



# Office of Utility Regulation

**Licence issued to  
Itex (Guernsey) Limited**

**under Part 1, section 1 of**

**THE TELECOMMUNICATIONS (BAILIWICK OF GUERNSEY) LAW, 2001**

The Director General, in exercise of the powers conferred on her by the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, grants to the Licensee a Licence to establish, operate and maintain the Licensed Telecommunications Network and provide the Licensed Telecommunications Services (as these terms are defined in the Conditions of this Licence), within, to and from the Bailiwick and subject to the Conditions, all lawful directions of the Director General and all applicable laws, rules, regulations and Ordinances of the States of Guernsey.

**DATED** *24 August 2004*

**SIGNED BY THE DIRECTOR GENERAL OF  
UTILITY REGULATION**

A handwritten signature in black ink, appearing to read 'R. G.', is positioned below the text 'SIGNED BY THE DIRECTOR GENERAL OF UTILITY REGULATION'.

## CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 A word or expression that is used in the Licence and the Conditions and is also used in the Telecommunications (Bailiwick of Guernsey) Law, 2001 or the Regulation of Utilities (Bailiwick of Guernsey) Law, has, except where the context otherwise requires, the same meaning in the Licence and the Conditions that it has in the relevant Law. In addition, the expressions set out below have the meanings given to them below:

**“Conditions”**: means Conditions 1 through 31 of this Licence, as may be amended, revoked or added to by the Director General from time to time;

**“Directory Information Services”**: means services offering information concerning the name, Number, address, customer type and directory type in respect of customers who have been provided with telecommunications directories and/or services relating to directory information;

**“ETSI”**: means the European Telecommunications Standards Institute;

**“ITU”**: means the International Telecommunications Union;

**“Licence”**: means this licence to provide the Licensed Telecommunications Services and to establish, operate and maintain the Licensed Telecommunications Network, subject to the Conditions;

**“Licence Commencement Date”**: means the date on which this Licence is signed by the Director General;

**“Licence Fee”**: means the fee prescribed by the Director General under sections 3(3) and 6 of the Telecommunications Law and payable by the Licensee;

**“Licensed Telecommunication Network”**: means the Telecommunications Network (other than the Licensed Mobile Telecommunications Network) which the Licensee is authorised to establish, operate and maintain in the Bailiwick for the purposes of providing the Licensed Telecommunications Services (other than Licensed Mobile Telecommunications Services);

**“Licensed Telecommunications Services”**: means the provision of any Telecommunications services to the public (other than Mobile Telecommunications Services);

**“Licensed Mobile Telecommunications Services”**: means services (other than satellite services) the provision of which consists, wholly or partly, in the establishment of radiocommunications to Users, which makes use wholly or partly of a Mobile Telecommunications Network and which has the characteristic of a pan-European, cellular, digital, land based, mobile telephony service compatible with the GSM standard. These services shall be provided in the 900MHz band in accordance with the Wireless Telegraphy Act and the ETSI technical specifications;

**“Licensee”**: means Itex (Guernsey) Limited

**“Numbers”**: means the formats of codes and subscriber numbers for routing telecommunications services to a network termination point, user, telecommunications equipment or customer premises equipment in the Bailiwick, which formats are allocated by the Director General (within the meaning of the Regulation Law) or by the Director General of Telecommunications appointed under the Telecommunications Act.

**“Number Portability”**: means a service enabling a Subscriber to transfer his contract with the Licensee to another Licensed Operator within the Bailiwick and retain the same Number allocated to that Subscriber by the Licensee;

**“Other Licensed Operator”**: means any person who, for the time being, has the benefit of a Class or Individual Licence granted under Part I of the Telecommunications Law;

**“Public Pay Telephone”**: means a telephone which is available to the general public for the use of Telecommunications Services, the means of payment for which is coins, cards or other tokens;

**“Regulation Law”**: means the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001.

**“Subscriber”**: means a legal or natural person who has a contract with the Licensee to receive Licensed Services. For the avoidance of doubt a subscriber does not include users of pre-paid services;

**“Telecommunications Law”**: means the Telecommunications (Bailiwick of Guernsey) Law, 2001

**“Term”**: means, subject to Condition 11, a period of fifteen years from the Licence Commencement Date;

**“Universal Service”**: means a Telecommunications Service, the scope of which is specified by States’ Directions;

**“User”**: means a consumer of Telecommunications Services.

1.2 In the Licence and these Conditions, unless the context indicates a contrary intention:

- (a) references to Conditions, paragraphs and subparagraphs are to Conditions, paragraphs and subparagraphs of the Conditions, as varied from time to time in accordance with the Conditions;
- (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, Ordinance 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.

