

FREQUENCY AUTHORISATION

**GRANTED BY THE MINISTER
UNDER THE
TELECOMMUNICATIONS ACT No[-]of 200[-]**

TO

[Frequency Authorisation Holder]

FOR THE

USE OF RADIO FREQUENCIES

**IN CONNECTION
WITH THE**

**OPERATION OF CERTAIN
TELECOMMUNICATIONS NETWORKS**

AND THE

**PROVISION OF CERTAIN
TELECOMMUNICATIONS SERVICES**

IN

[ECTEL Member State]

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FREQUENCY AUTHORISATION

THE MINISTER, in accordance with the Electronic Telecommunications Act No.[-] of 200[-], as amended, and acting upon the recommendation of ECTEL, hereby grants this Frequency Authorisation to [Frequency Authorisation Holder] (hereinafter referred to as the Frequency Authorisation Holder) to use the Authorised Frequency in connection with the operation of the Licensed Networks and the provision of the Licensed Services within the Licensed Area as specified herein.

PART I – THE FREQUENCY AUTHORISATION

1. FREQUENCY AUTHORISATION

- 1.1 This Authorisation shall be known as the [Frequency Authorisation Holder] Frequency Authorisation 20[--].

2. INTERPRETATION

- 2.1 In this Authorisation

“**Act**” means the Telecommunications Act 2001 and Regulations made thereunder as amended by superseding legislation;

“**Affiliate**” means, in relation to this Frequency Authorisation Holder, any body corporate that is a subsidiary of this Frequency Authorisation Holder or if this Frequency Authorisation Holder and another body corporate are subsidiaries of the same body corporate or if each of them is controlled by the same person; and if the Frequency Authorisation Holder and another body corporate are affiliated with the same body corporate at the same time, they are affiliated with each other;

“**Annex**” means one or more attachments to this Authorisation, all of which constitutes a part of and is unique to this Authorisation

“**Annual Licence Fee**” means the fee prescribed by the Act payable by the Frequency Authorisation Holder to the Commission on each anniversary of the Effective Date;

“**Authorised Frequency**” means the frequency set forth in **Annex A**;

“Change of control”, in relation to a Frequency Authorisation Holder, means when a person, alone or with other persons, takes charge of the Frequency Authorisation Holder or frequency authorization holder –

- (a) by acquiring directly or indirectly including by merger –
 - (i) 50% or more of the Frequency Authorisation Holder’s voting share;
 - (ii) rights or contracts which confer decisive influence on the composition, voting or decisions of organs of the Frequency Authorisation Holder or frequency authorization holder;
 - (iii) while not holding the rights or entitled to the rights under a contract under subparagraph (ii), has the power to exercise the rights deriving from such right or contract;
 - (iv) through the Frequency Authorisation Holder or frequency authorization holder divesting its shares;
- (b) by any direct or indirect sale or transfer of substantially all of the assets of the Frequency Authorisation Holder;
- (c) by an approved and completed plan of liquidation of the Frequency Authorisation Holder or an agreement for the sale on liquidation of the Frequency Authorisation Holder;
- (d) by the Frequency Authorisation Holder determining and declaring that a change of control has occurred;

“Commission” means the Commission established under the Telecommunications Act as amended or supeseded;

“Conditions” means the conditions of the Frequency Authorisation, modified or varied from time to time.

“Control” means, in the case of a body corporate the person who directly or indirectly, except by way of security only, holds the shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate;

“ECTEL” means the Eastern Caribbean Telecommunications Authority;

“Electronic Communications” means -

- (a) any type of transmission and receipt of symbols, signals, writing, images and sounds, or any sort of communication on lines, by radio optical, wire, or other electromagnetic systems;
- (b) Includes telecommunications;

“Electronic Communications Network” means transmission system and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, radio, optical signals, electricity distribution

systems, high-voltage lines or other electromagnetic means, including networks for radio and television broadcasting and cable television networks;

“Electronic Communication Service” means a service provided wholly or partially by the conveyance of signals on an electronic communications network;

“Emergency Services” means in respect of the Licensed Area, the relevant public, police, fire and ambulance services for that territory;

