



Commission for
Communications Regulation

Telecommunications Licence

Pro-forma General Telecommunications Licence

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An Coimisiún um Rialáil Cumarsáide

Commission for Communications Regulation

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PRO FORMA LICENCE:

General Telecommunications Licence

Under Section 111(2) of the Postal and Telecommunications Services Act, 1983, as amended, and the Communications Regulation Act 2002.

Telecommunications Licence No. XXX

(Name of Licensee)

LICENCE NO:

COMMISSION FOR COMMUNICATIONS REGULATION

**POSTAL AND TELECOMMUNICATIONS SERVICES ACT, 1983,
as amended, and The COMMUNICATIONS REGULATION ACT
2002.**

General Telecommunications Licence

(Name of Licensee)

LICENCE:

1. The Commission, in exercise of the powers conferred on it by Section 111(2) of the 1983 Act, as amended by the Licensing Regulations, and the 2002 Act, grants to the Licensee a Licence to provide Licensed Services within and to and from the State, subject to the Conditions, all lawful directions of the Commission and all applicable laws of the State.
2. In providing Licensed Services, the Licensee may apply for and use numbers under the National Numbering Scheme in compliance with the specific numbering conditions set out in these Conditions.
3. The Licence commences on the Licence Commencement Date and continues, subject to the Conditions and to the provisions of the 1983 Act, as amended by the Licensing Regulations, and to the 2002 Act, for fifteen (15) years from the Licence Commencement Date.

**SIGNED FOR THE COMMISSION FOR
COMMUNICATIONS REGULATION**

DATED:

LICENCE CONDITIONS

Part 1: General Conditions

1. Definitions and Interpretation

- 1.1. In the Licence and the Conditions the expressions set out below have the meanings given to them below (and other grammatical forms of the expressions have corresponding meanings):

“1983 Act”: means the Postal and Telecommunications Services Act, 1983;

“1996 Act”: means the Telecommunications (Miscellaneous Provisions) Act, 1996;

“2002 Act”: means the Communications Regulation Act 2002

“Affiliate”: means any company controlling, controlled by or under common control with the Licensee;

“Conditions”: means Conditions 1 through 24 as otherwise supplemented or amended from time to time and forming part of the Licence;

“Declaration”: means the declaration submitted or to be submitted by the Licensee as part of its application for the Licence, confirming that the information in the application form completed by the Licensee is accurate and that the Licensee will comply with the Conditions and all lawful directions of the Commission;

“Commission”: means the Commission for Communications Regulation;

“Fixed Telephone Network and Services Market”: means one or more markets which are served by the Licensee’s “fixed public telephone network” or “fixed public telephone service” as those terms are defined in Part 1 of Annex 1 of the Interconnection Directive;

“Licence”: means the authorisation herein granted by the Commission to the Licensee to provide Licensed Services;

“Licence Application Fee”: means the fee specified by the Commission in the Schedule and payable by the Licensee prior to and for the grant of the Licence;

“Licence Commencement Date”: means the date on which the Licence is signed by or on behalf of the Commission;

“Licensee”: means the person to whom the Licence is granted, as identified on page 1 or any person to whom the Licence is lawfully transferred or sub-licensed in accordance with Condition 2.2;

“Licensing Regulations”: means the European Communities (Telecommunications Licences) Regulations, 1998;

“Licensed Programme Services”: means any service involving compilation of sound and/or visual programme material intended for reception by the public which comes within the scope of services provided over Cable and Multi-point Microwave Media Distribution Systems licensable in accordance with relevant regulations under the Wireless Telegraphy Act 1926;

“Licensed Services”: means the establishment and/or operation of any Telecommunications Network and/or the provision of any services to the public consisting wholly or in part of the transmission and/or routing of signals on a Telecommunications Network, other than:

- (i) services to which Section 4(A) of the Telegraph Act 1869, as inserted by the European Communities (Telecommunications Infrastructure) Regulations, 1997 relates;
- (ii) the reception and/or origination of Licensed Programme Services and their conveyance over a Telecommunications Network;
- (iii) Mobile and Personal Communications Services; or
- (iv) the establishment and/or operation of a Mobile and Personal Communications System;

“Mobile and Personal Communications Services”: means services other than satellite services whose provision consists, wholly or partly, in the establishment of radiocommunications to a mobile user, and makes use wholly or partly of a Mobile and Personal Communications System;

“Mobile and Personal Communications System”: means a system consisting of the establishment and operation of a mobile network infrastructure, whether or not connected to public Network Termination Points, to support the transmission and provision of radiocommunications services to mobile users;

“National Numbering Scheme”: means the scheme administered by the Commission which sets out the sequence of numbers or other characters which shall be used to route telephony traffic to specific locations;

“Network Termination Point”: means all physical connections and their technical access specifications which form part of a Public Telecommunications Network and are necessary for access to and efficient

communication through that public network and which are individually identified by numbers allocated from the National Numbering Scheme;

“Other Licensed Operator”: means any person who, at the relevant time, has the benefit of a licence granted under Sections 111(2) or 111(3) of the 1983 Act;

“Public Pay Telephone”: means a telephone available to the general public for the use of which the means of payment are coins and/or credit/debit cards and/or prepayment cards;

“Public Telecommunications Network”: means a telecommunications network used, inter alia, for the provision of public telecommunications services (as defined in Section 111 of the 1983 Act) between Network Termination Points;

“Relevant Market”: means any market or markets in respect of which the Licensee has been designated as having SMP, in accordance with the Interconnection Directive;

“Schedule”: means the Schedule attached to the Licence;

“SMP”: means Significant Market Power as defined in the European Communities (Interconnection in Telecommunications) Regulations, 1998;

“State”: means Ireland;

“Telecommunications Network”: means the transmission equipment and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electro-magnetic means;

“Term”: means, subject to Condition 4 and to the 1983 Act, as amended by the Licensing Regulations, a period of fifteen years from the Licence Commencement Date;

“Users”: means individuals, including consumers or organisations, using or requesting publicly available telecommunications services.