## **PART I: ESTABLISHMENT AND ENFORCEMENT**

### **2. SCOPE OF THE LICENCE**

2.1 This Licence authorises the Licensee to provide Licensed Telecommunications Services and to establish, operate and maintain Licensed Telecommunications Networks in the Bailiwick of Guernsey for the Term

2.2 The Licence is personal to the Licensee and the Licensee shall not:

- (a) sub-license, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other person; or
- (b) sell or pledge any of its assets which are necessary to provide the Licensed Telecommunications Services or establish, operate and maintain the Licensed Telecommunications Network which the Licensee is obliged to provide under this Licence, unless such assets are immediately replaced with equivalent assets,

without the prior written consent of the Director General. The Director General shall not unreasonably withhold consent.

Condition 2.2 does not apply to:

- (i) a mortgage or other transaction entered into for the purpose of securing borrowings of the Licensee or an Associated Company, being borrowings for the purpose of the Licensed Telecommunications Network or the provision thereof or anything incidental thereto, or
- (ii) a transfer, assignment or other disposal of an interest in assets under an arrangement whereby the Licensee retains the use and benefit of such assets for the remainder of the useful life of such assets and for the duration of the Licence, or
- (iii) a transfer, assignment or other disposal of assets made in the ordinary course of business.

2.3 Subject to Condition 8 the Licensee shall notify the Director General of the occurrence of any of the following:

- (a) any fact or event likely to materially affect the Licensee's ability to comply with any Condition including any change to the Licensed Telecommunications Network which may detrimentally affect the permanence, availability or quality of the Licensed Telecommunications Network or the Licensed Telecommunications Services;
- (b) an insolvency-related event in respect of the Licensee or an Associated Company of the Licensee, or any preparatory steps being taken that might lead to an insolvency-related event,

immediately upon the Licensee becoming aware of the event.

2.4 The Licensee shall notify the Director General:

- (a) of any proposed Change of Control of the Licensee forthwith upon the Licensee, or its Chairman, Chief Executive Officer, Chief Operating Officer or any Director becoming aware of the proposed change; and
- (b) in any event, on the occurrence of any Change of Control of the Licensee, within thirty days of that event.

2.5 On receipt of notification the Director General may:

- (a) approve the proposed change or the change in writing;
- (b) disapprove the proposed change or the change in writing, giving reasons; or
- (c) approve the proposed change or the change subject to the Licensee accepting a modification of the Licence under Section 8 of the Telecommunications Law,

and, or in addition to any of the above measures, the Director General may issue such directions to the Licensee or invoke any of the sanctions, penalties or remedies in the Law or the Licence as the Director General considers necessary or appropriate.

In taking action under this section, the Director General may have regard to whether or not the Director General would have awarded the Licence to the Licensee had the Change of Control taken effect prior to the award.

2.6 In this Condition 2, "Control" shall mean any direct or indirect possession of any power or right that enables a person or group of persons to direct, or cause the general direction of, the management or policies of the Licensee by any means and in any event, a person or group of persons shall be deemed to Control the Licensee if:

- (a) he or they exercises or controls the exercise of fifty-one per cent or more of the votes able to be cast at general meetings of the Licensee on all, or substantially all, matters; or
- (b) he is or they are able to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all matters or is able to appoint or remove a majority of the governing body of the Licensee; or
- (c) he or they exercises or controls the exercise of fifty-one per cent or more of the partnership or other ownership interests of the Licensee,

and, in each case, reference to the Licensee shall include any person or group of persons who Controls the Licensee in any of such ways, and "Change of Control" shall mean any change as a result of which any other person or group of persons acquires Control.

2.7 The Licensee shall supply to the Director General, in relation to itself and any Associated Company which Controls the Licensee:

- (a) a copy of its annual return on the same date on which it is required to be filed in accordance with the Companies (Guernsey) Law, 1994;
- (b) a copy of its annual report and accounts on the same date on which it is circulated to the shareholders of the relevant body corporate; and

(c) where the relevant body corporate is not incorporated in the Bailiwick, any returns, reports, accounts or other information under the laws of any applicable jurisdiction which are, in the opinion of the Director General, analogous or equivalent to the above, at such times and in such forms as the Director General directs from time to time.

