



**UTILITY REGULATION AND COMPETITION OFFICE**

**INTERNET EXCHANGE POINT (IXP) LICENCE**

*(Type G Internet Exchange Point and Type 16 Internet Peering Service Provider)*

**ISSUED TO**

**SALT WIRELESS LTD**

**Date: 19 March 2021**



**LICENCE ISSUED TO**

**SALT WIRELESS LTD**  
**under Part III of**

**THE INFORMATION AND COMMUNICATIONS  
TECHNOLOGY LAW (2019 REVISION)**

The Utility Regulation and Competition Office, in exercise of the powers conferred on it by the Utility Regulation and Competition Law 2019 (URC Law) and in particular Section 23 of the Information and Communications Technology Law (2019 Revision) (ICT Law), grants to **Salt Wireless Ltd** a Licence to establish, operate and maintain the Information and Communications Technology Networks and/or Services as these terms are defined in the Conditions of this Licence, subject to the Conditions, all lawful directions of the Utility Regulation and Competition Office, all applicable laws and regulations of the Cayman Islands and applicable tariffs.

ISSUED BY THE UTILITY REGULATION AND COMPETITION OFFICE, of the Cayman Islands, on this 19 day of MARCH 2021.

  
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**CEO**  
**Utility Regulation and Competition Office**

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## **PART I: THE LICENCE**

### **1 DEFINITIONS AND INTERPRETATION**

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

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

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

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

**"Office"** means the Utility Regulation and Competition Office or "OfReg";

**"Compliance Plan"** means a plan submitted to the Office in accordance with Condition 11.5 and containing the information noted therein.

**"Conditions"** means all the clauses of this Licence, including any and all Annexes, as may be amended, revoked or added to in accordance with Condition 21 of this Licence.

**"Development Plan"** means a plan submitted to the Office in accordance with Condition 11.4 and containing the information noted therein.

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

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

**"ICT Law"** means the Information and Communications Technology Law (2019 Revision) and any amendments or revisions thereto.

**"IXP"** means the physical infrastructure in the Cayman Islands through which, Internet Service Providers and other entities connect their networks and exchange internet traffic but does not include private exchange through direct bilateral arrangements or communication between autonomous systems.

**"IXP Regulatory Framework"** means the framework as determined by the Office for the licensing and operation of IXPs as set out at Annex 6.

**"Local IP traffic"** means Internet traffic which originates in the Cayman Islands on a network operated by an ISP and terminates in the Cayman Islands on a network operated by another ISP, irrespective of whether the networks in question are, fixed wireline, fixed wireless or mobile networks.

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

**"Licence Commencement Date"** means the date specified in Condition 19.

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

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

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

**"Licensee"** means Salt Wireless Ltd.

**"Member"** means mean participants at an IXP who can benefit from services of the IXP, including but not limited to peering and/or transit arrangements in line with the IXP policies. These Members shall include Internet Service Providers but may also include other ICT Network or ICT Service licensees.

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

**"Outage Reporting Rules"** Rules issued by the Office setting out the reporting requirements relating to licensee Network or Service related faults and outages.

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

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

**"Universal Service"** means any of the categories of service specified by regulation made under Section 61 of the ICT Law, and as further defined in Annex 3.

**“Universal Service Fund”** means the fund which may be established by the Office to compensate Licensees for carrying out the Universal Service Obligations; as provided for under Section 59(2) of the ICT Law.

**“Universal Service Obligations”** means the obligation to provide universal service as set out in Part II of this Licence and as provided for under Section 62 of the ICT Law and set forth in Annex 3.

**“User”** means a natural person who uses the networks or services of the Licensee but is not necessarily a member.

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

## **2 SCOPE OF THE LICENCE**

- 2.1 In accordance with Section 23 of the ICT Law, this Licence authorises and requires the Licensee to establish, operate and maintain the Licensed ICT Networks and provide the Licensed ICT Services specified in Annex 1 for the Term specified in Annex 1 SUBJECT to Conditions of this Licence and all applicable Administrative Determinations of the Office and laws of the Cayman Islands. The requirement for the Licensee to establish, operate and maintain the Licensed ICT Networks provide the ICT Services means, at a minimum, that the Licensee will, unless otherwise agreed to by the Office, meet the roll out plan specified in Annex 1A.