“USO”: means universal service obligation as defined in Directive 98/10/EC of 26 February 1998.

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

(1) references to conditions, paragraphs, subparagraphs and the Schedule are to Conditions, paragraphs, subparagraphs of, and to the schedule to the Conditions as varied from time to time in accordance with the Conditions;

- (2) a document will be incorporated into and form part of the Conditions if it is referred to in the Conditions and a reference to such a document is to that document as varied from time to time;
- (3) headings used for Conditions, paragraphs, subparagraphs and the Schedule are for ease of reference only and will not affect the interpretation of the Conditions;
- (4) references to any law, ordinance, by-law, regulation or other statutory instrument includes any modification, re-enactment or legislative provisions substituted for the same;
- (5) use of the word 'includes' or 'including' is to be construed as being without limitation; and
- (6) the masculine gender shall include the feminine and neuter, and the singular shall include the plural, and vice versa, and words importing persons shall include firms or companies.

2. Nature of the Licence

- 2.1 For the avoidance of doubt, the Licence is non-exclusive.
- 2.2 The Licence is personal to the Licensee. The Licensee shall not sub-license or grant any right, interest or entitlement in the Licence. Nor may the Licensee transfer the Licence to any other person save with the prior written consent of the Commission, which consent to transfer shall not be unreasonably withheld where such other person is an Affiliate and is or is intending to provide Licensed Services and would be entitled to apply for and be granted a licence under Section 111(2) of the 1983 Act to provide Licensed Services. Any consent to transfer granted by the Commission under this Condition may be subject to such further conditions as the Commission may reasonably consider appropriate in the circumstances, including a requirement that the proposed transferee furnish to the Commission a declaration in the same terms as the Declaration.
- 2.3 If at any time the Licensee has or obtains the benefit of another licence under Sections 111(2) or 111(3) of the 1983 Act at the same time as it has the benefit of the Licence, the Commission may thereafter, and for so long as the Licensee has the benefit of that other licence, and subject to Section 111(2)(f) of the 1983 Act, apply in relation to Licensed Services the Conditions under the Licence and/or those under that other licence, and Conditions 3 and 4 shall be construed accordingly.
- 2.4 Where any Affiliate of the Licensee has been designated as having SMP, such of the Conditions in Parts 3 and/or 4 of any General Telecommunications Licence granted under Section 111(2) of the 1983 Act held by that Affiliate and which apply to the Affiliate for the time being shall, for so long as they

are applicable to the Affiliate, also apply to the Licensee if and to the extent that the Licensee provides Licensed Services in the market in which the Affiliate is designated as having SMP, and Conditions 3 and 4 shall be construed accordingly.

- 2.5 Nothing in this licence shall absolve the Licensee from any requirement in law to obtain such additional consents, permissions, authorisations or licences as may be necessary for the provision of Licensed Services and for the exercise of its rights or discharge of its obligations under the Licence. The Licensee is responsible for all costs, expenses and other commitments (financial and non-financial) in respect of the Licence and provision of the Licensed Services and the Commission shall bear no responsibility for such costs, expenses or commitments.
- 2.6 The Licence and the Conditions supersede any prior communications from the Commission relevant to Licensed Services and the Licensee acknowledges that nothing in any guidance notes or other prior communications with the Commission shall be deemed incorporated into the Licence or the Conditions.
- 2.7 The Licensee shall pay the Licence Application Fee prior to issue of the Licence.
- 2.8 The Licensee shall make any payment required by the Telecommunications (Miscellaneous Provisions) Act, 1996 (Section 6) Levy Order, 1998.

3. Compliance

- 3.1 The Licensee shall provide all documents, records, accounts, estimates or other information requested from time to time by the Commission, in the form and at the times specified by the Commission, for the purpose of verifying that the Licensee is complying with the Conditions, for statistical purposes or to assist the Commission to perform any duty or function imposed by national or European Community law. The Licensee shall notify the Commission of any material change in the ownership or control of the Licensee, any change in the address or telephone number of the Licensee's principal office or on the occurrence of any event described in Conditions 4.8(3), (4), (5) or (6).
- 3.2 The Commission may publish any information provided to the Commission under this Licence; in exercising its discretion under this Condition, the Commission shall have regard to the obligations in relation to the preservation of business secrets imposed on its under Regulation 7 of the Licensing Regulations.

