



**INFORMATION AND COMMUNICATIONS TECHNOLOGY  
AUTHORITY**

**LICENCE TO WESTTEL LTD**

**Document Number: 014**

**Date: 12 February 2004**



## **LICENCE ISSUED TO**

**WestTel Ltd  
under Part III of**

## **THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY LAW, 2002**

**WHEREAS** WestStar T.V. Limited has requested, pursuant to Section 27 of the Information and Communications Technology Authority Law, 2002, assignment of its Licence pertaining to certain ICT Networks and ICT Services to the Licensee which is consented to by the Information and Communications Technology Authority following publication of the proposed assignment in the Gazette;

**NOW THEREFORE** The Information and Communications Technology Authority, in exercise of the powers conferred on it by Section 23 of the Information and Communications Technology Authority Law, 2002, grants to the Licensee a Licence to establish, operate and maintain the Information and Communications Technology Networks and/or Services as these terms are defined in the Conditions of this Licence, subject to the Conditions, all lawful directions of the Information and Communications Technology Authority, all applicable laws and regulations of the Cayman Islands and applicable tariffs.

**GRANTED BY THE INFORMATION AND COMMUNICATIONS  
TECHNOLOGY AUTHORITY, the Cayman Islands, on this**

**12th day of February 2004.**

  
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**Acting Chairman  
Information and Communications Technology Authority**

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## **PART I: THE LICENCE**

### **CONDITIONS**

#### **1 DEFINITIONS AND INTERPRETATION**

1.1 A word or expression used in the Licence and the Conditions and also used in the ICTA Law has the meaning ascribed to that word or expression by the ICTA Law. In addition, the following expressions shall have the following meanings given to them.

**"Affiliate"** in relation to the Licensee, means any holding company of the Licensee, any subsidiary of the Licensee or any subsidiary of any holding company of the Licensee.

**"Annex"** means one or more attachments to this Licence, all of which constitute a part of and are unique to this Licence.

**"Authorised Frequencies"** means those frequency bands of the spectrum set forth in Annex 4;

**"Authority"** means the Information and Communications Technology Authority;

**"Compliance Plan"** means a plan submitted to the Authority in accordance with Condition 10.5 and containing the information noted therein.

**"Conditions"** means all the clauses of this Licence, including any and all Annexes, as may be amended, revoked or added to in accordance with Condition 20 of this Licence.

**"Development Plan"** means a plan submitted to the Authority in accordance with Condition 10.4 and containing the information noted therein.

**"Facility" or "Facilities"** means any component of an ICT Network.

**"Force Majeure"** means any cause affecting the performance by the Licensee of its obligations arising from acts, events, omissions, occurrences or non-occurrences beyond its reasonable control, including (but without limiting the generality thereof) governmental regulations, fire, flood or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available.

**"ICTA Law"** means the Information and Communications Technology Authority Law, 2002, and any amendments or revisions thereto.

**"Licence"** means this licence authorising and requiring the Licensee specified herein to establish, operate and maintain the specified Licensed ICT Networks and/or the specified Licensed ICT Services, subject to the Conditions.

**"Licence Commencement Date"** means the 10<sup>th</sup> day of October 2003.

**"Licence Fee"** means the fee or fees prescribed by the Authority under the provisions of Section 30 of the ICTA Law and payable to the Authority by the Licensee.

**"Licensed ICT Network"** means an ICT network or Facilities specified by the Authority in a Notice published in the Gazette in accordance with Section 23(2) of the ICTA Law as requiring a Licence.

**"Licensed ICT Service"** means an ICT service specified by the Authority in a Notice published in the Gazette in accordance with Section 23(2) of the ICTA Law as requiring a Licence.

**"Licensee"** means WestTel Ltd.

**"Maturation Dates"** means the date upon which the Licensee is permitted to operate a Licensed ICT Network to offer various Licensed ICT services, namely internet services 1 November 2003, mobile services 1 February 2004 and international services 1 April 2004.

**"Number"** means the code or Subscriber number allocated by the Authority and assigned by the Licensee to specific Subscribers or uses, and which is used to route Messages to a network termination point, subscriber, user, or item of ICT equipment in the Cayman Islands.

**"Other Licensee"** means any person, other than the Licensee, who has the benefit of a Licence granted under Part III of the ICTA Law.

**"Subscriber"** means a legal entity or natural person who has a contract with the Licensee to receive Licensed ICT Services.

**"Term"** means, pursuant to Section 28(a) of the ICTA Law, the period of time during which this Licence is valid as specified in Annex 1.

**Terms of Service"** means the terms and conditions pursuant to which the Licensee shall make all services available to a Subscriber.

**"Universal Service"** means any of the categories of service specified by regulation made under Section 40 of the ICTA Law, when promulgated, and as further defined in Annex 3.

**"Universal Service Fund"** means the fund which may be established by the Authority to compensate Licensees for carrying out the Universal Service Obligations;

**“Universal Service Obligations”** means the obligation to provide universal service as set out in Part II of this Licence and as set forth in Annex 3.

**“User”** means a legal or natural person who uses, or may use the networks or services of the Licensee, but is not necessarily a Subscriber.