- 2.2 In accordance with Section 23 of the ICT Law, this Licence authorises the use by the Licensee of the Authorised Frequencies and Transmitters listed in Annex 4 for the Term listed in Annex 1. Unless otherwise authorised in writing by the Office, the Licensee shall only use the Authorised Frequencies and Transmitters in the location and with the equipment and configuration specified in Annex 4. In accordance with Annex 2, the Licensee shall pay an annual fee to the Office for the use of the authorised frequencies. The Office retains ownership of the radio frequency spectrum set forth in Annex 4, and the Licensee agrees that it will abide by any and all radio frequency spectrum reallocation or diminution as required by the Office.
- 2.3 All ICT Services and all ICT Networks subject to licensure under the ICT Law and operated by the Licensee are subject to regulation by the Office. Nothing in this Licence shall be taken to mean or imply any derogation of, or limitation on, the exercise by the Office of all its duties, functions and responsibilities contained in the URC or the ICT Law.
- 2.4 The Licensee shall comply with any other requirement in law or practice to obtain any additional consents, permissions, authorisations or licences as may be necessary for the provision of the Licensed ICT Network or Licensed ICT Services and for the exercise of its rights or discharge of its obligations under this Licence and the ICT Law.
- 2.5 The Licensee shall:
- a. maintain all information systems, located in the Cayman Islands, as are reasonably necessary to enable the Licensee to respond in a timely manner to the information requirements of the Office, including without limitation information relevant to business conducted between the Licensee and its Affiliates; and
  - b. maintain within the Cayman Islands management systems and management (including a senior officer of the Licensee) accountable for meeting its obligations under this Licence.
- 2.6 All representations, including undertakings given by the Licensee, made by the Licensee in the Application for the ICT Licence constitute fundamental terms of the Licence granted. Any material deviation from such representations, including the undertakings given by the Licensee, is a fundamental breach of the Licence pursuant to section 33(1)(a) of the ICT Law or equivalent) the consequences of which shall be the revocation of the Licence.

### **3 LICENCE FEE**

- 3.1 The Licence Fees payable by the Licensee for the establishment, operation and management of the Licensed ICT Networks and/or Licensed ICT

Services specified in this Licence under the provisions of Section 30 of the ICT Law shall be as specified in Annex 2.

- 3.2 The Licence Fees for each type of Licensee shall be non-discriminatory.
- 3.3 The Licence Fees referred to in Condition 3.1 shall be payable directly by the Licensee to the Office on or before the payment dates specified in Annex 2, and in the case of those due at commencement of the licence, if any, the fees shall be paid prior to commencement of operations by the Licensee of the Licensed ICT Networks and/or Licensed ICT Services specified in this Licence, and thereafter for the Term(s).
- 3.4 The Office may delegate the collection of any or all Licence Fees due in accordance with the provision of Condition 3.1 to an administrative unit of the Cayman Islands Government, and the Licensee shall pay to such unit any and all fees owed on the same date as the fees are due to the Office.
- 3.5 Without prejudice to any other remedies of the Office under this Licence or the Laws of the Cayman Islands, if the Licensee fails to pay any amount due to the Office or delegated administrative unit of the Cayman Islands Government under this Condition 3 by the due date, the unpaid amount will accrue interest daily from the due date to the date of payment at three percentage points above the published Cayman Islands Dollar Prime Rate published from time to time by the Office's bankers.

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

- 4.1 Any and all aspects of the Licensee's business shall be subject to examination, investigation and audit by the Office. The Licensee shall provide to the Office in the manner and at the times required by the Office, on reasonable notice, any documents, accounts, returns, estimates, reports or other information so required, including but not limited to the documents, accounts, returns, estimates, invoices, reports, agreements and other information specified in this Licence.
- 4.2 Where the Licensee operates an ICT Network which makes use of any portion of the free space electromagnetic spectrum between the Licensee shall, on the first business day of July of every year, provide the Office with a comprehensive report on its anticipated use of the radio frequency spectrum for the following year and shall update the report as requested by the Office from time to time.
- 4.3 The Office may conduct, from time to time, or may delegate to a suitably qualified person as the Office may decide, an examination, investigation or audit of any aspect of or relating to the Licensee's Networks, Services business, administration or of its relationship with any Affiliate of the Licensee and of its compliance with the Conditions and the Laws.

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

of the Licence, the URC Law, ICT Law or of any applicable laws of the Cayman Islands or regulations, the Licensee shall bear all reasonable costs associated with any reporting, examination, investigation or audit

## **5 COMPLIANCE**

- 5.1 In addition to complying with the Conditions of this Licence, the Licensee shall comply with:
- a. any obligation imposed on it by any law, regulation or rule of the Cayman Islands that is applicable;
  - b. any Administrative Determination or request duly issued by the Office under the URC Law, ICT Law, this Licence, or any law, regulation or rule of the Cayman Islands that is applicable;
  - c. the Plans submitted pursuant to Condition 11;
  - d. applicable tariffs, if any; and
  - e. Outage Reporting Rules
- 5.2 The Licensee shall inform the Office as soon as it becomes aware of any action proposed to be undertaken by a person or group of persons which would be, or could reasonably be expected to, cause the Licensee to breach any of its obligations under the URC Law, ICT Law (including relevant (Regulations) or its Licence.
- 5.3 The Licensee shall, at all times, act in a manner best calculated to ensure that it has, or has access to, adequate:
- a. Financial resources; and
  - b. Management resources and systems of internal control,
- to enable it to operate the ICT Networks and Provide the ICT Services
- 5.4 The Licensee shall not, except with the written consent of the Office, enter directly or indirectly into any contract or other commercial arrangement with any person or groups of persons considered to be the Ultimate Controller.

