shall be the duty of every Carrier—
- (a) to furnish telecommunication service upon any reasonable request therefor and upon reasonable terms and conditions;
  - (b) to establish, upon reasonable terms and conditions, interconnection, at any technically feasible point within its network, with other Carriers; and such interconnection shall be at least equal in quality to that provided to itself, a subsidiary, affiliate or any other Carrier, to which it provides interconnection;
  - (c) to provide, on reasonable terms and conditions, for physical collocation of interconnection at its premises;
  - (d) to establish, and provide facilities for operating, through routes, on reasonable terms and conditions;
  - (e) subject to subsection (1A), to maintain the confidentiality of any information provided by a customer or another Carrier;
  - (f) to refrain from any act or practice which is intended, or is likely, to have the effect of lessening competition;
  - (g) to refrain from marketing practices or advertisements which are false or misleading in a material respect;
  - (h) to provide to other Carriers, upon reasonable terms and conditions, access to support structures including telephone poles, underground conduits and communication towers;
  - (i) to maintain existing services unless permitted by the Commission to discontinue such services;
  - (j) to display—
    - (i) in a conspicuous place in the Carrier's principal place of business or in such other place as may be specified in writing by the Minister; and
    - (ii) in such a manner that all the terms and conditions subject to which the licence is granted are visible and legible,
- every licence granted under this Act or authorized by law to establish, maintain or operate a public telecommunication service;

- (k) to submit to the Commission either prior to, or not later than ten days after, execution, and in such form as the Commission may specify, copies of all agreements in respect of interconnection or access to support structures between that Carrier and another Carrier, including any amendments to any existing agreements between Carriers.

(1A) Subsection (1)(e) does not apply—

- (a) where one Carrier wishes to transfer certain classes of services to another Carrier;
- (b) in respect public telecommunication services which are directly connected with the delivery of emergency services; or
- (c) where in the special circumstances of a particular case the Minister determines that it is in the public interest that such confidentiality should not apply.

(2) A carrier shall comply with a request under paragraph (1)(a), (b), (c) or (d) within thirty days of the request being made or within such longer period as the Commission may allow, and a Carrier is not relieved of the duty imposed by those paragraphs by reason only of the Carrier's inability to comply with the request within the time specified.

(3) For the purpose of paragraph (1)(k) any Carrier that is party to an agreement may furnish a copy of the agreement to the Commission on behalf of all the Carriers that are party to the agreement.

(4) Upon receipt of a copy of an agreement under paragraph (1)(k) the Commission shall within ten days either indicate its approval of such agreement or its intention to enquire into the agreement.

(5) Where the Commission approves an agreement and informs the Carrier in writing of such approval, the agreement shall either be executed within seven business days by all parties or remain in force as the case may be.

(6) If the Commission decides to enquire into any aspect of an agreement the Commission shall conclude its enquiries as expeditiously as possible and in no case in more than thirty days or such longer period as the Minister may allow and give a direction—

- (a) approving the agreement;
- (b) approving the agreement on a provisional basis;
- (c) changing the agreement in whole or in part; or

- (d) suspending the agreement or postponing the date upon which the agreement is intended to be executed to such other date as may be specified,

and the Carriers shall comply therewith.

(7) Where a Carrier has established to the satisfaction of the Commission that an existing service is unprofitable or loss-making, the Commission shall not refuse permission to discontinue that service unless—

- (a) the Commission considers that it is in the public interest to refuse permission, having regard to the utility of the service, the availability of suitable substitutes and the degree of reliance on the service by the public or segments of the public; and
- (b) the Commission is satisfied that the Carrier will be adequately compensated for the loss involved in continuing the service by the rates and charges it charges for other services it provides.

(8) No Carrier may disconnect another Carrier without the consent in writing of that Carrier or the Minister.

(9) A Carrier may only seek the permission of the Minister to disconnect another Carrier if—

- (a) that Carrier fails to settle its accounts due within a period of thirty days after receipt of a written warning notice and within a further period of thirty days after receipt of a written notice of intention to seek permission for disconnection;
- (b) that Carrier fails to comply with any term of the contract or agreement for the provision of the service;
- (c) that Carrier fails to conform to the agreed technical specification for the provision and operation of the service; or
- (d) there is other just and reasonable cause for disconnection.

(10) A Carrier which seeks the Minister's permission to disconnect another Carrier shall give notice to the Minister in writing not less than thirty days before the date of the proposed disconnection, informing the Minister of the reasons for the proposed disconnection, and the Minister shall forthwith refer the matter to the Commission for enquiry and report.

(11) Upon referral of a matter to the Commission under subsection (10), the Commission shall conclude its enquiry as expeditiously as possible and report to the Minister with recommendations within twenty days of the date of referral by the Minister.

(12) The Minister shall render a decision on a proposed disconnection of one Carrier by another within thirty days of receipt by the Minister of the notice by the Carrier under subsection (10).

### **Specified Carriers must give notice to Commission of charges**

23 (1) Subject to this Act, no specified Carrier shall initiate a new telecommunication service or vary its rates and charges for existing telecommunication services unless it gives notice in writing of the new service and the proposed rates and charges therefor, the proposed variation in the rates and charges for the existing service and the amount thereof to the Commission and publishes a notice in accordance with subsection (2).

(2) A notice under subsection (1) shall be published in such form approved by the Commission on two separate days in not less than one local newspaper approved by the Commission and shall specify therein that any person may make objections and forward such objections to the Commission within twenty-one days from the second date of publication of the notice.

(3) Where a notice under subsection (1) is given, then subject to subsection (4) or subject to the Commission giving a direction under section 24 a new service and the rates and charges therefor or a variation in the existing rates and charges shall not be introduced.

(4) Where the Commission is satisfied with the notice given under subsection (1) and informs the specified Carrier in writing or by notice published in the Gazette that it does not intend to inquire into the matter, the specified Carrier may introduce the new service and the rates and charges therefor or the variation in the existing rates and charges, as the case may be.

### **Carriers to maintain lists of rates and charges**

23A (1) A Carrier shall at all times keep at its place of business in Bermuda or such other place approved by the Commission, and on its website if any, a current list of all its rates and charges and shall make the list available for inspection by any person without charge during business hours subject to such reasonable restrictions as the Carrier may impose.

(2) A Carrier shall prior to initiating a new telecommunication service or varying the rates or charges for existing telecommunication services as the case may be furnish to the Department in such form as may be specified by the Commission, notice in writing of the new service and the rates and charges therefor or the revised rates and charges for the existing service as the case may be and such information shall be available for inspection at the offices of the Department or such other location as maybe specified by the Commission.

(3) A Carrier which contravenes any provision of this section is guilty of an offence and is liable on conviction by a court of summary jurisdiction to a fine not exceeding five thousand dollars and, in the case of a continuing offence, is liable to a

further fine of five hundred dollars for each day during which the contravention continues.

# **ANNEX C**

## RADIO FREQUENCY SPECTRUM

Set forth below are the frequencies assigned to the Licensee as at 29 April 2013.

<b>Radio Frequencies (Set Forth in Spectrum Licence Number)</b>	<b>Radio Service</b>
None	