- 1.2 In the Licence and these Conditions, unless the context indicates a contrary intention:
- (a) references to paragraphs and subparagraphs are to paragraphs and subparagraphs of the Conditions, as varied from time to time;
  - (b) a document will be incorporated into and form part of the Conditions if it is referred to in the Conditions and reference to such a document is to that document as varied from time to time;
  - (c) headings used for Conditions, paragraphs and subparagraphs are for ease of reference only and will not affect the interpretation of the Conditions;
  - (d) references to any law, rule, regulation or other legal instrument includes any modification, re-enactment or legislative provisions substituted for the same;
  - (e) use of the word "includes" or "including" should be construed as being without limitation; and
  - (f) the masculine gender shall include the feminine and neuter, and the singular shall include the plural, and vice versa, and words importing persons shall include firms or companies.

## **2 SCOPE OF THE LICENCE**

- 2.1 In accordance with Section 23 of the ICTA Law, this Licence authorises and requires the Licensee to operate the Licensed ICT Networks and/or supply the Licensed ICT Services specified in Annex 1 for the Term specified in Annex 1 subject to Conditions of this Licence, the Maturation Dates and all applicable laws of the Cayman Islands. The requirement for the Licensee to operate the Licensed ICT Networks and/or ICT Services means, at a minimum, that the Licensee will, unless otherwise agreed to by the Authority, meet the roll out plan specified in Annex 1A.
- 2.2 In accordance with Section 23 of the ICTA Law, this Licence authorises the use by the Licensee of the Authorised Frequencies listed in Annex 4 for the Term listed in Annex 1, on an exclusive or non-exclusive basis as indicated in Annex 4. The Licensee shall pay an annual fee prescribed by the Authority for use of the Authorised Frequencies. The Authority retains

ownership of the Authorised Frequencies, and the spectrum inherent thereto, and the Licensee agrees that it will abide by any and all Authorised Frequency relocation or diminution as required by the Authority.

- 2.3 All ICT Services and all ICT Networks subject to licensure under the ICTA Law and operated by the Licensee are subject to regulation by the Authority. Nothing in this Licence shall be taken to mean or imply any derogation of, or limitation on, the exercise by the Authority of all its duties, functions and responsibilities contained in the ICTA Law.
- 2.4 The Licensee shall comply with any other requirement in law or practice to obtain any additional consents, permissions, authorisations or licences as may be necessary for the provision of the Licensed ICT Network or Licensed ICT Services and for the exercise of its rights or discharge of its obligations under this Licence and the ICTA Law.
- 2.5 The Licensee shall:
  - (a) maintain sufficient information systems, located in the Cayman Islands, as are reasonably necessary to enable the Licensee to respond in a timely manner to the information requirements of the Authority, including without limitation information relevant to business conducted between the Licensee and its Affiliates.
  - (b) maintain within the Cayman Islands management systems and management (including an officer of the Licensee) accountable for meeting its obligations under this Licence; and
  - (c) ensure that its business is conducted in a manner which is in accord with applicable tariffs, if any.

### **3 LICENCE FEE**

- 3.1 The Licence Fees payable by the Licensee for the operation of the Licensed ICT Networks and/or Licensed ICT Services specified in this Licence under the provisions of Section 30 of the ICTA Law shall be as specified in Annex 2.
- 3.2 The Licence Fees for each class of Licensee shall be non-discriminatory.
- 3.3 The Licence Fees referred to in Condition 3.1 shall be payable directly by the Licensee to the Authority on or before the payment dates specified in Annex 2, and in the case of those due at commencement of the licence, if any, the fees shall be paid prior to commencement of operations by the Licensee of the Licensed ICT Networks and/or Licensed ICT Services specified in this Licence, and thereafter for the Term(s).

- 3.4 The Authority may delegate the collection of any or all Licence Fees due in accordance with the provision of Condition 3.1 to an administrative unit of the Cayman Islands Government, and the Licensee shall pay to such unit any and all fees owed on the same date as the fees are due to the Authority.
- 3.5 Without prejudice to any other remedies of the Authority under this Licence or the Laws of the Cayman Islands, if the Licensee fails to pay any amount due to the Authority or delegated administrative unit of the Cayman Islands Government under this Condition 3 by the due date, the unpaid amount will accrue interest daily from the due date to the date of payment at three percentage points above the published Cayman Islands Dollar Prime Rate published from time to time by the Authority's bankers, the Bank of Butterfield International (Cayman) Limited.

#### **4 PROVISION OF INFORMATION**

- 4.1 Any and all aspects of the Licensee's business shall be subject to examination, investigation and audit by the Authority. The Licensee shall provide to the Authority in the manner and at the times required by the Authority, on reasonable notice, any documents, accounts, returns, estimates, reports or other information so required, including but not limited to the documents, accounts, returns, estimates, reports and other information specified in this Licence.
- 4.2 Where the Licensee operates an ICT Network which makes use of a portion of the free space electromagnetic spectrum between 3 KHz and 300 GHz, the Licensee shall, within ninety days of the Licence Commencement Date, provide the Authority with a comprehensive report on its use of the radio frequency spectrum, and on its anticipated future use, and shall update the report as requested by the Authority from time to time.
- 4.3 The Authority may conduct, from time to time, or may delegate to a suitably qualified person as the Authority may decide, an examination, investigation or audit of any aspect of the Licensee's business or of its relationship with any Affiliate of the Licensee and of its compliance with the Conditions and the Laws.
- 4.4 The Authority shall notify the Licensee of the objectives and scope of any examination, investigation or audit carried out under Condition 4.3 in advance of the commencement of such examination, investigation or audit, except where the Authority has reasonable grounds for believing the Licensee is or has been acting fraudulently or contrary to law.
- 4.5 The scope of any examination, investigation or audit carried out under Condition 4.3 shall be no wider than is necessary to fulfil the objectives of the said examination, investigation or audit.