- 3.3 The Commission may arrange for an authorised officer from its office to carry out an audit, or may require the Licensee to arrange for an independent audit, of any aspect of the Licensee's business involved in the provision or support of Licensed Services to ensure compliance with the Conditions; and the Licensee shall allow the authorised officer of the Commission, or any independent auditor, to attend at, enter, inspect, take copies of and acquire such information as may be required in order to carry out the audit. The cost associated with any independent audit conducted under this Condition shall be the responsibility of the Licensee.
- 3.4 The Licensee shall notify the Commission in writing of the date on which it proposes to commence providing Licensed Services and shall confirm in writing when it has commenced such services. The Licensee shall also notify the Commission if and when it ceases to provide Licensed Services.
- 3.5 Where, prior to the Licence Commencement Date, the Licensee was lawfully operating a Telecommunications Network or providing telecommunications services, as defined in Section 111 of the 1983 Act (whether under a licence granted under Section 111 of the 1983 Act or as otherwise authorised by law) and where the Commission is satisfied that the Licensee reasonably requires additional time in which to change established procedures or to adapt existing systems in order to comply with the Conditions, the Commission may, on request from the Licensee, agree to defer such of the Conditions as it considers appropriate in the circumstances for a period of not longer than three months. The Commission shall publish notice of the deferment of any Condition made in accordance with this Condition.
- 3.6 The Licensee shall comply forthwith with any demand made by a person authorised by the Commission under Section 111 (7) of the 1983 Act in relation to any entry, inspection, test, measurement, copying of any record or the giving of information as may reasonably be required by that authorised officer.

4. Enforcement and Amendment

- 4.1 The Commission may amend the Licence from time to time where objectively justifiable and in a proportionate manner. Any amendment, including any amendment under Condition 4.3(2), shall be made in accordance with Section 111(2)(e)(iv) and Section 111(10) of the 1983 Act, and any other requirements under applicable national or European Community law.
- 4.2 If the Licensee, whether by act or omission, fails to comply with any Condition or any lawful direction issued by the Commission from time to time, the Commission shall serve written notice on the Licensee (a "Warning Notice"):

- (1) specifying how, in the Commission 's opinion, the Licensee is failing to comply with the Condition or, as the case may be, direction and requesting that, subject to sub-paragraph (2) below, such failure be corrected by the Licensee; and
- (2) affording the Licensee the opportunity to make representations to the Commission in respect of the alleged breaches within 14 days of the date of the Warning Notice. The Commission may, at the request of the Licensee, extend the 14 day period for submission of representations by such longer period as the Commission may consider reasonable in the circumstances.

4.3 If, after expiry of one month from the date of the Warning Notice, the Licensee shall not have corrected the acts or, as the case may be, omissions specified in the Warning Notice and the Commission, having taken account of any representations made by the Licensee in accordance with Condition 4.2, is satisfied that such acts or omissions constitute a breach of the Conditions or of a lawful direction of the Commission, it may impose any one or more of the following sanctions (the "Sanctions") on the Licensee:

- (1) subject to Condition 4.5, revocation or suspension of the Licence;
- (2) without prejudice to the generality of Condition 4.1, amendment of the Licence by way of reduction of the Term;
- (3) imposition of specific measures aimed at ensuring compliance in accordance with Section 111(4) of the 1983 Act.

No sanction shall be imposed by the Commission save in accordance with the procedures set out in Section 111(10) of the 1983 Act.

4.4 The Commission may publish notice of its intention to impose any Sanction under Condition 4.3 in such manner as it considers appropriate from time to time.

4.5 The Commission shall not take action under Condition 4.3 to revoke or suspend the Licence save in respect of a breach of any Condition or any lawful direction of the Commission which the Commission considers to be material or persistent. For the avoidance of doubt this provision shall not in any way limit the power of the Commission to revoke or suspend the Licence pursuant to Condition 4.8.

4.6 Invocation of any Sanction (other than that of revocation) against the Licensee for breach of a Condition or a lawful direction of the Commission shall not prejudice the right of the Commission to initiate procedures to invoke any other Sanction against the Licensee whether in respect of the same or any other breach of the Conditions or lawful direction of the Commission.

- 4.7 If the Term is reduced pursuant to Condition 4.3, the Commission may at its discretion restore the original Term where it considers restoration to be justifiable having regard inter alia to the behaviour of the Licensee since imposition of the Sanction of reduction of the Term. Restoration of the Term may be made subject to such conditions as the Commission may consider objectively justifiable and proportionate in the circumstances of the case. Any decision of the Commission in relation to restoration of the Term shall be notified in writing to the Licensee together with an explanation of the reasons for such decision. Notice of the restoration of the Term shall be published by the Commission.
- 4.8 Without prejudice to the foregoing Conditions 4.1 to 4.7, the Commission may suspend or revoke the Licence in any of the following circumstances:
- (1) if the Declaration is or was false or misleading in a material respect;
 - (2) where, in the opinion of the Commission, such revocation or suspension is required for the purpose of complying with national or European Community law;
 - (3) where the Licensee has ceased to provide Licensed Services;
 - (4) if the Licensee is an individual, a receiving order for bankruptcy has been made in respect of the estate of the Licensee;
 - (5) where the Licensee is a company within the meaning of the Companies Acts 1963 to 2001, an order for its winding up has been made or a resolution for voluntary winding up (within the meaning of those Acts) has been passed by the company otherwise than for the purpose of a merger or solvent reconstruction, or a receiver of the property of the company has been appointed or an examiner to the company has been appointed;
 - (6) if the Licensee shall, in respect of its activities in providing Licensed Services, have been found guilty of an offence under the Competition Acts 2002.