2.8 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 Telecommunications Services or the establishment, operation and maintenance of the Licensed Telecommunications Network and for the exercise of its rights or discharge of its obligations under this Licence.

2.9 The Licensee shall ensure that:

- (a) the administration and management of the business associated with the establishment, maintenance and operation of the Licensed Telecommunications Network and the provision of the Licensed Telecommunications Services shall be conducted from the Bailiwick; and
- (b) its business is conducted in a manner which the Director General is satisfied is on a normal commercial basis and at arm's length from the business of any of its shareholders or Associated Companies.

### **3. LICENCE FEE**

3.1 The Licensee shall pay the Licence Fee in the manner directed by the Director General.

3.2 Without prejudice to any other remedies of the Director General under this Licence or the Laws, if the Licensee fails to pay any amount due to the Director General 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 base rate of the Bank of England

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

4.1 For the purpose of monitoring the Licensee's compliance with the Conditions and the Laws, the Licensee shall provide to the Director General in the manner and at the times required by the Director General, any documents, accounts, returns, estimates, reports or other information including but not limited to the documents, accounts, returns, estimates, reports and other information specified in this Licence.

4.2 The Licensee shall, within ninety days of the Licence Commencement Date, provide the Director General with a comprehensive report on its use of the radio frequency spectrum, and the anticipated future use, and provide updates on the report as requested by the Director General from time to time.

4.3 The Director General may require an examination, investigation or audit of any aspect of the Licensee's business relating to the Licensed Telecommunications Network or the Licensed Telecommunications Services or its compliance with the Conditions and the Laws, and the Licensee shall provide any assistance requested by the Director General in relation to any such examination, investigation or audit. The Director General may issue directions with regard to the manner in which such examination, investigation or audit is

carried out.

- 4.4 In particular, the Director General may authorise a person to carry out an examination, investigation or audit or may require the Licensee to arrange for an examination, investigation or audit of any aspect of the Licensed Telecommunications Network or the provision of the Licensed Telecommunications Services to ensure compliance with the Conditions. The Licensee shall allow the Director General's authorised representative to attend at, enter and inspect any premises under the Licensee's or any of its Associated Companies' control, and to take copies of any documents and to acquire any information in the control of the Licensee or any of its Associated Companies, as may be required in order to carry out the examination investigation or audit.
- 4.5 The Licensee shall bear all reasonable costs associated with any examination, investigation or audit conducted under this Condition 4.

## **5. COMPLIANCE**

In addition to the Conditions, the Licensee shall comply with:

- (a) any obligation imposed on it by the Laws or by any law, regulation, rule or Ordinance; and
- (b) any direction duly issued by the Director General under the Laws or by any law, regulation, rule, Ordinance or this Licence.

## **6. MODIFICATION**

The Director General may from time to time modify, revoke or add to any condition in this licence. Any modification, revocation or addition to the Conditions shall be made in accordance with Section 8 of the Telecommunications Law and any other requirements under any applicable law.

## **7. ENFORCEMENT AND REVOCATION**

The Director General may at any time revoke this licence in accordance with the provisions and procedures set out in Section 28 of the Telecommunications Law. The Director General may also take any action to enforce any condition of this licence in accordance with Section 27 of the Telecommunications Law or any direction issued relating to this Licence.

## **8. EXCEPTIONS AND LIMITATIONS ON THE LICENSEE'S OBLIGATIONS**

If the Licensee is prevented from performing any of its obligations under this Licence because of force majeure:

- (a) the Licensee shall notify the Director General of the obligations it is prevented from performing and the reason why as soon as reasonably practicable; and
- (b) the Director General 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.

**9. INTEGRITY OF THE NETWORK**

- 9.1 The Licensee shall take all reasonable steps to ensure the integrity of the network and may refuse to provide the Licensed Telecommunications Services which it is obliged to provide in accordance with Condition 12 of this Licence to a particular User if providing those Licensed Services would or would be likely to cause damage or interference to the Licensed Telecommunications Network or Licensed Telecommunications Services.
- 9.2 In the event of a dispute arising as to the application of this condition, the licensee shall provide details with regard to its proposed action and the Director General shall issue a determination on the matter.