“Effective Date” means [DATE OF LICENCE];

“Frequency Authorisation Holder” means [Name of the Frequency Authorisation Holder];

“Frequency Authorisation Term” means [15] years from the Effective Date;

“Frequency Renewal Fee” means the frequency fees payable by the Frequency Authorisation Holder on the renewal of this Frequency Authorisation;

“Government” means the Government of [ECTEL Member State];

“International Electronic Communications Service” means an electronic communications service including telecommunications service between points in the Licensed Territory and points outside the Licensed Territory or with ships at sea and vessels in coastal waters;

“Licensed Networks” means any network that the Frequency Authorisation Holder operates pursuant to a licence granted under the Act;

“Licensed Services” means any services that the Frequency Authorisation Holder is licensed to provide under the Act;

“Merger” means the cessation of two or more persons, at least one of which is or controls a Licensee or frequency authorization holder from being distinct, whether by purchase or lease of share, amalgamation, combination, joint venture or any other method through which influence over the policy of another licensee or frequency authorization is acquired.

“Order” means an order issued by the Minister under the Act;

“Pro Forma Transaction” means:

- (a) An assignment from one or more individuals to a body corporate owned or controlled by the same individual or individuals without any change in their relative interest;

- (b) An assignment from a body corporate to shareholders without effecting any change in the disposition on their interest;
- (c) A reorganization of a body corporate that involves no change in the beneficial ownership thereof;
- (d) An assignment or transfer –
 - (i) From a body corporate to its wholly owned subsidiary or vice versa;
 - (ii) Between wholly owned subsidiaries of the same holding company;
- (e) An assignment from a body corporate to another body corporate owned or controlled by the assignor's share holders without a substantial change in their relative interest.

“Regional Spectrum Management Plan” means the Spectrum Plan to be developed by ECTEL in accordance with the Regulations;

“Renewal Fee” means a fee payable by the frequency authorisation holder to the Commission on the renewal of this frequency authorisation;

“Significant market power”, in relation to a Frequency Authorisation Holder, means that a Frequency Authorisation Holder individually or jointly with others enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by affording the Frequency Authorisation Holder the power to behave to an appreciable extent independently of its competitors and users;

“Significant interest”, in relation to an incorporated body, means a holding or interest in the company or in any holding company of the company held or owned by a person, alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly –

- (a) to control [20%] or more of the voting rights of that company at a general meeting of the company;
- (b) to a share of [20%] or more in dividends declared and paid by the company;
- (c) to a share of [20%] or more in any distribution of the surplus assets of the company;

2.2 Any word, phrase or expression used in this Frequency Authorisation shall, unless the context requires otherwise, have the same meaning as it has in the Act.

2.3 Words, importing the singular shall include the plural and vice versa.

3. SCOPE

- 3.1 The Frequency Authorisation Holder is hereby assigned the Authorised Frequency for use in connection with the operation of its Licensed Networks and the provision of its Services.
- 3.2 The Frequency Authorisation Holder shall have the exclusive use of the Authorised Frequency for the term specified herein.
- 3.3 This Frequency Authorisation is not intended to convey proprietary rights in the Authorised Frequency or give the right to use the spectrum except in accordance with the terms of this Authorisation.

4. PRECONDITION

- 4.1 The rights of the Frequency Authorisation Holder set out herein shall not take effect until the Frequency Authorisation Holder shall have paid the fees as prescribed in the Act.

5. DURATION AND RENEWAL

- 5.1 This Frequency Authorisation is granted on the Effective Date for a period of fifteen (15) years.
- 5.2 The Minister shall renew the Frequency Authorisation upon request by the Frequency Authorisation Holder for an additional period of five (5) years upon expiration of the Frequency Authorisation Term provided none of the provisions of section [-] of the Act would cause the Minister to refuse a request for renewal.
- 5.3 Where a Frequency Authorisation Holder wishes to renew the Frequency Authorisation, it shall make a written application to the Minister, in the prescribed form twelve (12) months prior to the expiry date of the Frequency Authorisation or at a later date if the Minister so determines.
- 5.4 On granting a renewal of the Frequency Authorisation the Minister may vary the terms of the Frequency Authorisation, if the Minister considers it necessary to do so.
- 5.5 Renewal of the Frequency Authorisation shall not take effect until the Frequency Authorisation Holder has paid Renewal Fee and any other fees owed under the Frequency Authorisation.