5. Application of Additional Conditions

- 5.1 Unless and until the Licensee has received notification from the Commission of an appropriate designation, the Conditions set out in Parts 3 and 4 of this Licence shall not apply to the Licensee.
- 5.2 If the Commission designates the Licensee as having SMP, she shall notify the Licensee of the designation and:
- (1) where the designation is in respect of a Relevant Market which is, or includes, the Fixed Telephone Network and Services Market, all the Conditions set out in Part 3 and Part 4 of this Licence shall apply to the

Licensee in respect of all Licensed Services carried on by it in the Fixed Telephone Network and Services Market and any other Relevant Market with effect from the date which is 30 days after the notification of the designation; or

- (2) where the designation relates to any Relevant Market other than the Fixed Telephone Network and Services Market, the Conditions in Part 4 of this Licence shall apply to the Licensee in respect of all Licensed Services carried on by it in the Relevant Market concerned with effect from the date which is 30 days after the notification of the designation.

5.3 If the Commission designates the Licensee as having a USO, it shall notify the Licensee of the designation and the Licensee shall comply with any directions issued by the Commission under applicable laws or regulations governing USO for the time being with effect from the date of notification of the designation.

5.4 Where a designation as to SMP or USO has been made prior to the Licence Commencement Date, the relevant Conditions or obligations shall apply as from the Licence Commencement Date.

5.5 Any Condition or obligations activated pursuant to this Condition 5 shall only apply to the Licensee for so long as the Licensee continues to have SMP in a Relevant Market or, as the case may be, a USO.

6. Public Service Conditions

6.1 The Licensee shall, in the manner and at the times specified by the Commission, publish the standard terms and conditions under which it provides each category of Licensed Services to its customers. In the absence of any other instruction from the Commission, the Licensee shall ensure that a statement of all applicable terms and conditions is:

- (1) filed with the Commission; and
- (2) promptly made available for inspection at the request of any member of the public.

6.2 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 Services or for the calculation of related charges.

6.3 In cases where it establishes or operates a Telecommunications Network, the Licensee shall establish and maintain the capability to intercept messages delivered by the Licensed Services and to provide information regarding the use of Licensed Services and, in this respect, shall comply with any directions given by the Minister to the Licensee under Section 110 of the 1983 Act as applied under Section 111(5) of the 1983 Act. In this Condition “intercept”

shall be construed in accordance with the meaning assigned to “interception” by Section 98 (5) of the 1983 Act.

- 6.4 The Licensee shall safeguard the privacy and confidentiality of any telecommunications messages associated with the Licensed Services in accordance with applicable national and European Communities laws in force from time to time and shall comply with all applicable national and European Communities laws from time to time regarding the protection of personal data.
- 6.5 The Licensee shall not attach to Public Telecommunications Networks any terminal equipment unless it is lawful to do so, or other equipment which fails to comply with essential interfaces or other essential requirements notified from time to time by the Commission.
- 6.6 The Licensee shall make contributions to assist in the funding of a USO in accordance with any directions issued by the Commission under applicable laws and regulations governing USO in force from time to time.
- 6.7 The Licensee shall comply with any directions issued by the Commission from time to time regarding emergency services and the provision of Licensed Services in times of emergency.
- 6.8 The Licensee shall comply with any direction issued by the Commission for the purposes of protecting the interests of its customers or Users, having regard to relevant legislation in force from time to time, including, but without limitation, directions regarding:
 - (1) the dialing and other tones used on Public Telecommunications Networks; and
 - (2) the provision of such services as may be specified by the Commission from time to time, including, but without limitation, call barring and calling line identification.
- 6.9 The Licensee shall implement an appropriate code of practice for the resolution of customer disputes and in relation to non-payment of bills and disconnection. The Commission may from time to time issue directions to the Licensee specifying any modifications or additions that it considers should be made to the code or as to the publication, republication, implementation or further modification of the code. The Licensee agrees to participate in good faith in any dispute resolution procedure established by the Commission for the resolution of disputes.
- 6.10 The Licensee shall ensure that Users have access to directory information services offered by at least one Directory Information Service Provider.

The Licensee shall maintain a complete and accurate database of its customers' numbers and, for the sole purpose of facilitating provision of directory information services, shall make such information available to every Directory

Information Service Provider and co-operate with them in the supply and compilation of comprehensive and accurate directory information subject always to applicable data protection laws in force from time to time.

For the purposes of this Condition 6.10 a Directory Information Service Provider shall mean any person to whom the Commission has allocated a directory enquiry access dialling code designated by the Commission from time to time under the National Numbering Scheme as a dialling code to be used for the provision of directory information services.

Insofar as any directory information is disclosed to the Licensee for the purpose of facilitating provision by the Licensee of directory information services, the Licensee shall not use such information for any other purpose unless specifically authorised to do so by the person disclosing same and shall comply with all applicable national and European Communities laws and regulation in force from time to time regarding the protection of personal data.

7. Public Pay Telephones

7.1 Where the Licensee provides Public Pay Telephones, it shall ensure that the following services are available at all Public Pay Telephones:

- (1) access to voice telephony and directory information services;
- (2) access to emergency calling services without the use of any card or coin; and
- (3) access to free-phone services.

7.2 All Public Pay Telephones supplied by the Licensee shall display a notice specifying:

- (1) the minimum charge for connection, call charge information and permissible methods of payment;
- (2) location of the Public Pay Telephone;
- (3) the statement that emergency calls can be made without charge;
- (4) a statement whether or not incoming calls can be received; and
- (5) contact information in the event of service complaints.

7.3 The Licensee shall be responsible for the installation, repair and maintenance of the Public Pay Telephones provided by it, and shall ensure that such telephones are equipped with apparatus to enable their use by people with hearing impairments.

7.4 If the Licensee wishes to withdraw from service a Public Pay Telephone it shall, where possible, display a notice to that effect at the Public Pay Telephone not less than 60 days before it is withdrawn.