- 4.6 Any audit ordered under Condition 4.3 shall be limited to any activities or information relating to the Licensee's information no earlier than three (3) years prior to the date the audit is commenced under Condition 4.3.
- 4.7 The Licensee shall provide any and all assistance requested by the Authority in relation to any such examination, investigation or audit, such request to be made on reasonable notice, except where the Authority has reasonable grounds for believing the Licensee is or has been acting fraudulently or contrary to law.
- 4.8 The Authority may issue directions with regard to the manner in which such examination, investigation or audit is to be carried out and with which the Licensee shall fully comply.
- 4.9 Where the Authority conducts or delegates an examination, investigation or audit in accordance with Conditions 4.1 and/or 4.3, the Licensee shall allow the authorised representative of the Authority, or of its delegate as the case may be –
- (a) to attend at, enter and inspect any premises which are under the control of the Licensee or of any of its Affiliates;
  - (b) to take copies of any documents; and
  - (c) to acquire any information in the control of the Licensee or any of its Affiliates as may be required in order to carry out the examination, investigation or public interest audit;
  - (d) require that any information be formatted and conveyed in any manner deemed appropriate.
- 4.10 The Authority or such other person who has been delegated by the Authority to conduct an examination, investigation or audit under Condition 4.3 as the case may be and the Licensee shall each bear its own costs incurred in connection with the examination, investigation or audit, provided that, in the event the examination, investigation or audit reveals a material breach of the Licence, the ICTA Law or of any applicable regulations, the Licensee shall bear all reasonable costs associated with any reporting, examination, investigation or audit.

## **5 COMPLIANCE**

- 5.1 In addition to complying with the Conditions of this Licence, the Licensee shall comply with:
- (a) any obligation imposed on it by any law, regulation or rule of the Cayman Islands that is applicable;

- (b) any direction, determination, decision request or order duly issued by the Authority under the ICTA Law, this Licence, or any law, regulation or rule of the Cayman Islands that is applicable;
- (c) the Plans submitted pursuant to Condition 10; and
- (d) applicable tariffs, if any.

## **6 EXCEPTIONS TO AND LIMITATIONS ON THE LICENSEE'S OBLIGATIONS**

- 6.1 If the Licensee is prevented from performing any of its obligations under this Licence because of *force majeure* -
- (a) the Licensee shall notify the Authority of the obligations which it is prevented from performing, and the reason why, as soon as reasonably practicable; and
  - (b) the Authority may suspend those obligations and the Licensee will not be liable to perform those obligations, for so long as the force majeure continues, only if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under this Licence or other reasonable precautions and the inability cannot reasonably be circumvented by the Licensee at its expense through the use of alternate sources, work-around plans or other means.

## **7 DURATION AND RENEWAL**

- 7.1 This Licence commences on the Licence Commencement Date and continues, subject to the Licensee's compliance with the Conditions and the Laws of the Cayman Islands, directions issued by the Authority and applicable tariffs, if any, and subject to any revocation or suspension by the Authority, for the Term.
- 7.2 Pursuant to Section 29 of the ICTA Law, the Licensee may serve notice on the Authority requesting a renewal of this Licence.
- 7.3 Within one hundred and eighty days of receiving a notice under Condition 7.2, or such further period as may be agreed with the Licensee, the Authority shall notify the Licensee whether it agrees to a renewal of the Licence subject to the same Conditions or any modified, amended or additional Conditions, and subject to the Licensee providing all necessary information to the Authority to enable it to make the notification within the required time.

## **PART II: SERVICE OBLIGATIONS**

### **8 UNIVERSAL SERVICE**

- 8.1 Pursuant to Section 42 of the ICTA Law and, in the event the Authority issues a directive, rule or regulation pursuant to the provision of Universal Service, the Licensee may be obligated to provide some or all of the services classified as Universal Services. In the event of such obligation, the Licensee will be designated a Universal Service provider for those services. The Authority may, following a public consultation process require the licensee to undertake a Universal Service Obligation, the terms for which will be incorporated into this Licence as an amended Annex 3.
- 8.2 Pursuant to Section 43 of the ICTA Law and, in the event the Authority issues a directive, rule or regulation pursuant to the provision of Universal Service, the Licensee shall contribute to the cost of the provision of the Universal Service Obligation as, and if, required by the Universal Service Regulations, unless the Licensee is exempt from that requirement in accordance with a directive from the Authority to that effect. The Authority may, following a public consultative process, require the Licensee to contribute to the cost of Universal Service at any time during the Term of the Licence, the terms for which will be incorporated into this Licence as an amended Annex 3.

### **9 911 SERVICE**

- 9.1 The Licensee shall provide, at no cost, to the Emergency Communications Centre (ECC) all information required to administer 911 Service in the Cayman Islands in the form and format and at the time intervals required by the ECC for an effective 911 Service, as amended from time to time by the ECC. Additionally, and at a minimum, the Licensee shall comply with the National Emergency Number Association Recommended Technical Standard "02-010 Standards for Recommended Formats and Protocols for Data Exchange".