**10. MATTERS OF INTEREST TO THE BAILIWICK**

- 10.1 The Licensee shall, in connection with its establishment, operation and maintenance of the Licensed Telecommunications Network and provision of the Licensed Telecommunications Services take reasonable steps to prevent any of them from being used in, or in relation to, the commission of offences against the laws of the Bailiwick.
- 10.2 The Licensee shall establish and maintain the capability to intercept Messages transmitted over the Licensed Telecommunications Network and to provide information regarding the use of Licensed Telecommunications Services, in order to be able to meet the requirements of the Interception of Communications (Bailiwick of Guernsey) Law, 1997.

**11. TERM AND RENEWAL**

- 11.1 The Licence commences on the Licence Commencement Date and continues, subject to the Licensee's compliance with the Conditions and the Laws and subject to any revocation or suspension by the Director General, for the Term.
- 11.2 At any time after the eleventh anniversary but prior to the twelfth anniversary of the Licence Commencement Date, the Licensee may serve notice on the Director General requesting a renewal of this Licence.
- 11.3 Within one hundred and eighty days of receipt of the notice under Condition 11.2, or such further period as may be agreed with the Licensee, the Director General shall notify the Licensee whether or not she agrees to a renewal of the Licence subject to the same Conditions or any modified, amended or additional Conditions, subject to the Licensee providing all necessary information to the Director General to enable her to make the notification within the required time.

## **PART II: PUBLIC SERVICE CONDITIONS**

### **12. UNIVERSAL SERVICE**

- 12.1 Where so directed by the Director General, the Licensee shall provide in the Bailiwick of Guernsey, the Universal Service set out in the States Direction issued in accordance with section 3(1)(c) of the Regulation Law as amended, modified or replaced from time to time. The Licensee shall comply with any direction given from time to time, by the Director General in respect to the Universal Service Obligation.
- 12.2 Until otherwise instructed, the Licensee shall defray the full cost of the Universal Service Obligation set out in this Condition. In the event that the provision of Universal Service represents an unfair burden on the Licensee the Director General may introduce a mechanism to share the determined net cost of the Universal Service obligation between licensed operators. Such determination shall be made following consultation by the Director General on the appropriate mechanism to be used.
- 12.3 The Director General may direct the licensee to contribute to a fund, to be established under Condition 12.2, to cover the net cost of the provision of the Universal Service Obligation and the Licensee shall comply with such directions.
- 12.4 If required by any Subscriber to whom it provides Licensed Telecommunications Services, the Licensee shall also provide maintenance services in respect of any Customer Premises Equipment in that Subscriber's control which is to be lawfully connected to the Telecommunications Network at a Network Termination Point, except where:
- (a) the Licensee has notified that Subscriber that the Customer Premises Equipment is beyond economic repair or the components or tools necessary to effect the repairs are no longer available and provided that the Director General has agreed in writing accordingly;
  - (b) the Customer Premises Equipment was supplied by a person other than the Licensee or its Associated Company.

### **13. PUBLIC EMERGENCY CALL SERVICES**

- 13.1 The Licensee shall provide a public emergency call service, being a Telecommunications Service that enables a User at any time and without incurring any charge or using any coin or token, to communicate with the police, the ambulance or fire services or the maritime search and rescue services and to notify them of an emergency by using Customer Premises Equipment lawfully connected to the Licensed Network at any place in the Bailiwick.
- 13.2 The Licensee shall ensure that codes 112 and 999 and other codes which may be designated as emergency access codes, are exclusively reserved for calls to emergency services.

### **14. DIRECTORY INFORMATION**

- 14.1 The Licensee shall ensure that Users have access to Directory Information Services and Operator Assisted Services offered by the Licensee any Other Licensed Operator who is

obliged to provide such services.

14.2 The Licensee shall, at its own expense:

- (a) maintain a complete and accurate database of its Subscribers' Numbers and make the data available to Other Licensed Operators who become obliged to provide Directory Information Services (but only to facilitate the provision of Directory Information Services);
- (b) co-operate with all such Other Licensed Operators in the supply or compilation of comprehensive and accurate directory information; and
- (c) not use any directory information provided to it by any Other Licensed Operator for any purpose other than for providing Directory Information Services unless specifically authorised to do so by the Other Licensed Operator concerned

14.3 The Licensee shall comply with the any relevant legislation covering the protection of data in place and as may be amended from time to time.