### **Definitions**

**“Control”** means any direct or indirect possession or any power or right that enables a person or group of persons to direct, or cause the general direction of, the management or policies of the Licensee by any means and in any event; and

**“Ultimate Controller”** means any person or group of persons who or which (alone or jointly with others, and directly or indirectly), in the reasonable opinion of the Office, is in a position to Control the Licensee.

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

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

## **7 DURATION AND RENEWAL**

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

## **PART II: SERVICE OBLIGATIONS**

### **8 UNIVERSAL SERVICE**

- 8.1 Pursuant to section ICT Law and, in the event the Office issues a directive, rule or regulation pursuant to the provision of Universal Service, the Licensee may be obligated to provide some or all of the services classified as Universal Services. In the event of such obligation, the Licensee will be

designated a Universal Service provider for those services. The Office may, following a public consultation process require the licensee to undertake a Universal Service Obligation, the terms for which will be incorporated into this Licence as an amended Annex 3.

- 8.2 Pursuant to Section 59 *et seq.* of the ICT Law and, in the event the Office issues a directive, rule or regulation pursuant to the provision of Universal Service, the Licensee shall contribute to the cost of the provision of the Universal Service Obligation as, and if, required by the Universal Service Regulations, unless the Licensee is exempt from that requirement in accordance with a directive from the Office to that effect. The Office may, following a public consultative process, require the Licensee to contribute to the cost of Universal Service at any time during the Term of the Licence, the terms for which will be incorporated into this Licence as an amended Annex 3.

## **9 9-1-1 SERVICE**

### **Proper and Effective Functioning of the Network**

- 9.1 The Telecoms Licensee shall take all necessary measures to ensure the proper and effective functioning of its ICT Network(s), including the provision of uninterrupted access to the 9-1-1 Service as part of any Type 1, Type 3, Type 4, Type 5 and/or Type 16 ICT Service it or another Telecoms Licensee provides, such measures to include:
- (a) a direct network connection to the PSCC;
  - (b) a direct network connection to each of the other Telecoms Licensees;
  - (c) all network components required for a person to complete a call to the 9-1-1 Service to be physically located within the Cayman Islands, including all related ICT Critical National Infrastructure assets, services and systems; and
  - (d) the 9-1-1 Service call signal and communication to remain on ICT Network(s) located within the Cayman Islands.

**Requirement to monitor the functioning of the 9-1-1 Service and to notify the Office of any outage affecting the ICT Critical National Infrastructure**

9.2 The Telecoms Licensee shall:

- (a) monitor on a continuous basis the availability of a person's access to the PSCC.
- (b) notify the PSCC in the format set out in the Annex to this Licence Condition as soon as it is aware that there has been a failure such that a person is not guaranteed access to the PSCC and,
- (c) notify the Office within one hour where it is aware that there has been a failure such that a person is not guaranteed access to the PSCC via the Licensee's Network such a notification to be published on the Office's website.

DEFINITIONS:

**"9-1-1 Service"** means a voice call to the Public Safety Communications Centre using the emergency call number "9-1-1";

(d) **"ICT Critical National Infrastructure"** means the infrastructure and related systems and services used in connection with the operation of the Telecoms Licensee's ICT Network which includes towers, masts, switching equipment (including signalling transfer points) and customer database systems (including those used for local number portability, billing and provisioning purposes) necessary to provide the 9-1-1 Service;

- (e) **"Public Safety Communications Centre"** means a 24-hour communications facility able to receive all calls directly from the public established by the Department of Public Safety Communications (or its equivalent) as an answering location for 9-1-1 calls originating within the Cayman Islands; and,
- (f) **"Telecoms Licensee"** means all Office Licensees licensed to provide Type 1, Type 3, Type 4 and/or Type 5 and 16 ICT Services over ICT Network(s).

### **Annex: Outage Reporting Form**

|          |   |  |
|----------|---|--|
| <b>1</b> | <b>Telecoms Licensee Name:</b>                      |  |
| <b>2</b> | <b>Telecoms Licensee incident reference number:</b> |  |
| <b>3</b> | <b>Date and time of Network/Service failure:</b>    |  |
| <b>4</b> | <b>Date and time of resolution:</b>                 |  |
| <b>5</b> | <b>Location of incident:</b>                        |  |

|    |   |  |
|----|---|--|
| 6  | <b>Brief description of Network/Service failure:</b>  |  |
| 7  | <b>Impact of Network/Service failure:</b><br><b>i) Services affected;</b><br><b>ii) Number/proportion of users affected ;</b><br><b>and,</b><br><b>iii) Networks and assets affected.</b> |  |
| 8  | <b>Summary of Network/Service failure cause and action taken so far:</b>  |  |
| 9  | <b>Third party details:</b>   |  |
| 10 | <b>Name and contact details for follow up:</b>  |  |

## **10 FACILITATION OF INTERCEPTION**

10.1 The Licensee shall install and maintain at its own cost the ICT Network equipment and software necessary to enable it to provide at least the

information and the interception of messages on its ICT Network as required to be provided by the Licensee under the ICT Law (including any Regulations made under that law such as the Interception Regulations).

The ICT Network equipment and software installed to enable the provision of such Information and the interception of messages as referenced above must meet with applicable ETSI standards.