### **10 DEVELOPMENT OF LICENSED ICT NETWORKS AND LICENSED ICT SERVICES**

- 10.1 The Licensee shall develop and operate the Licensed ICT Networks and Licensed ICT Services according to standards of performance in line with international best practices.
- 10.2 The Licensee shall comply at all times with relevant standards established by the Authority.
- 10.3 The Licensee shall submit to the Authority a Development Plan and a Compliance Plan, together known as "the Plans". Any and all matters to

be included in these plans may be added to, deleted or substituted by the Authority at any time during the Term of this Licence. The Plans may be submitted in confidence in accordance with the Confidentiality Rules.

10.4 The Development Plan shall describe the following:

- a) planned nature and extent of Caymanian participation as set out in Annex 1B;
- b) contact coordinates of key management responsible for and Authorised to respond to the Authority in such areas as network operations and maintenance, legal, regulatory and corporate affairs;
- c) the target levels of quality of service performance which the Licensee will achieve with the Licensed ICT Networks and Licensed ICT Services, the estimated timeframe within which those targets will be achieved and how the achievement of those target levels of performance will be monitored;
- d) anticipated introduction of new Facilities and new ICT services, including geographic coverage;
- e) the manner in which financial data will be captured, and reported and verified for purposes of the Licence Fee, including providing the Authority with audited financial statements within a time frame that is no later than three (3) months from financial year end;
- f) the Licensee's internal rules and procedures for the treatment of Other Licensee and Subscriber confidential information referenced in Condition 13 and Annex 5; and
- g) such other matters as required by the Authority from time to time.

10.5 The Compliance Plan shall describe the manner in which the Licensee has complied with the terms of its Licence and shall also address:

- (a) the extent to which it has met, exceeded or failed to meet the various categories in the Development Plan.
- (b) whether it has provided and continues to provide all financial data pertinent to the amount of Licence Fees to be paid;
- (c) interconnection and infrastructure arrangements and disputes;
- (d) significant differences between target levels of performance and performance levels achieved over a sustained period of time, and major service interruptions and reasons therefore;
- (e) broad categories of Subscriber complaints, the manner resolved and the time frames involved;
- (f) confidentiality of information and the extent to which it has been safeguarded;

- (g) Terms of Service violations, voluntary or otherwise;
  - (h) trust account deposits in favour of Subscribers; and
  - (i) such other matters as required by the Authority from time to time.
- 10.6 The Authority may direct the Licensee to update and resubmit the Plans from time to time.
- 10.7 The Authority may direct the Licensee as to matters to be included in the Plans and may amend or replace such direction from time to time.
- 10.8 The Authority may include as a Condition of this Licence the targets specified by the Licensee in the Plans and the Licensee shall be deemed to be in breach of its Licence if such target levels are repeatedly not achieved.
- 10.9 Within fifteen days of the end of each six-month period during the Term, the Licensee shall, unless otherwise approved or directed by the Authority, provide the Authority with the Plans whereby the Development Plan will address the subsequent six (6) months and the Compliance Plan will address the preceding six (6) months.
- 10.10 The Licensee shall comply with any directions issued by the Authority from time to time regarding any other quality of service indicators, measurement methods and compliance requirements, as may be reasonably required, for the Licensed ICT Networks and Licensed ICT Services.
- 10.11 The Licensee shall on request by the Authority supply the results of its measurements of actual performance against any quality of service indicators and measurements which the Authority may publish or require publication of such information as it considers appropriate.

## **11 LICENSEE'S OBLIGATIONS TO USERS**

- 11.1 The Licensee shall, in accordance with the ICTA Law, take such steps as are reasonably necessary to ensure that, in relation to its Licensed ICT Networks and/or Licensed ICT Services as applicable, Users can reasonably and reliably have access to information services to assist them with queries relating to the Licensed ICT Services.
- 11.2 The Licensee shall use its best endeavours to meet the quality of service commitments set out in the Development Plan and Conditions 10.8 and 10.10. A repeated failure to meet such quality of service obligations shall be regarded as a breach of this Licence.
- 11.3 The Licensee shall, prior to the provisioning of ICT Services to Subscribers, develop, implement and publish procedures for responding to complaints from and disputes with Subscribers related to the quality of

any Licensed ICT Services and to statements of charges and prices, and the Licensee shall respond quickly and adequately to any complaints but, in no event, later than one (1) month after the filing of such complaint with the Licensee.

- 11.4 The Licensee, and its Terms of Service, shall be subject to the Authority's Dispute Resolution Rules for resolving such complaints from and disputes with Subscribers.
- 11.5 Prior to the provisioning of ICT Services to Subscribers, the Licensee shall develop Terms of Service for the provisioning of Licensed ICT Services to Subscribers which, at a minimum, comply with the Subscriber Protection and Privacy provisions stipulated in Annex 5.
- 11.6 The Authority may, following a public consultative process, issue directives, rules or regulations which shall replace Annex 5 in whole or in part. The Licensee shall comply with every such directive, rule or regulation.
- 11.7 The Licensee shall provide all Subscribers of Licensed ICT Services with the terms and conditions of the applicable Subscriber contracts in the manner specified by the Authority, if any, and shall thereafter provide Licensed ICT Services based upon the applicable contract.
- 11.8 Subscriber contracts shall be compliant with the ICTA Law and any other applicable laws, directives and regulations of the Authority. In the event that Subscriber contracts do not comply with the ICTA Law and any other applicable laws, the Authority shall instruct the Licensee to make appropriate amendments.