5.6 The provisions of section [-] of the Act relating to modification, suspension, revocation shall apply mutatis mutandis to the renewal of a Frequency Authorisations.

6. ASSIGNMENT

6.1 The Frequency Authorisation Holder shall not assign or otherwise transfer this Frequency Authorisation or any of its rights or obligations under this Frequency Authorisation without the prior written consent of the Minister, subject to Clause 6.2 below.

6.2 The prior written consent of the Minister shall not be required by the Frequency Authorisation Holder where the assignment or transfer results from an internal reorganization of a body corporate that involves no change in the beneficial ownership thereof. The Frequency Authorisation Holder shall give prior notification to the Minister of the nature and extent of such assignment or transfer.

7. MODIFICATION, SUSPENSION AND REVOCATION

7.1 The Frequency Authorisation shall be subject to modification, variation, suspension and revocation according to sections 37 and 38 of the Act.

7.2 In deciding whether to agree to an amendment proposed by the Frequency Authorisation Holder, the Minister shall give due consideration to any submissions received from the Frequency Authorisation Holder and other interested parties in relation to the proposed amendment.

PART II – FREQUENCY AUTHORISATION CONDITIONS

1. FREQUENCY AUTHORISATION FEES AND MONEYS OWED

1.1 The Frequency Authorisation Holder shall pay all fees prescribed under the Act.

1.2 If the Frequency Authorisation Holder owes the prescribed fees payable in respect of this Frequency Authorisation, the Frequency Authorisation Holder shall be in breach of this Licence.

2. AUTHORISED FREQUENCY

2.1 Nothing in this Frequency Authorisation empowers the Frequency Authorisation Holder to use spectrum that has not been granted in accordance with the Act.

- 2.2 The Frequency Authorisation Holder shall use the Authorised Frequency in accordance with the Regional Spectrum Management Plan and only for the purposes of providing the Licensed Services.
- 2.3 The Frequency Authorisation Holder shall take such steps as the Minister may by notice in writing to the Frequency Authorisation Holder reasonably require so as to ensure that the activities of the Frequency Authorisation Holder do not cause harmful interference to the lawful operation on of any other Frequency Authorisation Holder.
- 2.4 The Frequency Authorisation Holder shall, suspend the use of the Authorised Frequency immediately upon the direction of the Minister for the period specified in the direction.

3. INFORMATION REQUIREMENTS

- 3.1 The Frequency Authorisation Holder shall provide the Minister, the Commission and ECTEL with any relevant agreements (including agreements with any Affiliates of the Frequency Authorisation Holder) and such relevant accounting, financial, costs, technical and other information (including but not limited to a complete audited financial report) reasonably required to enable the Minister, the Commission and ECTEL to carry out their functions under the Act in such manner and at such times that the Minister, the Commission and ECTEL may request.

4. PERFORMANCE REQUIREMENTS

- 4.1 The objectives in relation to the use of all frequencies are set out in Annex A. Notwithstanding **Annex A** a licensee in possession of 700MHz shall also comply with the provisions of **Annex B**.
- 4.2 The Frequency Authorisation holder shall proceed expeditiously and diligently to ensure that the frequency advanced in this Frequency Authorisation application be deployed in the following timeframe in order to avoid the possibility of forfeiture of the spectrum:
 - (a) If after 18 months from the date of grant of this Frequency Authorisation by the Minister, the Frequency Authorisation Holder does not utilize the spectrum contained within the Frequency Authorisation for which this Frequency Authorisation has been granted, the Frequency Authorisation Holder shall forfeit the spectrum to which this Frequency Authorisation relates. Upon forfeiture of the spectrum under this clause, there shall be

no refund of any fees, bonds payments or charges whatsoever that have been paid in respect of this granting of the Frequency Authorisation.