8. Interconnection

The Licensee shall comply with the European Communities (Interconnection in Telecommunications) Regulations 1998 insofar as same are applicable to the Licensee, and undertakes to participate in good faith in any negotiations or dispute resolution processes initiated pursuant to those regulations.

9. Trench Sharing

- 9.1 Where the Licensee proposes to carry out any trenching work on a public highway or in any public place, he shall notify the Commission of his intention and shall publish a notice of same in at least one national and one local newspaper of general circulation not less than 21 days in advance of commencement of such works, or as otherwise agreed with the Commission. If the Licensee receives a request from any Other Licensed Operator for permission to lay separate ducts in the trenches opened by the Licensee and sharing would not result in any material deviation from the Licensee's timetable for completion of the trenching work or roll-out of its Telecommunications Network, the Licensee shall negotiate in good faith with the Other Licensed Operator with a view to agreeing the terms on which such trench-sharing shall take place. Such terms may include a provision that the Other Licensed Operator make a fair contribution to the costs incurred in connection with the trenching work.
- 9.2 Recognising timetable issues of the kind described in Condition 9.1, the Commission may on its own initiative at any time, and shall if requested by the Licensee and the Other Licensed Operator concerned in any particular instance, make directions specifying the issues to be covered in any agreement of this type, the conditions that shall apply and the time limits within which the agreement is to be completed.

Part 2: Additional Conditions on Numbering and Quality of Service

10. Numbering

- 10.1 The Licensee shall not use any number from the National Numbering Scheme for the purpose of terminating telecommunications messages on any Public Telecommunications Network within the State unless that number shall have been allocated to the Licensee by the Commission for that purpose.
- 10.2 Insofar as any number from the National Numbering Scheme, which is allocated to the Licensee by the Commission, is used for terminating telecommunications messages, the Licensee shall use the same for terminating telecommunications messages solely on a Public Telecommunications Network in the State. Any numbers from the National Numbering Scheme allocated to the Licensee shall be used in accordance with the conditions applicable to their allocation and with the other provisions of this Condition 10 and the National Numbering Scheme and any other numbering plans or conventions or directions issued by the Commission from time to time.
- 10.3 No Licensee shall acquire any proprietary rights in any number or range of numbers allocated to it or used by its customers. No number or range of numbers may be sold or otherwise transferred by the Licensee without the prior written consent of the Commission.
- 10.4 The Licensee shall manage any numbers allocated to it:
- (1) with a view to conserving numbers as a public resource; and
 - (2) in conformity with the National Numbering Scheme.
- 10.5 The Licensee shall maintain a record of the status of all numbers allocated to it by the Commission and shall, on request, make that information available to the Commission. The Licensee shall ensure that the allocation of individual numbers or number ranges by the Licensee to its customers is carried out in an objective, transparent, non-discriminatory and timely manner.
- 10.6 The Licensee shall make any changes in any equipment, facilities or processes required in order to continue to comply with the National Numbering Scheme or any directions issued by the Commission from time to time. The Commission may change the numbers allocated to the Licensee at any time. The Licensee shall comply with any direction of the Commission in relation to the implementation of number changes and informing Users of such changes.
- 10.7 The Commission may reclaim any numbers or numbering ranges allocated to the Licensee if, in the opinion of the Commission:
- (1) the numbers are unused and unlikely to be put into use in the foreseeable future;

- (2) reclamation is necessary as part of a change to the National Numbering Scheme; or
 - (3) the Licensee is found to be in breach of any Condition, including specific numbering Conditions.
- 10.8 The Licensee shall not charge its customers for allocations of numbers except where authorised and in accordance with any direction from the Commission.
- 10.9 The Licensee shall comply with any directions issued by the Commission following a public consultation regarding number portability.
- 10.10 The Licensee shall reserve and use the access codes 112 and 999, and other codes subsequently designated as being for use as emergency access codes, exclusively for calls to the emergency services.

11. Quality of Service and Publication of Performance Data

- 11.1 The Licensee shall comply with any directions issued by the Commission from time to time regarding quality of service indicators and measurement methods for basic telephony services and/or digital leased lines. In issuing directions, the Commission shall have due regard to any applicable European (ETR) Regulations. The Commission may also, following a public consultation, issue directions regarding quality of service indicators and measurement methods for other Licensed Services, again having due regard to any applicable European (ETR) Regulations.
- 11.2 The Licensee shall, as and when required, supply to the Commission, in a form specified by it, the results of its own measurements of actual performance against any quality of service requirements specified by the Commission in respect of the Licensed Services from time to time. The Commission may include the figures supplied to it in any compilation of the quality of service indicators of licensed operators in the State and/or in the European Community, and may publish the compilation.

Part 3: Additional Conditions applying where the Licensee is designated as having Significant Market Power in the Fixed Telephone Network and Services Market.

12. Access

- 12.1 The Licensee shall provide Licensed Services in the Relevant Market on a non-discriminatory basis to all persons requesting such services (including, for the avoidance of doubt, Other Licensed Operators). The terms for supplying any such requested Licensed Service shall not prohibit any Other Licensed Operator making the request from reselling the requested service to the public or incorporating the requested service in any other service offered by it to the public.
- 12.2 At any time after the Licence Commencement Date, and following a public consultation on the general issue of access, the Commission may make a direction requiring the Licensee, at the request of an Other Licensed Operator, to make Equal Access available to that Other Licensed Operator on the terms set out in that direction; and the Commission may make subsequent directions modifying or supplementing the regulation of Equal Access.
- 12.3 In this Condition, “Equal Access” means a facility provided whereby a User can access the Telecommunications Network or telecommunication 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:
- (1) 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
 - (2) on a call-by-call basis using any numbers or codes allocated by the Commission for this purpose in accordance with the National Numbering Scheme.
- 12.4 The Licensee may not charge any fee or require the customer to acquire any special equipment as a pre-requisite to obtaining Equal Access or changing his designation of preferred operator.