## **12 PRIVACY AND CONFIDENTIALITY**

- 12.1 The Licensee shall maintain the confidentiality of, and refrain from using or disclosing, unless consent has been given to such use or disclosure by the person entitled to the confidentiality of that information:
  - (a) any confidential, personal and proprietary information obtained in the course of its business from any Subscriber, where such information originates from any such Subscriber;
  - (b) any information regarding usage of a Licensed ICT Network or a Licensed ICT Service; or
  - (c) any information received or obtained as a result of or in connection with the operation of a Licensed ICT Network or the provision of a Licensed ICT Service.
- 12.2 Notwithstanding Condition 12.1, the Licensee is permitted to use such information to operate its Licensed ICT Networks or Licensed ICT Services, bill and collect charges, protect its rights or property or prevent

the unlawful or fraudulent use of the Licensed ICT Networks or the Licensed ICT Services.

- 12.3 The Licensee shall establish implement, and publish its procedures for maintaining the confidentiality of information subject to this Condition 12.

### **13 OTHER LICENSEE CONFIDENTIAL INFORMATION**

- 13.1 In the event the Licensee receives information from an Other Licensee for the purposes of interconnection, infrastructure sharing or the provision of ICT Services generally, where such information received is of a competitive nature, such as customer orders, market forecasts, plans for the development of new services, network plans, new customers and current or proposed business plans, the Licensee shall treat such information in confidence and shall share it only amongst those employees who have a need to know for provisioning services to the Other Licensee disclosing such information and shall not provide such information to personnel involved in the provision of ICT services offered in competition, and shall use such information solely for the purpose for which such information is received.

- 13.2 The Authority may establish rules and procedures it deems necessary to prevent the misuse of Other Licensee confidential information.

### **14 ANTI-COMPETITIVE PRACTICES: AGREEMENTS**

- 14.1 Agreements by or between licensees or between one or more licensees and any other person, decisions by licensees or concerted practices which-

- (a) may affect trade in the Islands; and
- (b) have as their object or effect the prevention, restriction or distortion of competition relating to any ICT service or ICT network subject to this Law,

are prohibited.

- 14.2 Subsection 14.1 applies, in particular, to agreements, decisions or practices which-

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;

- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

14.3 Subsection 14.1 applies only if the agreement, decision or practice is, or is intended to be, implemented in the Islands or is or is intended to be implemented in such other manner as will effect the operation of any ICT network or ICT service in the Islands.

14.4 The Licensee acknowledges that a breach of subsection 14.1 constitutes a breach of a Condition of its Licence. Further, the Licensee shall not enforce any such agreement, arrangement, decision or practice.

14.5 A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by a licensee or a concerted practice, but with any necessary modifications unless the context otherwise requires.

14.6 In this section "the Islands" means, in relation to an agreement which operates or is intended to operate only in a part of the Islands, that part.

14.7 This Condition 14 shall be amended in the event legislation of general application, or any amendment thereof, addressing such agreements, decisions, or concerted practices as are defined in this Condition comes into force and effect. In such case the legislation of general application, or any amendments thereof, shall be substituted for this provision.

## **15 ANTI-COMPETITIVE PRACTICES: CONDUCT**

15.1 Any conduct on the part of one or more licensees which amounts to the abuse of a dominant position in a market is prohibited if it may affect the trade in ICT networks and ICT services within the Islands.

15.2 The conduct referred to in subsection 15.1 may, in particular, constitute such an abuse if it consists in-

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

- (b) limiting production, markets or technical development to the prejudice of subscribers;
- (c) applying dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts; and
- (e) using revenues attributed to a particular ICT service or ICT network to cross subsidize unfairly or affect competition for another ICT service or ICT network, unless otherwise approved or directed by the Authority.

15.3 In this section "dominant position" means a dominant position within the Islands.

15.4 This Condition 15 shall be amended in the event legislation of general application, or any amendment thereof, addressing such conduct as is referenced in this Condition comes into force and effect. In such case the legislation of general application, or any amendments thereof, shall be substituted for this provision.

## **16 NUMBER ALLOCATION**

16.1 The Licensee shall operate its Licensed ICT Networks and provide its Licensed ICT Services in accordance with a numbering plan established pursuant to Section 49 of the ICTA Law.

16.2 Subject to Section 49 of the ICTA Law, when required to do so by the Authority, the Licensee shall provide Number portability in accordance with any requirements specified by the Authority.

16.3 The Authority shall issue to the Licensee the Numbers required to offer Licensed ICT Services. The Licensee shall have no proprietary or ownership rights to Numbers.

## **17 INTERCONNECTION AND INFRASTRUCTURE**

17.1 Interconnection charges shall be cost oriented and reciprocal such that the Licensee and all interconnecting Other Licensees shall charge each other the same rate for the same service.

17.2 A Licensee shall not deny another Licensee access to its infrastructure or infrastructure arrangements, except:

- (a) where there is insufficient capacity taking into account reasonably anticipated requirements;
- (b) there are reasons of safety or security; or
- (c) there are technical or engineering matters which could make such access difficult or impossible.

17.3 In the event of a dispute between Licensees relating to interconnection or infrastructure sharing the Licensee shall submit such dispute to the Authority and will abide by the decision of the Authority.

## **18 REGULATORY TREATMENT**

18.1 Market conditions may require the Authority, following a public consultative process, to issue directives, rules or regulations concerning the regulatory treatment of the Licensee's prices or other matters. In such event, the Licensee shall comply with any such directives, rules or regulations as issued by the Authority.

