

LICENCE

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

TO

[SUBSCRIBER TELEVISION LICENSEE]

FOR THE

ESTABLISHMENT AND OPERATION

OF A

SUBSCRIBER TELEVISION NETWORK AND /OR SERVICE

IN

[ECTEL Member State]

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TELECOMMUNICATIONS SUBSCRIBER TELEVISION LICENCE

THE MINISTER in accordance with the Telecommunications Act No.[-] of 200[-], as amended, and acting upon the recommendation of ECTEL, hereby grants this Licence to [Subscriber Television Licensee] (hereinafter referred to as the Licensee) to establish and operate a Subscriber Television Network and/or Services within [ECTEL Member State] and to do all or any of the acts specified herein.

PART I - LICENCE

1. LICENCE

1.1 This licence shall be known as the [Subscriber Television Licensee] Subscriber Television Network and /or Services Licence 200[-].

2. INTERPRETATION

2.1 In this Licence:

“**Act**” means the Telecommunications Act 200[-] and regulations made thereunder, or as amended by superseding legislation;

“**Affiliate**” means, in relation to this Licensee, anybody corporate that is a subsidiary of this Licensee or if this Licensee 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 Licensee 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 Licence, all of which constitutes a part of and is unique to this Licence;

“**ATSC**” means Advanced Television Systems Committee;

“**Annual Licence Fee**” means the fee payable by the Licensee to the Commission on each anniversary of the Effective Date;

“**Authorised Frequency**” means the radio frequency that the Licensee is authorized to use pursuant to its frequency authorization issued under the Act.

“**Broadcasting Services**” means either sound broadcasting or television broadcasting or both and includes subscriber television services.

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

- (a) by acquiring directly or indirectly including by merger –
 - (i) 50% or more of the licensee’s voting share;
 - (ii) rights or contracts which confer decisive influence on the composition, voting or decisions of organs of the licensee 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 licensee or frequency authorization holder divesting its shares;
- (b) by any direct or indirect sale or transfer of substantially all of the assets of the licensee;
- (c) by an approved and completed plan of liquidation of the licensee or an agreement for the sale on liquidation of the licensee;
- (d) by the licensee determining and declaring that a change of control has occurred;

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

“Conditions” means the conditions contained in this Licence, as amended, modified or varied from time to time.

“Control” means in the case of a body corporate, that a person 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.

“Coverage Obligations” means the geographical coverage obligations to provide the Licensed Services according to the geographical coverage set out in **Annex B** to this Licence or as amended;

“Customer” means any Person who is provided with the Licensed Services by the Licensee;

“Customer Equipment” means the equipment used by the Customer for the purpose of accessing the Licensed Services;

“DTMB” means Digital Terrestrial Multimedia Broadcast;

“DVB” means Digital Video Broadcasting;

“ECTEL” means the Eastern Caribbean Telecommunications Authority;

“Effective Date” means [DATE OF LICENCE]

“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;

“Government” means the Government of the [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;

“Internet” means a global information system, consisting of high speed circuits connecting routers that transmit data in the form of Internet Protocol packets, that is logically linked together by a globally unique address, based on Internet Protocol; is able to support communications using the Transmission Control Protocol/Internet Protocol; and provides, uses or makes accessible, either publicly or privately, high level services on an electronic communications Network;

“Internet Access” means the provision of access to the Internet;

“ISDB” means Integrated Services Digital Broadcasting;

“Licence” means this Licence together with the Annexes;

“Licence Term” means fifteen (15) years from the Effective Date;

“Licensed Area” means the area defined in Part I clause 3 of this licence;

“Licensed Networks” means those networks detailed in **Annex A**; or as operated pursuant to a licence granted under this Act;

“Licensed Services” means those electronic communications services the Licensee is authorized to provide;

“Licensee” means [Subscriber Television Licensee];

“Market” means a market in [ECTEL Member State] of and when used in relation to an electronic service, means a market for those electronic communications services or other services that are substitutable for, or otherwise competitive with, the first-mentioned electronic communications services;

“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.