10.2 Upon notice that a warrant has been issued by the Governor authorising any person employed by the Law Enforcement Agency to intercept a message as provided for under the Interception Regulations, the Licensee shall ensure that the Law Enforcement Agency is able to commence interception as provided for in that warrant, free of charge:

- a. as soon as is reasonably practicable but no later than four (4) hours following the communication of that notice; or,
- b. where the information request is headed PRIORITY, (being investigations into matters affecting the immediate safety of a person, the immediate prevention or detection of a serious crime or an immediate threat to national security), as soon as is reasonably practicable but no later than thirty minutes following the communication of that notice.

10.3 The Licensee shall provide to the Law Enforcement Agency, free of charge and in an encrypted and useable format, the information requested in accordance with a request for information made under section 77 of the ICT Law (or its equivalent), or in accordance with other lawful authority as the case may be, within the timeframes stated below:

- a. where the information request is headed ROUTINE (being investigations into reports of criminal activity which do not require information for immediate evidential presentation), the information is to be provided within ten (10) working days from the date of the request;
- b. where the information request is headed URGENT, (being investigations into matters which require information for immediate evidential presentation), the information is to be provided within two (2) working days from the date of the request; or,
- c. where the information request is headed PRIORITY, (being investigations into matters affecting the immediate safety of a person, the immediate prevention or detection of a serious crime or an immediate threat to national security), the information is to be provided in real time or as close to real time as is practicable.

10.4 The Licensee shall ensure that there are at least two designated persons in the Cayman Islands, one being the primary contact and the other being the secondary contact, whose responsibility it is to provide the Law Enforcement Agency with information requested in accordance with a request for information made under the ICT Law, or in accordance with other lawful authority, and the assistance necessary to comply with a warrant issued by the Governor under the Interception Regulations.

10.5 The Licensee shall provide the details of the persons so designated under Condition 10.4 above to the Law Enforcement Agency, and the appointment of such designated persons is subject to satisfactory security clearances by the Law Enforcement Agency.

**Definitions:**

"**ETSI**" means the European Telecommunications Standards Institute;

"**Information**" means at least:

- a) the Terminal Equipment being used by a Subscriber of the Telecom Licensee's ICT Services (including the manufacturer, model name or number, type and an identifying serial number or a media access control ('MAC') address);
- b) whether the Terminal Equipment used is, or has been, active on the Telecoms Licensee's ICT Network;
- c) the Subscriber details associated with the Terminal Equipment being used on the Telecoms Licensee's ICT Network (including the relevant telephone number, account identifier, IP address and email address where applicable);
- d) the date, time and duration of any voice call by the said Subscriber, including where additional persons may have joined or left that voice call;
- e) the location of the Terminal Equipment in use; and,
- f) the last registered location of the Terminal Equipment which was active on the Telecoms Licensee's ICT Network;

**"Interception Regulations"** means The *Information and Communications Technology Authority (Interception of Telecommunication Messages) Regulations, 2011* (as amended) or its equivalent;

**"Law Enforcement Agency"** means the Royal Cayman Islands Police Service;

**"Licensee"** means an ICT licensee licensed to provide Type 1, 3, 4, 5 or 16 ICT Services, or their equivalent (such services as specified from time to time by the Office in accordance with s23(2) of the ICT Law or its equivalent);

**"Terminal Equipment"** means a product enabling communication or a relevant component thereof which is intended to be connected directly or indirectly by any means whatsoever to interfaces of public ICT Networks; and,

**"Useable Format"** means a format whereby the information provided is in a format readable by the Law Enforcement Agency.

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

- 11.1 The Licensee shall develop and operate the Licensed ICT Networks and Licensed ICT Services according to standards of performance in line with international best practices.
- 11.2 The Licensee shall at a minimum comply at all times with the Conditions set out in Annex 6 and with any other relevant standards established by the Office.
- 11.3 The Licensee shall submit to the Office a Development Plan and a Compliance Plan, together known as "the Plans". Any and all matters to be included in these plans may be added to, deleted or substituted by the Office at any time during the Term of this Licence. The Plans may be submitted in confidence in accordance with the Confidentiality Rules.
- 11.4 The Development Plan shall describe the following:
  - a) planned nature and extent of Caymanian participation as set out in Annex 1B;