## **Part III: General Provisions**

### **19 ASSIGNMENT**

- 19.1 The Licensee may not assign, convey or transfer this Licence, in whole or in part, without the prior written consent of the Authority.
- 19.2 Condition 19.1 shall not apply where the assignment, conveyance or transfer results from an internal reorganization of a body corporate that involves no change in the beneficial ownership thereof. The Licensee shall give prior notification to the Authority of the nature and extent of such assignment, conveyance or transfer.

### **20 LICENCE COMMENCEMENT DATE**

20.1 This Licence shall take effect on the date granted by the Authority.

### **21 AMENDMENTS**

21.1 Subject to Section 31 of the ICTA Law, no amendments or additions to this Licence shall be valid unless in writing and signed by the Authority.

### **22 COMPLIANCE WITH LAWS**

22.1 The Licensee shall comply at all times with applicable laws and regulations of the Cayman Islands.

22.2 The Licensee, in accordance with subsection 23(4) of the ICTA Law, may be exempt from complying with the Local Companies (Control) Law (1999 Revision). Nonetheless, the Licensee shall comply with the level and degree of Caymanian participation stipulated in Annex 1B.

## **Annex 1**

### **1 LICENCED ICT NETWORK AND ICT SERVICES**

- 1.1 The Licensee is authorized to operate the following ICT Networks as defined by the Authority under the provisions of section 23(2) and published in a Notice in the Gazette:

<b>Type</b>	<b>Description</b>	<b>Term</b>
<b>B</b>	Fixed Wireless	15 years
<b>S</b>	Spectrum*	annual

\* Identified in Annex 4

- 1.2 The Licensee is authorized to supply the following ICT Services as defined by the Authority under the provisions of section 23(2) of the ICTA Law and published in a Notice in the Gazette:

<b>Type</b>	<b>Description</b>	<b>Term</b>
<b>5</b>	Internet Telephony	15 years
<b>9</b>	Internet Service Provider	15 years

## **Annex 1A**

### **Roll Out Plan**

#### **Internet Service**

Residential and business high speed internet access shall be offered on Grand Cayman no later than 1 December 2003. Similar service shall be extended to the Sister Islands no later than 24 months following the introduction of Internet Telephony on Grand Cayman.

#### **Internet Telephony**

Residential and business Internet Telephony service will be offered on Grand Cayman no later than 1 August 2004. As noted above, it is anticipated that the ICT industry may undertake a fibre cable to the Sister Islands within 24 months from the Licence Commencement date, at which time Internet Telephony service will be offered to the Sister Islands.

## **Annex 1B**

### **Caymanian Participation**

The following identifies the nature and extent of Caymanian participation, including without limitation, the level of beneficial ownership by Caymanians, if any, and any participation by Caymanians as directors, management or otherwise and the dates upon which such participation will be achieved.

Equity participation will be 25% Caymanian as of the Licence Commencement Date.

Employees will be 25% Caymanian within three months of the Licence Commencement Date.

2 of 5 Directors will be Caymanian as of the Licence Commencement Date.

## **Annex 2**

### **1 LICENCE FEES**

#### 1.1 Definitions:

“Annual Revenue” means, for any Licensee Financial Year, the Annual Turnover less:

- (a) payments made to Other Licensees for interconnection, infrastructure, and wholesale services and settlement payments made to international carriers for international traffic, including adjustments to payments for such traffic (if any of these payments are made to an Affiliate, they shall be excluded from Annual Revenue only to the extent that those payments are made at open market value on an arm’s-length basis.); and
- (b) Non-recurring extra-ordinary items of receipt (including real estate) not made in the ordinary course of business.

“Annual Turnover” means the total amount of receipts in money or money’s worth received by the Licensee from all sources arising out of or in connection with the Licensee’s business in or from the Cayman Islands in any Licensee Financial Year of this Licence;

“Audit” means an audit performed by a professionally qualified external auditor and certified by an independent firm of chartered accounts.

“Audited Financial Statements” means audited: balance sheet, profit and loss statement, cash flow statement, detailed Annual Turnover and Annual Revenue statements and such other statements as the Authority may reasonably prescribe, all in respect of the Licensee’s business in the Cayman Islands for a Licensee Financial Year during the Term of the Licence.

“Dispute Notice” shall have the meaning set out in section 2.1.

“ICT Sector One” shall mean all those activities identified as ICT Services and ICT Network in the Section 23(2) Notice.

“Licensee Financial Year” means the Licensee’s financial year.

“Quarter” or “Quarterly” means a period of three (3) calendar months commencing 1 July, 1 October, 1 January and 1 April. For purposes of the initial

quarter it shall mean the period from the Licence Commencement Date to the end of the applicable Quarter.

“Quarterly Revenue” means the Quarterly Turnover less:

- (a) payments made to Other Licensees for interconnection, infrastructure and wholesale services and settlement payments made to international carriers for international traffic, including adjustments to payments for such traffic (if any of these payments are made to an Affiliate, they shall be excluded from Annual Revenue only to the extent that those payments are made at open market value on an arm’s-length basis); and
- (b) Non-recurring extra-ordinary items of receipt (including real estate) not made in the ordinary course of business.

“Quarterly Turnover” means the total amount of receipts in money or money’s worth received by the Licensee from all sources arising out of or in connection with the Licensee’s business in or from the Cayman Islands in any Quarter.