## 15. PUBLIC PAY TELEPHONES

15.1 The Licensee shall ensure that the following Telecommunications Services are accessible at all Public Pay Telephones forming part of the Licensed Telecommunications Network:

- (a) Voice Telephony Services;
- (b) Directory Information Services;
- (c) public emergency call services without the need for any charge or the use of any card or other token;
- (d) free-phone services; and
- (e) operator-assisted services.

In this Condition 15, "Voice Telephony Services": means the conveyance of voice messages between the Licensed Telecommunications Network and any other public telecommunications network;

15.2 All Public Pay Telephones provided by the Licensee shall display a notice specifying:

- (a) the minimum charge for connection, call charge information and permissible methods of payment;
- (b) the location of the Public Pay Telephone;
- (c) a statement that emergency calls can be made without charge, card or token;
- (d) a statement as to whether or not incoming calls can be received; and
- (e) contact information in the event of service complaints.

15.3 The Licensee shall be responsible for the installation, maintenance and prompt repair of

its Public Pay Telephones and shall ensure that at least one of any such Public Pay Telephones in each location where Public Pay Telephones are located, is equipped for use by people with hearing, sight or other disabilities, unless the Director General directs otherwise in writing.

- 15.4 If the Licensee wishes to withdraw any Public Pay Telephone from service it shall display a notice to that effect at the Public Pay Telephone concerned not less than sixty days before service is withdrawn, unless the Director General agrees otherwise in writing.

## **16. CONSUMER PROTECTION**

- 16.1 The Licensee shall, in the manner and at the times specified by the Director General, publish the standard terms and conditions, including tariffs under which it provides each category of Licensed Telecommunications Services to Subscribers and Users. In the absence of any other direction from the Director General, the Licensee shall ensure that a current statement of all applicable terms and conditions is:

- (a) filed with the Director General; and
- (b) promptly made available for inspection at the request of any member of the public or promptly sent to them by post on request.

- 16.2 The Director General may direct the Licensee to change the Licensee's standard terms and conditions from time to time.

- 16.3 The Licensee shall safeguard the privacy and confidentiality of all Messages transmitted over the Licensed Telecommunications Network and the Licensed Telecommunications Services shall comply with all applicable laws from time to time regarding the protection of personal data and shall comply with any directions issued by the Director General for the purposes of protecting the interests of its Subscribers or Users.

- 16.4 The Licensee shall provide each of its Subscribers with an acceptable level of itemised billing for international calls, at no additional charge. On request by a Subscriber, the Licensee shall also provide itemised billing for local calls at a reasonable charge. The itemised bill produced by the Licensee shall in all cases provide sufficient detail to facilitate verification of charges incurred by the Subscriber in using the Licensed Telecommunications Services. Calls which are free of charge to the user, including calls to helplines, shall not be identified in the subscriber's itemised bill.

- 16.5 The Licensee shall within three months of the Licence Commencement Date publish an appropriate code of practice ("consumer code") for the resolution of Subscriber or User disputes, including but not limited to the non-payment of bills and disconnection. The Director General may from time to time issue directions to the Licensee specifying any modifications or additions that she considers should be made to the consumer code.

- 16.6 The consumer code shall identify a transparent, simple, inexpensive procedure in order to address, inter alia, the following:

- (a) the appointment of a representative of the Licensee to be the first point of contact for members of the public;
- (b) a means of recording complaints against and disagreements with the Licensee;

- (c) the procedure and time frame in which the Licensee will respond to complaints and disagreements; and
- (d) the method and duration of retention of records of complaints and disagreements; and
- (e) the level of any compensation that the Licensee may offer where complaints have been upheld or not satisfactorily resolved.

If a complaint or disagreement remains unresolved for 3 months, either party may refer it to the Director General for determination.

- 16.7 The consumer code may be amended by the Licensee from time to time, provided that the Licensee shall notify the Director General and publish the proposed changes 28 days in advance of their coming into effect. The Director General may issue directions to the Licensee as to the changes, including but not limited to directions not to make the changes, directions to amend the changes further or directions as to the timing of the changes.
- 16.8 The Licensee shall participate in good faith in any dispute resolution procedure established by the Director General for the resolution of disputes.
- 16.9 The Licensee shall ensure the accuracy and reliability of any systems, equipment, data or procedures which the Licensee uses to measure or to track the provision of Licensed Telecommunications Services or for the calculation of related charges.