13. Retail Price Control

- 13.1 Condition 6.1 shall apply as if it also required publication of the prices applicable from time to time for each category of Licensed Services supplied at any time by the Licensee in the Relevant Market. Except as provided in Condition 13.2, or as otherwise directed by the Commission, the Licensee shall, in respect of each such category of Licensed Services in the Relevant Market, supply such Licensed Services only at the prices and in accordance

with all the other terms and conditions for the relevant category of Licensed Services published by the Licensee under Condition 6.1 and this Condition 13.

13.2 Where, in relation to the Relevant Market, the Licensee intends at any time to introduce:

- (1) new prices for any Licensed Services, or prices for any new Licensed Services to be introduced by the Licensee;
- (2) any discounts to published prices for Licensed Services or for any customers to whom additional services, whether or not Licensed Services, or goods are provided by the Licensee or any Affiliate; or
- (3) special offers to all or any of its customers for particular categories of Licensed Services,

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

13.3 If it comes to the attention of the Commission that the Licensee may be in breach of Condition 6.1 and/or this Condition 13, the Commission may require the Licensee to provide a written explanation of the circumstances and written confirmation, signed by a director or senior manager of the Licensee, to the effect that no breach has occurred or that any offer made to a potential customer which was not compliant has been withdrawn.

13.4 All published prices, discount schemes and special offers of or introduced by the Licensee for Licensed Services within the Relevant Market shall be transparent and non-discriminatory; all prices shall be cost-oriented; all discount schemes shall be cost-justified; and all special offers shall be objectively justifiable. If the Commission, after consulting the Licensee and such other persons as it may determine, is satisfied that any such published price, discount scheme or special offer is in breach of this Condition, the Commission may require the Licensee to bring such prices, discount schemes or special offers into conformity with this Condition.

13.5 The Commission may at any time issue a direction terminating the application of this Condition 13 in relation to any Licensed Service where, after public consultation, it is satisfied that there is competition sufficient to protect the interests of the Users in the Relevant Market in respect of that Licensed Service.

14. Prohibition on Cross-Subsidies

- 14.1 Where the Commission, after consulting the Licensee and such other interested parties as it considers appropriate, determines that the Licensee or an Affiliate is unfairly cross-subsidising or unfairly subsidising any category of Licensed Services in the Relevant Market, or is unfairly cross-subsidising any Offered Service by activities in the Relevant Market, it may issue a direction to that effect and require the Licensee to cease to do so.

For the purposes of this condition an Offered Service shall mean any service provided by the Licensee or an Affiliate (whether pursuant to a licence granted under Section 111 of the 1983 Act or otherwise) the cross-subsidisation of which the Commission considers will affect a telecommunications market or markets.

- 14.2 In order to enable the Commission to evaluate whether 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 itself and any Affiliate, and shall observe any directions issued by the Commission for this purpose.

15. Separate Accounts

- 15.1 The Licensee shall maintain accounting records in a form which enables the activities of any business unit specified in any direction given by the Commission to be separately identifiable, and which the Commission considers to be sufficient to show and explain the transactions of each of those business units and shall:

- (1) prepare, in respect of each calendar quarter, accounting statements setting out and fairly presenting the costs (including capital costs), the revenue and the financial position of each of those business units including a reasonable assessment of the assets employed in and liabilities attributable to them and deliver copies of the same to the Commission on demand; and
- (2) deliver to the Commission each year a copy of its annual audited accounts forthwith on publication of the same.

- 15.2 The Licensee shall comply with any directions made by the Commission from time to time in relation to the preparation and delivery of accounting statements.

16. Alterations to the Network

The Licensee shall provide the Commission with all information required by the Commission concerning proposed changes to the Public Telecommunications Network of the Licensee or an Affiliate, or any equipment or any software within the same, being changes which will or may have the effect of requiring any person who has lawfully connected telecommunications apparatus or interconnected any Public Telecommunications Network therewith to modify or replace the same. The Licensee shall also comply with any directions made from time to time by the Commission with regard to the requirement for prior consultation on network changes.

17. Private Circuits

17.1 The Licensee shall comply with its obligations under the European Communities (Leased Lines) Regulations, 1998, and undertakes to participate in good faith in any negotiations or dispute resolution process initiated pursuant to those regulations.

17.2 If the Commission considers, in relation to international circuits or half-circuits owned or controlled by the Licensee or an Affiliate, that alternative sources are not available at an economic cost, it may direct the Licensee to provide Indefeasible Rights of Use to any Other Licensed Operator, unless it is satisfied that the Licensee has or will have insufficient capacity to meet the request.

18. Approval of Customer Contracts

18.1 The Licensee shall deliver to the Commission, who may publish and consult on the same, copies of all standard-form contracts from time to time issued by the Licensee in connection with the provision of any Licensed Service provided within the Relevant Market, and shall supply a true and complete copy of any particular contract within five days of any written request from the Commission.