“Regulated Financial Year” means a period of twelve (12) months commencing 1 July and ending on 30 June.

“Regulatory Fee” means a fee payable to the Authority which is determined by multiplying the Authority’s costs, for a Quarter, which the Authority has determined should be paid by Licensees in ICT Sector One, by the Quarterly Revenue of the Licensee, divided by the total Quarterly Revenue of all licensees in ICT Sector One. The amount of the fee shall be established and published by the Authority thirty (30) days prior to each Quarter, and shall be based on data from the Quarter immediately preceding the Quarter in which the date of publication falls. The specific calculation and filing procedures shall be prescribed and published by the Authority in a licence fee guidelines document to be issued within sixty (60) days from the Licence Commencement Date. At the same time the Authority shall publish the Regulatory Fees payable for the Quarter beginning July 1, 2003. For the Licensee, this fee shall not exceed six hundred thousand Cayman Islands Dollars (CI\$600,000.00) for any Regulated Financial Year.

“Turnover” shall mean Quarterly Turnover and/or Annual Turnover, as applicable in the circumstances.

“Unaudited Financial Statements” means a balance sheet, profit and loss statement and a cash flow statement, that have not been audited, all in respect of the Licensee’s business in the Cayman Islands.

## 1.2 Licence Fee Procedures and Payment

(a) Not later than fifteen (15) calendar days following the end of the Quarter the Licensee shall deliver to the Authority a licence fee report showing the amount of Quarterly Turnover broken down in a manner prescribed by the Authority, Quarterly Revenue and all calculations applied, and Unaudited Financial Statements. The said licence fee report may require the Licensee to provide further information in respect of the Licence Fee calculated.

(b) At the same time as provision of the information specified in subsection (a) the Licensee shall deliver a cheque payable to the Authority which shall be equal to six per cent (6%) of the Quarterly Revenue together with an amount equal to the Licensee's Quarterly Regulatory Fee.

(c) The Licensee shall include, when providing the information specified in subsections (a) and (d), an affidavit signed by an officer of the Licensee attesting to the veracity and completeness of the information provided and that the Licensee has reported all Turnover.

(d) The Licensee shall deliver to the Authority within three (3) months of the end of the Licensee's Financial Year a full set of Audited Financial Statements. If the Audited Financial Statements, as accepted by the Authority, show that the Licensee has under paid the Licensee Fee a further sum in the amount of the under payment shall be paid to the Authority. In the event the Audited Financial Statements show that the Licensee has overpaid a credit shall be applied to the subsequent years License Fee.

## 2. Dispute Resolution

2.1 Within 28 days of the receipt by the Authority of the Licensee's Unaudited Financial Statements in accordance with clause 1.2(a) of this Annex or the receipt of the Licensee's Audited Financial Statements in accordance with clause 1.2(d) hereof (as the case may be), the Authority may serve the Licensee with a Dispute Notice stating the grounds upon which the Authority disputes the exclusion of any item from Turnover or the inclusion of any item as a deductible from Turnover for the purposes of calculating Quarterly Revenue or Annual Revenue as (the case may be) in accordance with the terms of this Annex.

2.2 The Licensee and the Authority shall thereupon use their reasonable endeavours to reach a settlement in writing of the said Dispute Notice provided that where such dispute has not been resolved to the reasonable

satisfaction of the Authority within 28 days of the receipt by the Licensee of the Dispute Notice the dispute shall be referred to an independent accountant to be agreed between the Licensee and the Authority within 14 days thereafter.

2.3 In the event that the Authority and the Licensee are unable to agree on the identity of such independent accountant the Licensee and the Authority shall refer the choice of accountant to the President for the time being of the Cayman Islands Chamber of Commerce whose decision shall be final and binding.

2.4 The decision of the independent accountant in respect of the Dispute Notice shall be final and binding and the costs of the referral of the said Dispute Notice including the fees charged by the independent accountant for adjudicating on the Dispute Notice shall be awarded by the independent accountant to the party in whose favour the said Dispute shall be resolved.

### 3. Authorised Frequencies Fee

3.1 The Licensee shall pay an annual Authorised Frequency Fee. For the five years following 10 July 2003 this fee shall not exceed Ninety Cayman Islands Dollars (CI\$90) per radio transmitter per year.

3.2 The Authorised Frequencies Fees are to be set on the following principles:

(a) The total amount collected each Regulated Financial Year for Authorised Frequency Fees from all Licensees (including the Licensee) shall not exceed the Authority's annual estimated cost of electromagnetic spectrum management and other related activities.

(b) The Authorised Frequencies Fee shall be set to be the same for all transmitters, irrespective of the use of the transmitter or the type of spectrum used by the transmitter.

## **Annex 3**

### **UNIVERSAL SERVICE**

This Annex is reserved for terms and conditions pertaining to any Universal Service Obligation or contribution to the cost of Universal Service which the Authority may, following a consultative proceeding, require in accordance with Condition 8 of the Licence.

## Annex 4

### Number Allocation

Type	Prefix	Status	Comments	In Svc Date
Carrier Access Code			Not required at this time.	
Carrier Selection Code			Not required at this time.	
End user Numbers	345-743-XXXX 345-745-XXXX 345-746-XXXX 345-747-XXXX 345-749-XXXX	Issued Issued Issued Issued Issued	1 block of 10,000 1 block of 10,000 1 block of 10,000 1 block of 10,000 1 block of 10,000	To be utilized within(6) six months

### Authorized Frequencies

Frequency	Type of Service	Comments
2150-2162 MHz	internet	Non-exclusive
2500-2700 MHz	Internet and internet telephony	Non-exclusive
2400-2500 MHz	Internet hubs	Non-exclusive
5750-5800 MHz	Point to point radio	Non-exclusive

### Type S Licence

The number of transmission frequencies/channels licensed are 4.