- (b) Notwithstanding clause 4.2 (a) above, in relation to frequency Authorisation granted in respect of 700MHz spectrum, wireless broadband access shall be offered to the public within one (1) year of granting of this Frequency Authorisation by the Minister failing which this Frequency Authorisation shall become subject to forfeiture;

- 4.3 The Minister may, after consultation with ECTEL, reassign spectrum:
 - (a) to allow for the introduction of new technology;
 - (b) Where it is necessary to ensure the efficient use of radio spectrum;
 - (c) Where the overall demand for radio frequency for a particular telecommunications service cannot be met; or
 - (d) Where the frequency authorization holder request frequency held by another frequency authorization holder and the Minister considers it appropriate to do so.

5. PRE-NOTIFICATION OF CHANGES IN SHAREHOLDING

- 5.1 The Frequency Authorisation Holder shall notify the Minister of any acquisition of shares or change in shareholding of the Frequency Authorisation Holder, if by reason of that acquisition or change, the total number of shares held by a Person or any nominee or trustee for that Person, immediately after the change or acquisition exceeds 20 per cent of the total number of shares in the Frequency Authorisation Holder (where such shareholding did not already exceed 25 per cent prior to that change or acquisition).
- 5.2 The Frequency Authorisation Holder shall notify the Minister ninety (90) days prior to the taking effect of the change or acquisition stated above.
- 5.3 Upon receipt of the notification under clause 5.2, the Minister shall on the recommendation of ECTEL, issue in writing within 80 days, a certificate of non-objection without conditions, a certificate of non-objection with conditions or a certificate of objection.
- 5.4 The Minister shall before issuing a certificate under Clause 4.3 take into account the public interest or national security, the purposes of the Treaty establishing ECTEL and the purpose of ECTEL.
- 5.5 A licence who failure to comply with Clause 4 (notification of change in shareholding) shall be in breach of this licence.

6. CHANGE OF CONTROL

6.1 The Licencee shall not enter into a merger agreement or any agreement which results in the change of control of the frequency, without the prior written consent of the Minister, acting on the recommendation of ECTEL. The Minister shall not unreasonably withhold his consent and shall give reasons for refusal.

7. FORCE MAJEURE

7.1 Force Majeure refers to an event or accident which is beyond the control of the Frequency Authorisation Holder and includes:

- (a) acts of God, action by or against enemies of the State, riot or civil commotion;
- (b) strikes, lock-outs and other industrial disturbances;
- (c) wars, blockades or insurrection;
- (d) earthquake, hurricane, flood, fire or explosions;
- (e) outbreak of pestilence or epidemics;
- (f) government rationing of electricity or other wartime or emergency controls imposed by Government;
- (g) embargoes or trade restrictions;

7.2 The Frequency Authorisation Holder shall not be in breach of this Authorisation if and to the extent that it is prevented from fulfilling its obligations by reason of Force Majeure.

8. COMPLIANCE

8.1 The Frequency Authorisation Holder shall comply with all applicable Acts, Regulations, Directions, Orders and Recommendations, including but not limited to the Act, and shall comply with the Directions, Orders and Recommendations issued by the Minister and the Commission.

GRANTED BY THE MINISTER on the day of20[--]

Signed:

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Minister of Telecommunications

ANNEX A

AUTHORISED FREQUENCIES AND TECHNICAL PARAMETERS

The Authorized Frequencies are attached hereto:

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ANNEX B

COVERAGE OBLIGATIONS FOR 700MHz SPECTRUM

- (a) 700MHz wireless broadband access offered to the public within one (1) year of granting of this frequency Authorisation by the Minister;
- (b) Within eighteen (18) months of the granting of this Frequency Authorisation the Frequency Authorisation Holder shall achieve geographical coverage that will cover at least 60% of the size of the Frequency Authorisation Holder's mobile wireless subscriber base existing at the time of assignment;
- (c) Within two (2) years of the granting of this Frequency Authorisation achieve geographical coverage that will cover at least 95% of the size of the Frequency Authorisation Holder's mobile wireless subscriber base existing at the time of assignment.

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