“Net Neutrality” means the principle that an electronic communications network and licensees permit all data over the internet by not interrupting, throttling, blocking or degrading such data.

“NTSC” means National Television System Committee;

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

“PAL” means Phase Alternating Line;

“Quality of Service Obligations” means the quality of service obligations set out in an **Annex** to this Licence, as amended in Regulations issued by the Minister;

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

“Regulations” means regulations issued by the Minister pursuant to Section [-] of the Act;

“Renewal Fee” means a fee payable by the Licensee to the Commission on the renewal (Application) of this Licence;

“Retail Customer” means a consumer other than a licensee, who is –

- (a) obliged to pay periodically or on demand for an electronic communications service; or
- (b) has entered into an agreement for the provision of an electronic communications service; any Person who is, or who wishes to be, provided with the Licensed Services by the Licensee

“SECAM” means Sequential Color with Memory;

“Significant market power”, in relation to a licensee, means that a licensee 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 licensee 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;

“Standard Customer Agreement” means the terms and conditions on which a particular Subscriber Television Service is provided to the Customer;

“Subscriber Television” is a system of delivering television programming to paying subscribers usually provided by analog and digital wire-line systems, satellite, and terrestrial broadcast”.

“Universal Service Obligation” means the obligation to provide Universal Service as set out in Part II, Condition 3.1 of this Licence and **Annex D** or as amended in Regulations issued by the Minister;

- 2.2 Any word, phrase or expression used in the Licence shall, unless the context requires otherwise, have the same meaning as it has in the Act or in any superseding legislation.
- 2.3 Words importing the singular shall include the plural and vice versa.

3. SCOPE

- 3.1 The Licensee is hereby authorized to establish and operate the Licensed Networks to provide the Subscriber Television services to any Person within [ECTEL Member State (hereinafter referred to as the Licensed Area)] provided that such network is in compliance with all applicable laws and regulations, and in particular the Electronic Communications (Terminal Equipment) Regulations as amended or superseded.
- 3.2 The Licensee is hereby authorised to provide the Licensed Services by means of the Licensed Network using the Authorised Frequency as required.

3.3 The Licensee is authorized to sell or lease Customer Equipment to the public and provide maintenance and repair services in connection with any such Customer Equipment provided that such Customer Equipment is of a type approved under Section [-] of the Act.

3.4 This License is non-exclusive and is not intended to convey proprietary rights.

4. PRECONDITION

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

5. DURATION AND RENEWAL

5.1 This Licence is granted on the Effective Date for a period of fifteen (15) years.

5.2 The Minister shall renew the Licence upon application by the Licensee for an additional period of fifteen (15) years upon expiration of the Licence Term provided none of the provisions of section [-] of the Act would cause the Minister to refuse a request for renewal.

5.3 Where the Licensee wishes to renew the Licence, the Licensee shall make a written application to the Minister, in the prescribed form, twelve (12) months prior to the expiry date of the Licence or at a later date if the Minister so determines.

5.4 On granting a renewal of the Licence the Minister may vary the terms of the Licence; if the Minister considers it necessary to do so.

5.5 The provisions of section [-] of the Act relating to suspension, revocation, etc. shall apply mutatis mutandis to the renewal of a Licence.

5.6 Renewal of the Licence shall not take effect until the Licensee has paid the Renewal Fee and any other fees owed under the Licence.

6. ASSIGNMENT

6.1 The Licensee shall not assign or otherwise transfer this Licence or any of its rights or obligations under this Licence save as permitted under the Act. Where such transfer is permitted, the prior written consent of the Minister, shall be obtained subject to clause 6.2 below.

6.2 The prior written consent of the Minister shall not be required by the Licensee where the assignment 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 Minister of the nature and extent of such assignment or transfer.

7. CHANGE OF CONTROL

The Licensee shall not enter into a merger agreement or any agreement which results in the change of control of the licensee, 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.