## **Annex 5**

### **SUBSCRIBER PROTECTION AND PRIVACY**

#### **1. Description of Services**

The Licensee's services and rates for such services are to be clearly described in its marketing materials. The Licensee's marketing materials shall clearly state how Users may contact it. Such contact information may include a valid telephone, fax, e-mail address and web site.

#### **2. Disclosure of Contract Terms and Terms of Service**

The Licensee's Subscriber contracts and agreements shall clearly set out the rates, terms and conditions of the Licensee's services. The Licensee's services shall be described in a manner such that Users are able to tell in advance what services will cost, where and how well the Licensee's services will work.

The Licensee's Terms of Service shall form part of the Licensee's Subscriber contracts and agreements. The Licensee's Terms of Service shall provide a clear description of the conditions for providing service. At a minimum, the Licensee shall obtain explicit written authorization from a User in order to provide services. An example of the Licensee's conditions for providing service may be that an application form is properly completed; that facilities are available for the type of service required; and that there are no outstanding bills for services previously supplied by the Licensee.

#### **3. Customer Dispute Procedures**

The Licensee shall establish a Subscriber complaint and dispute procedures, with trained and knowledgeable staff personnel. Subscribers must be allowed to dispute charges for services they do not believe they originated or authorized. A charge being disputed by a Subscriber shall not be considered past due unless the Licensee has reasonable grounds for believing that the purpose of the dispute is to evade or to delay payment.

The complaint and dispute procedures shall be clearly stated in the Licensee's Terms of Service. The Licensee shall make available separately, or on its web site, its complaint and dispute procedures. The complaint and dispute procedures shall accord with the Authority's Dispute Resolution Rules.

#### **4. Protection of Customer Information**

The Licensee shall have an established policy for the protection of Subscriber information and procedures to support that policy. At a minimum, the Licensee's policy for the protection of Subscriber information shall include the following: unless a Subscriber provides express consent, all information obtained or collected by the Licensee regarding the customer, other than the Subscriber's name, address, listed telephone number are confidential and may not be disclosed by the Licensee to anyone other than:

- (1) the Subscriber;
- (2) an Other Licensee, provided the information is required for the efficient and cost-effective provision of service that has been authorized by the Subscriber and disclosure is made on a confidential basis with the information to be used only for that purpose;
- (3) a public authority or an agent of a public authority, if in the reasonable judgment of the Licensee, it appears that there is imminent danger to life or property which could be avoided or minimized by disclosure of the information;
- (4) an agent retained by the Licensee in the collection of the Subscriber's account, provided the information is required for that purpose; and
- (5) a company involved in supplying the Subscriber with telephone or telephone directory related services, provided the information is required for that purpose, and the Subscriber has not requested to not be listed in the telephone directory, and disclosure is made on a confidential basis with the information to be used only for that purpose.

The Licensee's policy for the protection of Subscriber information shall be included in its Subscriber contracts and agreements, including Licensee's contact information if a Subscriber believes the policy has been breached.

#### **5. Payment of Customer Bills**

The Licensee's Subscriber contracts and agreements shall clearly state what payments Subscribers are responsible for, when bill payments are due and the last date they must be paid before incurring late payment charges.

#### **6. Identification of Licensee Personnel**

The Licensee's Terms of Service shall make clear that every person who is authorized to perform work on behalf of the Licensee carries an identification card. If the Subscriber has doubts, the Subscriber may ask to see the employer's identification card and/or to call the Licensee's office.

## **7. Suspension and Termination of Service**

The Licensee's Terms of Service shall describe the conditions under which Subscribers may terminate their services. Subscribers who give reasonable advance notice to the Licensee may terminate their services after expiry of the minimum contract period, in which case, they must pay charges due for the services which have been furnished. The Licensee may levy a termination charge based on costs associated with provisioning the service but is not entitled to levy a termination charge which is in the nature of a penalty.

The Licensee's Terms of Service shall make clear the circumstances under which the Licensee may suspend or terminate service (e.g. where a Subscriber fails to pay an account that is past due or exceeds a specific dollar amount that is reasonable for the service, or for reasons related to unreasonable use).

The Licensee may suspend or terminate a Subscriber's local voice services only during normal business hours.

## **8. Notice of Service Changes or Rate Changes**

The Licensee's Terms of Service shall clearly state the minimum notice period to be provided to existing Subscribers for changes to services and/or rates. The minimum notice period should be reasonable for the service provided.

## **9. Subscriber Deposits**

The Licensee's Terms of Service shall indicate whether a Subscriber deposit is required and the reason for the deposit. The deposit amount should be reasonable and be related to the use of the Licensee's equipment, credit worthiness of the Subscriber or for other similar reasons). Upon termination of service, the Licensee shall within one hundred and twenty (120) days refund to any such Subscriber all monies deposited including interest thereon as provided in the terms of service for that subscription, less any monies owed by the Subscriber for unpaid bills. The Licensee shall keep all such deposits in a separate trust account established by the Licensee with the beneficial right to the monies in such account designated in favour of Subscribers making security deposits.