## **PART III: GENERAL CONDITIONS RELATING TO THE PROVISION OF TELECOMMUNICATIONS**

### **17. NUMBERING**

- 17.1 The Licensee shall use only those Numbers that are allocated to it for the purpose of terminating Messages on the Licensed Telecommunications Network and shall comply with any directions concerning use and allocation which are issued by the Director General from time to time
- 17.2 The Licensee shall manage any Numbers allocated to it with a view to conserving Numbers as a public resource and shall maintain a record of the status of all Numbers allocated to it and on request, shall provide that information to the Director General
- 17.3 The Licensee shall not charge its customers for allocations of Numbers except where authorised and in accordance with any direction from the Director General.
- 17.4 The Licensee shall comply with any directions issued by the Director General in respect of Number Portability.

### **18. RADIO FREQUENCY SPECTRUM**

- 18.1 The Licensee shall provide the Licensed Telecommunications Services in accordance with the requirements of the Wireless Telegraphy Act and Telecommunications Act.
- 18.2 Licensee shall at all times facilitate the proper management of the radio frequency spectrum and shall ensure that the equipment and systems of the Licensee are adequate to prevent or, if necessary, eliminate interference with other authorised radio systems. The Licensee shall if so directed by the Director in writing where she believes that an emergency exists:
- (a) modify, in such manner as may be specified in the direction, the operating characteristics of any radio transmitting station used for the purposes of the Licensed Telecommunications Services; or
  - (b) cease operating any radio channel or radio transmitting station used for the purposes of the Licensed Telecommunications Services.
- 18.3 The Licensee shall ensure that non-ionising radiation emissions from its Licensed Telecommunications Network are within the limits specified by the guidelines published by the International Commission for Non-Ionising Radiation Protection (ICNIRP) and that it complies with any radiation emission standards adopted and published from time to time by ETSI, the European Committee for Electrotechnical Standardisation and any other standards specified by the Director General.

### **19. INTERCONNECTION**

- 19.1 The Licensee shall:
- (a) have the right to Interconnect the Licensed Fixed Telecommunications Network with the Fixed Telecommunications Network or Mobile Telecommunications Network of any Other Licensed Operator that has been found to be dominant by the Director

General in the Fixed Telecommunications Network or Mobile Telecommunications Network markets as the case may be, provided the technical standards and specifications for interconnection have been complied with; and

- (b) have an obligation to negotiate interconnection to its Licensed Fixed Telecommunications Network with the Fixed Telecommunications Networks or the Mobile Telecommunications Networks of any Other Licensed Operator whose licence authorises such Interconnection.

- 19.2 Any disputes between the Licensee and any Other Licensed Operator in relation to matters arising from Condition 19.1 may be referred to the Director General where either party has a dominant position in the relevant market and disputes so referred shall be determined in accordance with Section 10 (5) and 10(6) of the Telecommunications Law.

## **20. ACCESS TO FACILITIES**

- 20.1 If the Licensee or the Licensee's Associated Company and any Other Licensed Operator fail to reach agreement within sixty days in respect of a request by the Other Licensed Operator for Access, and the Director General considers that such Access is essential as being the only economically feasible means by which Telecommunications Networks can be installed or connected to the premises of a User or Subscriber, or over, under, in or across any public right of way or as being the only feasible means of avoiding material damage to the environment, the Director General may instruct the Licensee to allow, or to procure that the Licensee's Associated Company allows the Other Licensed Operator, Access on reasonable terms unless the Director General determines that the Licensee or the Licensee's Associated Company concerned, alone or with any other person willing or required to do so, is unable to grant the necessary Access, or that it would otherwise be unreasonable for it to do so.

- 20.2 In the absence of agreement between the parties, the terms of Access including time limits for completion of any agreement shall be determined by the Director General.

## **PART IV: CONDITIONS APPLICABLE TO DOMINANT OPERATORS**

### **21. APPLICATION OF CONDITIONS**

Where the Director General has decided, in accordance with Section 5 of the Telecommunications Law, that a licensee has a dominant position in a relevant market, she may determine that provisions of this Part IV apply.