8. MODIFICATION, SUSPENSION AND REVOCATION

- 8.1 This licence shall be subject to modification, variation, suspension and revocation according to Sections [-] of the Act.
- 8.2 In deciding whether to agree to an amendment proposed by the Licensee, the Minister shall give due consideration to any submission received from the Licensee and other interested parties in relation to the proposed amendment.
- 8.3 If after 18 months from the date of issuance of this licence the licensee does not provide full customer service for which this licence has been granted, the licensee shall forfeit this licence. Upon forfeiture of this licence 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 licence.

PART II - LICENCE CONDITIONS

1. LICENCE FEES AND MONEYS OWED

- 1.1 The Licensee shall pay all fees prescribed under the Act.
- 1.2 If the Licensee owes money to the Government or ECTEL in relation to fees payable in respect of this Licence, the Licensee shall be in breach of this Licence if the Licensee fails to pay that money within ninety (90) days after receiving a written notice from the Minister indicating that payment is due.

2. NETWORK BUILD OUT AND EMERGENCIES

- 2.1 The Licensee shall comply with the Geographical Coverage Obligations as outlined in Annex B as amended.

- 2.2 The Licensee shall provide access for emergency services by means of the Licensed Networks.
- 2.3 In the event of hurricanes, earthquakes, floods and similar emergencies, the Minister may in the first instance require the Licensee to provide free of charge to Government or to such Institutions or persons as the Minister may identify, such Telecommunications Services as the Minister reasonably determines are necessary in the public interest. Such period shall not exceed fifteen (15) days in the first instance.
- 2.4 In the event that the emergency extends beyond fifteen (15) days, the Minister may require that the services referred to in clause 2.3 continue to be provided free of charge to Government or such Institutions as identified by the Minister for a further fifteen (15) days.
- 2.5 The Government will compensate the Licensee for any days in excess of thirty- (30) days.

3. UNIVERSAL SERVICE

- 3.1 The Licensee shall fulfill the Universal Service Obligation pursuant to Section [-] of the Act, and in accordance with **Annex D** or as amended in Regulations Issued by the Minister.
- 3.2 The Licensee shall make and receive payments into and from the Universal Service Fund in accordance with the Act or Regulations issued by the Minister pursuant to Section [-] of the Act.

4. LICENSEE'S OBLIGATIONS TO CUSTOMERS

- 4.1 The Licensee shall, in accordance with the Act take such steps as are necessary to ensure that in relation to its Licensed Networks, each customer can reasonably and reliably have access to information services to assist them with queries relating to the Licensed Networks including installation and fault reporting; freedom of customer migration, and billing.
- 4.2 The Licensee shall comply with the principle of net neutrality as set out in this Licence, save as is necessary for reasonable network management and in accordance with the Act.
- 4.3 The Licensee agrees meet the Quality of Service Obligations, included in Annex C of this licence as amended in Regulations issued by the Minister.
- 4.4 The Licensee shall meet those Quality of Service Obligations and a repeated failure to comply with a Commission's directive to meet such quality of service obligations shall be regarded as a breach of this Licence.

- 4.5 The Licensee shall, no later than three months after the Effective Date, establish and submit for the Commission's approval, an efficient procedure for the resolution of disputes with Customers, in accordance with the Act.
- 4.6 The Licensee shall, no later than three months after the Effective Date, submit for the Commission's approval, a form of Standard Customer Agreement containing the terms and conditions for the provision of Licensed Services to Customers.
- 4.7 The Licensee shall notify all Customers of the approved terms and conditions of the Standard Customer Agreement in the manner specified by the Commission and shall thereafter provide Licensed Services based upon the Standard Customer Agreement.
- 4.8 The Licensee may from time to time modify the Standard Customer Agreement after such modification has been approved by the Commission and shall notify the Commission and customers of such modification at least one month before the intended date of implementation.
- 4.9 The Standard Customer Agreement and any modifications made under Condition 4.7 above shall be compliant with the Act as amended and other applicable laws. In the event that the Standard Customer Agreement or modifications do not comply with the Act and other applicable laws, the Commission shall instruct the Licensee to make the appropriate amendments. Such amendments shall be notified to the Customer in accordance with Condition 4.6 above and shall not have retroactive effect.