- b) contact details of key management responsible for and authorised to respond to the Office in such areas as network operations and maintenance, legal, regulatory and corporate affairs;
  - c) the target levels of quality of service performance which the Licensee will achieve with the Licensed ICT Networks and Licensed ICT Services, the estimated timeframe within which those targets will be achieved and how the achievement of those target levels of performance will be monitored;
  - d) anticipated introduction of new facilities, ICT Networks and new ICT services, including geographic coverage;
  - e) the manner in which financial data will be captured, and reported and verified for purposes of the Licence Fee, including providing the Office with audited financial statements within a time frame that is no later than three (3) months from financial year end;
  - f) the Licensee's internal rules and procedures for the treatment of User confidential information; and
  - g) such other matters as required by the Office from time to time.
- 11.5 The Compliance Plan shall describe the manner in which the Licensee has complied with the terms of its Licence and shall also address:
- a. the extent to which it has met, exceeded or failed to meet the various categories in the Development Plan.
  - b. whether it has provided and continues to provide all financial data pertinent to the amount of Licence Fees to be paid;
  - c. infrastructure arrangements and disputes;
  - d. significant differences between target levels of performance and performance levels achieved over a sustained period of time, and major service interruptions and reasons therefore;
  - e. broad categories of User complaints, the manner resolved and the time frames involved;
  - f. confidentiality of information and the extent to which it has been safeguarded; and
  - g. such other matters as required by the Office from time to time.
- 11.6 The Office may direct the Licensee to update and resubmit the Plans from time to time.
- 11.7 The Office may direct the Licensee as to matters to be included in the Plans and may amend or replace such direction from time to time.

- 11.8 The Office may include as a Condition of this Licence the targets specified by the Licensee in the Plans and the Licensee shall be deemed to be in breach of its Licence if such target levels are repeatedly not achieved.
- 11.9 Within thirty days of the end of each twelve-month period during the Term, the Licensee shall, unless otherwise approved or directed by the Office, provide the Office with the Plans whereby the Development Plan will address the subsequent twelve months and the Compliance Plan will address the preceding twelve months.
- 11.10 The Licensee shall comply with any directions issued by the Office from time to time regarding any other quality of service indicators, measurement methods and compliance requirements, as may be reasonably required, for the Licensed ICT Networks and Licensed ICT Services.
- 11.11 The Licensee shall on request by the Office supply the results of its measurements of actual performance against any quality of service indicators and measurements which the Office may publish or require publication of such information as it considers appropriate.

## **12 LICENSEE'S OBLIGATIONS TO MEMBERS AND USERS**

- 12.1 The Licensee shall, in accordance with the ICT Law, take such steps as are reasonably necessary to ensure that, in relation to its Licensed ICT Networks and/or Licensed ICT Services as applicable, Members and Users can reasonably and reliably have access to information services to assist them with queries relating to the Licensed ICT Services.
- 12.2 The Licensee shall use its best endeavours to meet the quality of service commitments set out in the Development Plan, Conditions 11.8 and 11.10 and as are required by and set out in Annex 6. A repeated failure to meet such quality of service obligations shall be regarded as a breach of this Licence.
- 12.3 The Licensee shall, and subject to Annex 5, prior to the provisioning of ICT Services, develop, implement and publish procedures for responding to complaints from and disputes related to the quality of any Licensed ICT Services and the Licensee shall respond quickly and adequately to any complaints but, in no event, later than one (1) month after the filing of such complaint with the Licensee.
- 12.4 The Licensee, and its Terms of Service, shall be subject to the Office's Dispute Resolution Regulations for resolving such complaints from and disputes with Users.

- 12.5 The Office may issue directives, rules or regulations which shall replace Annex 5 in whole or in part. The Licensee shall comply with every such directive, rule or regulation.

### **13 PRIVACY AND CONFIDENTIALITY**

- 13.1 The Licensee shall maintain the confidentiality of, and refrain from using or disclosing, unless consent has been given to such use or disclosure by, the person entitled to the confidentiality of that information:
- a. any confidential, personal and proprietary information obtained in the course of its business from any Subscriber, where such information originates from any such Subscriber;
  - b. any information regarding usage of a Licensed ICT Network or a Licensed ICT Service; or
  - c. any information received or obtained as a result of or in connection with the operation of a Licensed ICT Network or the provision of a Licensed ICT Service.
- 13.2 Notwithstanding Condition 13.1, the Licensee is permitted to use such information to operate its Licensed ICT Networks or Licensed ICT Services, bill and collect charges, protect its rights or property or prevent the unlawful or fraudulent use of the Licensed ICT Networks or the Licensed ICT Services.
- 13.3 The Licensee shall establish, implement, and publish its procedures for maintaining the confidentiality of information subject to this Condition 13 and subject to the Data Protection Law.

### **14 OTHER LICENSEE CONFIDENTIAL INFORMATION**

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

## **15 SIGNIFICANT MARKET POWER**

- 15.1 Where the Office imposes specific conditions on sectoral providers determined to have significant market power in the relevant markets, pursuant to in particular sections 44 to 45 of the URC Law, the Licensee shall provide ICT Services and/or ICT Networks in those relevant markets on such terms and conditions as so set out (and reflected in Annex 3B)

## **16 INTERCONNECTION AND INFRASTRUCTURE**

- 16.1 Interconnection charges shall be cost oriented and reciprocal such that the Licensee and all interconnecting Other Licensees shall charge each other the same rate for the same service.
- 16.2 A Licensee shall not deny another Licensee access to its infrastructure or infrastructure arrangements, except:
- (a) where there is insufficient capacity taking into account reasonably anticipated requirements;
  - (b) there are reasons of safety or security; or
  - (c) there are technical or engineering matters which could make such access difficult or impossible.
- 16.3 Where the Licensee is licensed to establish Type G Internet Exchange Point Networks and Provide Type 16 Internet Peering Service Provider Services, it shall upon Commencement ensure it has more than sufficient capacity to allow access to interconnection and infrastructure sharing for all existing Type 9 Internet Service Provider (ISP) and Type 5 Internet Telephony Licensees.
- 16.4 The Licensee shall provide access to interconnection and infrastructure sharing for the purpose of providing IXP Services to all Type 9 and Type 5 Licensees, at least 30 days subsequent to any grant of licence to provide such Type 9 or 5 service.
- 16.5 In the event of a dispute between Licensees relating to interconnection or infrastructure sharing the Licensee shall submit such dispute to the Office and will abide by the decision of the Office.