### **22. EQUAL ACCESS**

22.1 The Licensee shall at the request of an Other Licensed Operator or if directed by the Director General, make Equal Access available to that Other Licensed Operator. The Director General may direct the terms upon which such Equal Access shall be provided and the Director General may make subsequent directions modifying or supplementing the regulation of Equal Access. In this Condition, "Equal Access" means a facility provided whereby a User can access the Telecommunications Network or Telecommunications Services offered by an Other Licensed Operator. The User's choice may be made in either of the following ways, subject to the requirements of the direction:

- (a) by pre-selection, that is to say the User registers with the Licensee the name of the Other Licensed Operator which will convey all his calls (but the Licensee may offer a facility to overwrite the preference in the case of any particular call); or
- (b) on a call-by-call basis using any numbers or codes allocated for this purpose by the appropriate licensing authority.

22.2 The Licensee may not charge any fee or require the Subscriber to acquire any special equipment as a pre-requisite to obtaining Equal Access or changing its designation of preferred Operator.

### **23. INTERCONNECTION**

23.1 The Licensee shall on request, Interconnect the Licensed Telecommunications Network with the Telecommunications Network or the Mobile Telecommunications Network of any Other Licensed Operator whose licence authorises such Interconnection, at any technically feasible point.

23.2 The Licensee shall make available to interested parties such Technical Standards and Specifications as may be required to enable connection to the Licensed Telecommunications and Network. The Director General may issue a direction as to the information that must be provided.

23.3 The Licensee shall not be required to enter into an Interconnection agreement or provide Interconnection services if that agreement or the provision of those services would:

- (a) be technically infeasible or if it could reasonably be expected materially to impair the quality of any Licensed Telecommunications Service; or
- (b) threaten the integrity, security, or interoperability of the Licensed Telecommunications Services or Network in a material way,



provided that the Licensee informs the Other Licensed Operator, in writing, with a copy to the Director General forthwith justifying its decision to refuse Interconnection or its intention to terminate Interconnection services under an Interconnection agreement. The Director General may determine whether the action by the Licensee is reasonable and issue directions accordingly.

- 23.4 The Licensee shall provide copies of any interconnect agreements to the Director and such agreements shall be made available to interested parties upon request being made in writing to the Director. The Director may determine following consultation with the Licensee those aspects which deal with the commercial strategy of the parties and those aspects shall not be made available.
- 23.5 The Director may direct that changes be made to any interconnect agreement to ensure that it is in compliance with the Telecommunication Law.

## **24. LEASED CIRCUITS**

- 24.1 The Licensee shall offer to lease out circuits for any lawful purpose:
- (a) on publicly advertised conditions and on non-discriminatory terms. This is without prejudice to discounts that are in accordance with Condition 29;
  - (b) within a reasonable and published period of time from any request;
  - (c) so as to meet the quality standards required under the Conditions; and
  - (d) at prices that do not exceed levels determined from time to time by the Director General.
- 24.2 The Licensee shall offer to lease out circuits to other licensed operators on terms that are no less favourable than those on which the Licensee makes equivalent leased circuits available to its Associated Companies or its own business divisions
- 24.3 The Licensee shall not be obliged to provide, and may cease to provide, leased circuits to Users in cases in which:
- (a) use of the leased circuits in the manner proposed would harm the integrity, security or interoperability of the Licensed Telecommunications Network or Licensed Telecommunications Services in a material way; or
  - (b) the leased circuits will be connected to Customer Premises Equipment that is not approved for connection to the Licensed Telecommunications Network.
- 24.4 If the Licensee refuses to provide leased circuits or intends to terminate the provision of a leased circuit service on grounds that the User of the leased circuits is acting in a manner set out in Condition 24.3, the Licensee shall immediately give its reasons in writing to the User, and submit a copy to the Director General. The Director General may consider whether the reasons given for the refusal or the intention to terminate the leased circuit are justified and issue directions accordingly.
- 24.5 The Licensee may include in its agreements with Users of leased circuits, reasonable restrictions consistent with Condition 24.3.

**25. SEPARATE ACCOUNTS**

Within six months of the Licence Commencement Date, the Licensee shall prepare and maintain accounting records in a form that enables the activities specified in any direction given by the Director General to be separately identifiable, and which the Director General considers to be sufficient to show and explain the transactions of each of those activities. The Director General may direct the Licensee as to the basis and timing of such reports as the Director General may require.