5. FREQUENCY

- 5.1 Nothing in this Licence empowers the Licensee to use spectrum that has not been granted in accordance with the Act.
- 5.2.1 The Licensee shall use the Authorised Frequency in accordance with the Regional Spectrum Management Plan and only for the purposes of providing the Licensed Services

6. NON-DISCRIMINATION AND FAIR TRADING

- 6.1 The Licensed Networks shall be established and operated, and the Licensed Services shall be provided, by the Licensee on an arm's length commercial basis with respect to all Affiliates of the Licensee.
- 6.2 The Licensee shall not engage in any activities, whether by act or omission, which have, or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in relation to the Licensed Services.

6.3 The Licensee shall not engage in any activities, whether by act or omission, which have, or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in relation to the Licensed Services.

6.4 Without limiting the generality of Condition 7.2, any such act or omission shall include:

6.4.1 any abuse by the Licensee, either independently or with others, of a dominant position or a position of significant market power.

6.4.2 entering into any contract or engaging in any concerted practice with any other party;

6.4.3 Failing to comply with any written direction of the Commission to act or to refrain from acting in a particular manner where the effect of the Act or omission has been deemed by the Commission as likely to have the effect of unfairly preventing, restricting or distorting competition in the Licensed Service; or

6.5.4 where the effect of the conduct defined in Clause 6.5.1, 6.5.2 and 6.5.3, is, or is likely to be, a substantial lessening of competition in that market or any other market.

6.6 For the purposes of Clause 6.5.1 of this Part, a Licensee may be considered as having a dominant position if the Commission has designated the Licensee as a dominant electronic communications provider. Further for the purposes of Clause 6.5.1 of this Part, a Licensee may be considered to have significant market power where, as a result of a market analysis the Commission comes to that conclusion.

6.7 An electronic communications provider shall be considered dominant or having significant market power in respect of a particular electronic communications market or markets in [Member State] in accordance with this Licence and the Act.

6.8 A Licensee may make an application for a declaration of non-dominance in accordance with the Act. Or where it has been declared as having significant market power, apply to the Commission to have its status reviewed.

7. TECHNICAL STANDARDS

The Licensee shall develop and operate the Licensed Networks in accordance with the technical standards outlined in **Annex E**.

8. INFORMATION REQUIREMENTS

8.1 The Licensee shall provide the Minister, the Commission and ECTEL with any relevant agreements (including agreements with any Affiliates of the Licensee) 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.

9. PRIVACY AND CONFIDENTIALITY

9.1 The Licensee shall ensure the privacy and confidentiality of information and business secrets obtained in the course of its business from any Person to whom it provides Licensed Services by establishing and implementing procedures for maintaining confidentiality of such information as set out in the Act.

10. PRE-NOTIFICATION OF CHANGES IN SHAREHOLDING

10.1 Subject to Clause 7, the Licensee shall notify the Minister's of any acquisition of shares, voting rights or distribution of surplus assets or change in shareholding of the Licensee by any Person if, by reason of that acquisition or change, the total number of shares in the Licensee held by the Person, together with any shares held by 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 Licensee (where such shareholding did not already exceed 20 per cent prior to that change or acquisition).

10.2 The Licensee shall notify the Minister in writing ninety (90) days prior to the taking effect of such change or acquisition stated above.

10.3 Upon receipt of the notification under clause 10.2, 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.

10.4 The Minister shall before issuing a certificate under Clause 10.3 take into account the public interest or national security, the purposes of the Treaty establishing ECTEL and the purpose of ECTEL.

10.5 A licence who failure to comply with Clause 10 (notification of change in shareholding) shall be in breach of this licence.