## **17 REGULATORY TREATMENT**

- 17.1 Market conditions may require the Office to issue directives, rules or regulations concerning the regulatory treatment of the Licensee. In such event, the Licensee shall comply with any such directives, rules or regulations as issued by the Office.

## **PART III: GENERAL PROVISIONS**

### **18 ASSIGNMENT**

- 18.1 The Licensee may not assign, convey or transfer this Licence, in whole or in part, without the prior written consent of the Office.
- 18.2 Condition 18.1 shall not apply where the assignment, conveyance or transfer results from an internal reorganization of a body corporate that involves no change in the beneficial ownership thereof. The Licensee shall give prior notification to the Office of the nature and extent of such assignment, conveyance or transfer.

### **19 LICENCE COMMENCEMENT DATE**

- 19.1 This Licence shall take effect on 19 March 2021.

### **20 AMENDMENTS**

- 20.1 Subject to Section 31 of the ICT Law, no amendments or additions to this Licence shall be valid unless in writing and signed on by the Office.

### **21 COMPLIANCE WITH LAWS**

- 21.1 The Licensee shall comply at all times with applicable laws and regulations of the Cayman Islands.
- 21.2 The Licensee, in accordance with subsection 23(4) of the ICT Law, may be exempt from complying with the Local Companies (Control) Law (as revised). Nonetheless, the Licensee shall comply with the level and degree of Caymanian participation stipulated in Annex 1B.

## Annex 1

### LICENCED ICT NETWORK AND ICT SERVICES

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

| <b>Type</b> | <b>Description</b>            | <b>Term</b> |
|-------------|-------------------------------|-------------|
| <b>G</b>    | Internet Exchange Point (IXP) | 15 Years    |
|             |                               |             |

\* See Annex 4.

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

| <b>Type</b> | <b>Description</b>                  | <b>Term</b> |
|-------------|-------------------------------------|-------------|
| <b>16</b>   | Internet Peering Service Provider * | 15 years    |

\* The Office shall have the right to impose upon the Licensee additional obligations concerning the Type 16 ICT Service which may include obligations pertaining to national security and/or protection of Critical National Infrastructure, as defined by the URC Law.

## **Annex 1A**

### **Roll Out Plan**

#### **ICT Network(s)**

The Licensee shall make every effort to ensure that it establishes ICT Network infrastructure to facilitate and support exchange of Local IP Traffic for all local Internet Service Providers across the Cayman Islands as of **30 April 2021**.

#### **ICT Service(s)**

The Licensee shall make every effort to ensure that it has in place policies, agreements, and all other arrangements necessary to provide ICT Services to all local Internet Service Providers as of **30 April 2021**.

## **Annex 1B**

### **Caymanian Participation**

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

Equity participation: 60% Caymanian as of the date Licence Commencement Date.

Employees: 50% Caymanians as of the Licence Commencement Date.

Directors: 60% Caymanians as of the Licence Commencement Date.

## **ANNEX 2**

### **1 LICENCE FEES**

#### **1.1 Definitions:**

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

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

“Annual Turnover” means the total amount of receipts in money or money’s worth earned by a Licensee from all sources arising out of or in connection with the Licensee’s business in or from the Cayman Islands in any Licensee Financial Year of this licence (receipts of transactions with Affiliates are to be included as if those transactions are made at a minimum of open market value on an arm’s length basis);

“Audit” means an audit performed by a professionally qualified external auditor and certified by an independent firm of Chartered Accounts or Certified Public Accountant.

“Audited Financial Statements” mean, at the Licensee’s option, either:

- (a) audited balance sheet, profit and loss statement, cash flow statement, detailed Annual Turnover and Annual Revenue statements (including audits of amounts of Annual Turnover earned as money's worth, Annual Turnover earned from Affiliates, payments to Affiliates, and other deductions from Turnover) and such other statements as the Office may reasonably prescribe, all in respect of the Licensee's business in or from the Cayman Islands for a Licensee Financial Year during the Term of the Licence; or
- (b) audited statements of Annual Turnover and Annual Revenue (including audits of amounts of Annual Turnover earned as money's worth, Annual Turnover earned from Affiliates, payments to Affiliates, and other

deductions from Turnover) and such other statements as the Office may reasonably prescribe, all in respect of the Licensee's business in or from the Cayman Islands for a Licensee Financial Year during the Term of the Licence.