18.2 The Licensee shall also prepare and deliver to the Commission a draft statement setting out the minimum service levels for customers (including Other Licensed Operators) in respect of each category of Licensed Services it offers within the Relevant Market, any exceptions to these and the compensation or refunds it will offer to customers or prospective customers in case service levels are not met. The Commission may publish and initiate a consultative process on the draft statement and, after considering the responses received and consulting the Licensee, issue directions to the Licensee specifying any modifications or additions that it considers should be made to the draft statement. The Licensee shall then publish the statement in the agreed amended form, in accordance with any directions as to publication made by the Commission and shall forthwith implement the same. The

Commission may from time to time issue further directions requiring modifications or additions to the statement and as to its republication and implementation.

- 18.3 The Commission may, on its own initiative or at the request of a body of the kind referred to in Condition 22, and acting in an objective and proportionate manner and in order to protect the rights of the Licensee's customers, direct that the Licensee alter its standard form contracts and/or compensation or refund schemes offered to customers or prospective customers.

19. Selling Practices

The Licensee shall draw up an appropriate code of practice directed to its and its Affiliates' employees and agents concerning selling practices for Licensed Services within the Relevant Market and designed to avoid unfair or anti-competitive practices, and shall submit the same to the Commission in draft form. The Commission may initiate a consultative process on the draft code and, after considering the responses received and consulting the Licensee, issue directions to the Licensee specifying any modifications or additions that she considers should be made to the draft code. The Licensee shall then publish the code in the agreed amended form, in accordance with any directions as to publication made by the Commission, externally and internally to its and its Affiliates' employees and agents; and shall forthwith implement the same. The Commission may from time to time issue further directions requiring modifications or additions to the code and as to its republication and application.

20. Misuse of Data

The Licensee shall not make use of network or traffic data, traffic profiles or any other data of any nature, and which are not otherwise lawfully publicly available and which become available to the Licensee directly or indirectly either as a result of entering into interconnection arrangements or otherwise as a result of carrying telecommunications messages, in such a way which, in the reasonable opinion of the Commission, would unduly prefer the interests of any business carried on by the Licensee or an Affiliate or place persons competing with that business at an unfair disadvantage.

21. Access to Limited Facilities

If the Licensee and any Other Licensed Operator fail to reach agreement within a reasonable time in respect of a request by such Other Licensed Operator:

- (a) for access on reasonable terms to any ducts, poles or means of ingress into buildings occupied by customers of the Licensee or an Affiliate or

any means which allow the laying of cables over, under, in or across roads or structures in relation which there exist public rights of way; or

- (b) to share use of rights owned or controlled by the Licensee or an Affiliate,

and if the Commission considers, following receipt of a request for intervention by that Other Licensed Operator and consultation with the Licensee, that use of such ducts, poles, means or other rights is essential as being the only economically feasible means by which Telecommunications Network infrastructure can be run or connected to the premises of a User, or over, under, in or across any public right of way, the Commission may direct the Licensee to allow, or to procure that the Affiliate concerned allow, that other operator to share the use of the ducts, poles, means or rights on such reasonable terms as she may determine, unless the Commission determines that the Licensee or the Affiliate concerned, alone or with any other person willing or required to do so, is unable to grant the necessary access or rights or that it would otherwise be unreasonable for it to do so.

Part 4: Additional Conditions applying where the Licensee is designated as having SMP in any Market

22. Bodies Representing Users' Interests

The Commission shall from time to time publish details of bodies recognised by it as representing the interests of Users. The Licensee shall give due consideration to any matter relating to the provision of Licensed Services which is raised by any such body and shall, at the request of the Commission, furnish the Commission with a written report of its dealings with that body.

23. Undue Preference and Unfair Discrimination

23.1 The Licensee shall not, in respect of a Relevant Market, whether in respect of the prices charged or other terms or conditions applied or otherwise, show undue preference to, or exercise unfair discrimination against, particular persons or persons of any class or description regarding the provision of any Licensed Service or access to any Telecommunications Network. The Licensee will be deemed to have shown undue preference or exercised undue discrimination if it favours any business carried on by the Licensee or an Affiliate so as to place persons competing with that business or Affiliate at an unfair disadvantage.

23.2 The Licensee shall not, in respect of a Relevant Market, show undue preference to or exercise unfair discrimination against any Other Licensed Operator in respect of the quality of any Licensed Service provided by the Licensee to such Other Licensed Operator. The Licensee may be deemed to have shown undue preference or to have exercised unfair discrimination if it favours a business carried on by it or by an Affiliate in relation to the quality of any Licensed Service provided to that business or Affiliate as compared with the Licensed Services provided to any Other Licensed Operator, so as to place the Other Licensed Operator at an unfair disadvantage.

24. Linked Sales

24.1 The Licensee shall not, in any Relevant Market, make it a condition of providing any Licensed Services that a person should require from the Licensee, or any person specified by the Licensee, any service or apparatus other than the one that is specifically requested, unless the Licensee has notified the Commission of its intention to do so and satisfied her that there are technical reasons why this bundling should occur.

24.2 The provisions of Condition 24.1 shall not prevent the Licensee from offering discounts in accordance with any discount scheme which complies with Condition 13.4 and which has been published under Condition 13.2.

Part 5: Additional Provisions applying where the Licensee is designated as a person to whom Part 5 shall apply.