11. RIGHTS OF ACCESS

11.1 The Licensee shall have the rights of access that are necessary to permit the installation and maintenance of the Licensed Networks on public rights-of-way, in public buildings and other public property, and in respect of similar works necessary for the provision of the Licensed Services.

- 11.2 In the course of constructing or maintaining any Licensed Network of the Licensee, the Licensee may, by its officers or agents duly authorized in writing and on production of the authority, cut or remove from any street, high-way or land, any tree or branch or other parts of a tree, tending to interfere with, endanger, or otherwise prejudicially affect such Licensed Networks.
- 11.3 In exercising this right, no person shall enter any land without the consent of the owner or occupier until after the expiration of fifteen days' notice in writing given to the owner or occupier or posted up conspicuously upon the property.
- 11.4 If such owner or occupier, within seven days from the service or posting up of such notice gives written objection thereto, the Licensee may not enter upon the private land in question without first having obtained the necessary Court Order.
- 11.5 Where any condition exists which is dangerous and relates to the provision of the licensed services by the Licensee, the Licensee may immediately enter upon Land and take whatever reasonable action is necessary and expedient to establish safe conditions thereon.
- 11.6 Where the Licensee takes action under Condition 11.5 above, the Licensee must within three (3) days thereof, inform the owner or occupier of the land in question (either by service of a written notice on him or by posting up conspicuously a notice on such land) of the action taken.
- 11.7 In the exercise of any powers under this Clause, the Licensee shall cause as little inconvenience or damage as is reasonably practicable and the Licensee is liable to pay compensation to any person who suffers damage to his property in consequence of the exercise of such powers by the Licensee. For the avoidance of doubt, this Condition shall also apply to public lands, public buildings and other public property.

12. FORCE MAJEURE

- 12.1 Force Majeure refers to an event or accident which is beyond the control of the Licensee 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 explosion or other such disaster;
 - (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;

12.2 The Licensee shall not be in breach of this Licence if and to the extent that it is prevented from fulfilling its obligations by reason of Force Majeure.

13. COMPLIANCE

13.1 The Licensee shall comply with all applicable Acts, Regulations, Directions, Orders and Recommendations, including but not limited to the Act as amended and shall comply with the Directions, Orders and Recommendations issued by the Minister and the Commission.

Granted by the Minister on the of20XX.

Signed by:

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Minister of Telecommunications

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ANNEX A LICENSED NETWORKS

1. The Licensee is authorized pursuant to this Licence to establish, own and operate all electronic communications facilities necessary for the transmission of Subscriber Television services whether:
 - (a) using wireline or wireless or other technology, or any combination thereof;
 - (b) reception for retransmission from satellite networks; or
 - (c) used in conjunction with other multi-media services

2. In this context, the term “transmission” relates to the transport of signals for the provision of Subscriber Television Services

3. For the avoidance of doubt, nothing in this Licence grants a person the right to establish, own or operate any electronic communications facilities, or to provide any electronic communications service, for which a licence is required, unless that person has been granted such a licence in accordance with the Act or any other legislation.

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ANNEX B
GEOGRAPHICAL COVERAGE OBLIGATIONS

1. Within eighteen months of issuance of this License the Licensee shall make the Licensed Service available to at least [50%] of domestic residences in the Licensed Area and within five years of its issuance to at least [80%] of domestic residences in the Licensed Area.

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ANNEX C

QUALITY OF SERVICE OBLIGATIONS

The Licensee shall comply with Quality of Service Obligations as set out in Regulations governing the Quality of Service in [ECTEL Contracting State] as amended from time to time.

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ANNEX D UNIVERSAL SERVICE OBLIGATIONS

The Licensee shall comply with Universal Service Obligations as set out in Regulations governing the Universal Service Obligations in [ECTEL Contracting State] as amended from time to time.

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ANNEX E

TECHNICAL STANDARDS

Adherence to relevant standards as outlined by the International Telecommunications Union (ITU) for television broadcasting is required for all analogue and digital transmission systems, including but not limited to NTSC, PAL and SECAM, ATSC, DVB, ISDB and DTMB.

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