**26. CROSS SUBSIDISATION**

26.1 The Licensee shall not unfairly cross subsidise or unfairly subsidise the establishment, operation or maintenance of any Telecommunications Network or Telecommunications Services.

26.2 To enable the Director General to evaluate where any unfair cross-subsidisation or unfair subsidisation is taking place, the Licensee shall record at full cost in its accounting records any material transfer of assets, funds, rights or liabilities between a part and any other part of its business, and between it and any Associated Company, and shall comply with any directions issued by the Director General for this purpose.

**27. UNDUE PREFERENCE AND UNFAIR DISCRIMINATION**

The Licensee shall not show undue preference to, or exercise unfair discrimination against, any User or Other Licensed Operator regarding the provision of any Licensed Telecommunications Services or Access. The Licensee will be deemed to be in breach of this Condition if it favours any business carried on by the Licensee or an Associated Company or Other Licensed Operator so as to place Other Licensed Operators competing with that business at an unfair disadvantage in relation to any licensed activity.

**28. LINKED SALES**

28.1 The Licensee shall not make it a condition of providing any Licensed Telecommunications Services, or providing Access that a Subscriber, User or Other Licensed Operator should acquire from the Licensee, or any person specified by the Licensee, any Telecommunications Service or Telecommunications Apparatus including Customer Premises Equipment, other than the one that is specifically required by the person concerned, unless the Licensee has notified the Director General of its intention to do so and has satisfied her that there are technical reasons why such a bundling of Telecommunications Services and/or Telecommunications Apparatus should occur, or that there is a sufficient economic benefit to Users to justify the bundling.

28.2 The provisions of Condition 28.1 shall not prevent the Licensee from offering discounts in accordance with any discount scheme which complies with Condition 29.

**29. PRICE REGULATED SERVICES**

29.1 Where the Licensee intends to introduce:

- (a) new prices for any Licensed Telecommunications Services, or prices for new Licensed Telecommunications Services to be introduced by the Licensee;

- (b) any discounts to published prices for Licensed Telecommunications Services within a Relevant Market in which the Licensee has been found to be dominant or for any Subscribers to whom additional services or goods are provided by the Licensee or any of its Associated Companies; or
- (c) special offers to all or any of its customers for particular categories of Licensed Telecommunications Services where those Licensed Telecommunications Services have been found to be within a Relevant Market in which the Licensee has been found to be dominant,

it shall publish the same at least twenty one (21) days prior to their coming into effect or otherwise as required by law, and provide full details of the same to the Director General.

29.2 The Director General may determine the maximum level of charges the Licensee may apply for Licensed Telecommunications Services within a Relevant Market in which the Licensee has been found to be dominant. A determination may;

- (a) provide for the overall limit to apply to such Licensed Telecommunications Services or categories of Licensed Telecommunications Services or any combination of Licensed Telecommunications Services;
- (b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or
- (c) provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.

29.3 All published prices, discount schemes and special offers of or introduced by the Licensee for Licensed Telecommunications Services shall be transparent and non-discriminatory; all discount schemes shall be cost-justified and all special offers shall be objectively justifiable.

29.4 If the Director General, after consulting the Licensee and such other persons as she may determine, is satisfied that any published price, discount scheme or special offer is in breach the Regulation Law, Telecommunications Law or this Licence, the Director General may, by issuing a direction, require the Licensee to bring the relevant prices, discount schemes or special offers into conformity with the Laws and/or the requirements of this Licence.

## **PART V: FAIR COMPETITION**

### **30. FAIR COMPETITION**

The Licensee shall:

- (a) not engage in any practice or enter into any arrangement that has the object or the likely effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Telecommunications Networks or the provision of Telecommunications Services in the licensed area; and
- (b) comply with any direction issued by the Director General for the purpose of preventing any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Telecommunications Networks or the provision of Telecommunications Services.

### **31. MISUSE OF DATA**

The Licensee shall not make use of network or traffic data, traffic profiles or any other data of any nature which become available to it directly or indirectly as a result of entering into Interconnection arrangements or otherwise as a result of carrying Messages, in any way which, in the reasonable opinion of the Director General, would unduly prefer the interests of any business carried on by the Licensee or an Associated Company of the Licensee, or place Other Licensed Operators at an unfair disadvantage.