"Dispute Notice" shall have the meaning set out in section 2.1. of this Annex

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

"Licensee Financial Year" means the Licensee's financial year consisting of a period of 12 consecutive months at the end of which books are closed and annual financial reports are prepared.

"Quarter" or "Quarterly" means a period of three (3) calendar months commencing 1 July, 1 October, 1 January and 1 April. For purposes of the initial quarter it shall mean the period from the Licence Commencement Date to the end of the applicable Quarter.

"Quarterly Revenue" means the Quarterly Turnover less:

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

"Quarterly Turnover" means the total amount of receipts in money or money's worth earned by the Licensee from all sources arising out of or in connection with the Licensee's business in or from the Cayman Islands in any Quarter (receipts for transactions with Affiliates are to be included as if those transactions are made at a minimum of open market value on an arm's length basis).

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

"Regulatory Fee" means a fee payable to the Office which is determined by multiplying the Office's costs, for a Quarter, which the Office has determined

should be paid by Licensees in ICT Sector One, by the Quarterly Revenue of the Licensee, divided by the total Quarterly Revenue of all licensees in ICT Sector One. The amount of the fee shall be established and published by the Office thirty (30) days prior to each Quarter and shall be based on data from the Quarter immediately preceding the Quarter in which the date of publication falls. The specific calculation and filing procedures shall be prescribed and published by the Office in a licence fee guidelines document.

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

"Statement of Cash Flows" means the statement of the Licensee's cash flow activities, particularly its operating, investing and financing activities for a given quarter or financial year of the Licensee;

"Statement of Comprehensive Income" means the statement of the Licensee's income, expenses, and profits for a given quarter or financial year of the Licensee;

"Statement of Financial Position" means the statement of the Licensee's assets, liabilities, and shareholders' equity at the end of a given quarter or financial year of the Licensee, separating current assets and liabilities from non-current assets and liabilities;

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

## **1.2 Licence Fee Procedures and Payment**

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

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

(c) The Licensee shall include, when providing the information specified in subsections (a) and (d), an affidavit signed by an officer of the Licensee attesting

to the veracity and completeness of the information provided and that the Licensee has reported all Turnover.

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

## **2. Dispute Resolution**

- 2.1 Within 28 days of the receipt by the Office of the Licensee's Unaudited Financial Statements in accordance with clause 1.2(a) of this Annex or the receipt of the Licensee's Audited Financial Statements in accordance with clause 1.2(d) hereof (as the case may be), the Office may serve the Licensee with a Dispute Notice stating the grounds upon which the Office disputes the exclusion of any item from Turnover or the inclusion of any item as a deductible from Turnover for the purposes of calculating Quarterly Revenue or Annual Revenue as (the case may be) in accordance with the terms of this Annex.
- 2.2 The Licensee and the Office shall thereupon use their reasonable endeavours to reach a settlement in writing of the said Dispute Notice provided that where such dispute has not been resolved to the reasonable satisfaction of the Office within 28 days of the receipt by the Licensee of the Dispute Notice the dispute shall be referred to an independent accountant to be agreed between the Licensee and the Office within 14 days thereafter.
- 2.3 In the event that the Office and the Licensee are unable to agree on the identity of such independent accountant the Licensee and the Office shall refer the choice of accountant to the President for the time being of the Cayman Islands Chamber of Commerce whose decision shall be final and binding.
- 2.4 The decision of the independent accountant in respect of the Dispute Notice shall be final and binding and the costs of the referral of the said Dispute Notice including the fees charged by the independent accountant for adjudicating on the Dispute Notice shall be awarded by the independent accountant to the party in whose favour the said Dispute shall be resolved.

## **3. Authorised Frequencies Fee**

- 3.1 By the first day of each Regulated Financial Year, the Licensee shall pay to the Office a fee as determined by the Office from time to time for each radio transmitter per channel used or to be used by the Licensee within that Regulated Financial Year
- 3.2 The Authorized Frequencies Fees are to be set on the following principles:
  - (b) The total amount collected each Regulated Financial Year for Authorized Frequency Fees from all Licensees (including the Licensee) shall not exceed the Office's annual estimated cost of electromagnetic spectrum management and other related activities.
  - (c) The Authorised Frequencies Fee shall be set to be the same for all transmitters, irrespective of the use of the transmitter or the type of spectrum used by the transmitter.
  - (d) If, during the Regulated Financial Year, additional radio transmitters or additional channels are used by the Licensee that were not included in the Authorised Frequencies Fee payment provided for above at the start of the Regulated Financial Year, the Authorised Frequencies Fee for such new radio transmitters and channels apply for that regulated Financial Year with no proration of that fee and should be paid accordingly.

## **Annex 3**

### **UNIVERSAL SERVICE**

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

### **ANNEX 3A SIGNIFICANT MARKET POWER**

This Annex is reserved for terms and conditions pertaining to any Significant Market Power obligation(s) which the Office may, following a consultative proceeding, require in accordance with Condition 15 of the Licence.