25. Definitions and interpretations

25.1 In this Part 5, the expressions set out below have the meanings given to them below (and other grammatical forms of the expressions have corresponding meanings):

“Designated Commencement Date” means the date upon which the Licensee is designated by the Commission as a person to whom Part 5 of this Licence shall apply;

“Fixed Wireless Point to Multi-Point Access” or **“FWPMA”** means point to multi-point radio systems operating between terminal equipment at fixed locations and base station(s) at fixed locations and where such base stations may be connected to a telecommunications network;

“FWPMA Network” means a network for the provision of Fixed Wireless Point to Multi-point Access (FWPMA);

“FWPMA Regulations” means the Wireless Telegraphy (Fixed Wireless Point to Multi-Point Access Licence) Regulations, 1999;

“Required Services” means those Licensed Services provided by the Licensee via FWPMA, as set out in Part I of the Second Schedule.

26. Application of Part 5 of Licence

26.1 The provisions of this Part 5, and the rights and obligations contained therein, apply solely to a Licensee who is designated by the Commission as a person to whom the said Part 5 shall apply, and to no other Licensee. A Licensee to whom this Part 5 applies has the right to use FWPMA for the provision of Licensed Services.

27. Term

27.1 The provisions of this Part 5 will commence on the Designated Commencement Date and unless revoked or amended shall, subject to the conditions and provisions of the 1983 Act, as amended, and to the 2002 Act, and such other legislation as has been or may be adopted from time to time, continue for a period not exceeding 10 years from the Designated Commencement Date.

28. Rights and Obligations

- 28.1 The Licensee shall provide the Required Services in accordance with the Second Schedule.
- 28.2 The Licensee may refuse to extend or continue the provision of the Licensed Services to or from particular Network Termination Points and/or terminal equipment if such extension or continuation would, or would be likely to, cause damage or interference to the FWPMA Network, or the Required Services or any other FWPMA Network, Telecommunications Network, or telecommunications services.
- 28.3 Condition 2.2 shall not apply to:
- (a) a mortgage or other transaction entered into with a financial institution for the purpose of securing borrowings of the Licensee or a subsidiary, being borrowings for the purposes of the FWPMA Network and the Required Services or provision thereof or anything incidental thereto; or
 - (b) a transfer, assignment or other disposal of assets that are intended to be, and are, immediately after their transfer, assignment or other disposal, assigned by way of lease to the Licensee.
- 28.4 The Licensee shall comply with any lawful direction issued by the Commission including directions for the purposes of protecting the interests of Users. Such directions may include, but not be limited to, directions regarding conditions and obligations contained in the Second Schedule.

29. Ownership

- 29.1 The Licensee shall not issue or transfer or redeem shares such as would give rise to a change in control of the Licensee or a material change in the ability of the Licensee to perform the Licensed Services without the prior consent of the Commission (which shall not be unreasonably withheld).
- 29.2 A consent under subparagraph (a) shall be subject to such conditions (if any) as the Commission may determine and shall specify in writing to the Licensee, and any such condition shall be deemed to be a condition of this Licence.
- 29.3 The Licensee by itself or through its Board of Directors shall not act to give effect to any change in the beneficial or legal ownership of shares such as would give rise to a change in control of the Licensee or a material change in the ability of the Licensee to perform the Licensed Services without the prior consent of the Commission (which shall not be unreasonably withheld).
- 29.4 In this Condition 29 "shares" means shares of any class in the Licensee.

30. Suspension, Revocation or Expiration

- 30.1 Upon the revocation of this Licence, or the revocation or expiration of the licence issued to the Licensee under the FWPMA Regulations, or where the rights and obligations accorded to the Licensee under this Part 5 have been revoked or have expired, the Licensee shall not be entitled as of right, or be deemed to enjoy any equity entitling it to the right to use FWPMA for the provision of Licensed Services.

31. Enforcement and Amendment

- 31.1 Where the Commission has served a Warning Notice in accordance with Condition 4.2, and where the specified condition or direction by which the Licensee is failing to comply is solely a condition of or a direction in relation to this Part 5, then the sanctions that may be imposed by the Commission under Condition 4.3. shall, in such circumstances, relate solely to the revocation, suspension, or amendment by way of reduction of the term, or imposition of specific measures, as may be decided by the Commission, of the rights and obligations of the Licensee under the provisions of this Part 5.
- 31.2 Where the circumstances under which the Commission may suspend or revoke the Licence under Condition 4.8 relate solely to this Part 5, the said revocation or suspension may, at the discretion of the Commission, refer solely to the rights and obligations accorded to the Licensee under the provisions of this Part 5. In such circumstances, the reference in Condition 4.8 (i) to the Declaration shall be construed to include the Licensee's application for a licence to provide FWPMA.

32. Review of Spectrum

- 32.1 Notwithstanding the rights of the Commission under Condition 4.1, the Commission may, after the elapse of three years from the Designated Commencement Date, and in accordance with its responsibilities, in particular with regard to the efficient and effective use of the frequency spectrum, conduct a review from time to time of the Licence having regard to such matters as, inter alia, international developments, new technologies and market requirements. Any review may include an examination of the allocation of spectrum and the terms and conditions of the Licence. Following such a review, the Commission may supplement, amend or revoke the rights and obligations of the Licensee under this Part 5.

THE SCHEDULE

The Licence Application Fee:

Second Schedule

Part I: Required Services

Second Schedule

Part II: Service Quality, Performance Standards and Obligations

Second Schedule

Part III: Coverage and Roll-Out Targets

Second Schedule

Part IV: Level of Tariffs

Second Schedule

Part V: Performance Guarantees