## Annex 4

### Authorized Frequencies and Transmitters

| Frequency | Description | Transmitter & Antenna Information |     |
|-----------|-------------|-----------------------------------|-----|
| n/a       | n/a         | <i>Type:</i>                      | n/a |
|           |             | <i>Location:</i>                  | n/a |
|           |             | <i>Power:</i>                     | n/a |

### Type S Licence

Type S Licenses are issued annually on the basis of the number of transmitters and frequencies.

## **Annex 5**

### **MEMBER PROTECTION AND PRIVACY**

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

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

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

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

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

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

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

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

#### **4. Protection of Member and Third Party user Information**

The Licensee shall have an established policy for the protection of Members and third party users information and procedures to support that policy. At a minimum, the Licensee's policy for the protection of such information shall include the following: unless express consent is given by the owner of information, all information obtained or collected

by the Licensee regarding the Member or its customer, other than the Member's ' name, address, contact details or other information required to be disclosed by this licence or applicable law, regulation or rule, are confidential and may not be disclosed by the Licensee to anyone other than:

- (1) the Member or owner of information;
- (2) another Licensee, provided the information is required for the efficient and cost-effective provision of authorised service and disclosure is made on a confidential basis with the information to be used only for that purpose;
- (3) a public authority or an agent of a public authority, if in the reasonable judgment of the Licensee, it appears that there is imminent danger to life or property which could be avoided or minimized by disclosure of the information;
- (4) an agent retained by the Licensee in the collection of its

The Licensee's policy for the protection of information shall be included in its contracts and agreements.

## **5. Payment of Charges**

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

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

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

Where the Licensee wishes to terminate a Members service for any reason, it shall first notify the Office. The Office will consider the merits of the proposed disconnection and issue a Direction in relation to the matter within a reasonable time.

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

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

## **8. Deposits**

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

## Annex 6



### INTERNET EXCHANGE POINT (IXP) Regulatory Framework

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## **1. Introduction**

- 1.1** Pursuant to Utility Regulation and Competition Law (2019 Revision) (URC Law) and the Information and Communications Technology Law (2019 Revision) (the 'ICT Law') the telecommunications sector must be regulated by the Utility Regulation and Competition office ("Office" or "OfReg") to, among other objectives, promote appropriate effective and fair competition in the communications markets, protect the short and long term interests of consumers and ensure creation of favourable atmosphere to for promotion of innovation and facilitation of development. Additionally, the regulatory activities must focus on promoting and maintaining an efficient, economic and harmonized utilisation of ICT infrastructure as well as protecting critical national infrastructure.
- 1.2** In exercise of the powers conferred by section 12(1) of the URC Law, the Cabinet issued a Direction to the Office – the 'Utility Regulation and Competition (Information and Communications Technology) Directions, 2020'. As part of the Directions, the Office was tasked to, among other things:
  - 1.2.1** Take measures to ensure local internet communication remains onshore including the facilitation of establishment of ICT peering point for the exchange of local IP traffic between service providers and to take necessary steps to ensure that the exchange of local traffic is a condition in licences of service providers.
- 1.3** The Cayman Islands' Information and Communications Technology (ICT) sector is undergoing rapid change. Implementation of this Regulatory Framework on Internet Exchange Points is focused on fulfilling the mandate to keep local internet traffic within jurisdiction and improve customer experience from internet usage in the country but is also designed to support the Office's broader sector objectives to facilitate the development of a world-class communications ecosystem for the Cayman Islands, to increase the attractiveness of the Islands for investment in digital innovation and development.

## **2 Definitions**

- 2.1** The terms and expressions defined in the URC and ICT Laws and Regulations shall have the same meaning in the present Regulatory Framework.
- 2.2** In addition, the following terms and expressions shall have the meaning assigned to them hereunder except where the context in this Regulatory Framework otherwise requires:

- 2.2.1 'Internet Exchange Points' ("IXP") shall mean the physical infrastructure in the Cayman Islands through which, Internet Service Providers and other entities (such as content delivery networks, content providers, enterprises and others as defined by the Office) connect their networks and exchange internet traffic but does not include private exchange through direct bilateral arrangements or communication between autonomous systems.
- 2.2.2 'Internet Exchange Point Services' or 'IXP Services' shall mean services offered by the IXPs. These services may include but shall not be limited to provision of Ethernet switch(es) for the purposes of peering or transit among IXP Members, supporting network operations centres for monitoring and fault detection, guaranteed service level agreements, internet security services and other services as deemed appropriate. IXPs, unless authorised through a separate process, shall not offer any service or operate any network that requires specific license, registration or authorisation from the Office.
- 2.2.3 'IXP Members' shall mean participants at any IXP who can benefit from services of the IXP, including but not limited to peering and/or transit arrangements in line with the IXP policies. These Members shall include Internet Service Providers but may also include other ICT Network or ICT Service licensee.
- 2.2.4 'IXP Service Provider' shall mean any entity issued a license by the Office to provide Internet Exchange Point Services in the Cayman Islands and owns or exercises direct control of an Internet Exchange Point.
- 2.2.5 'Infringing Content' shall mean content that infringes an existing intellectual property right.
- 2.2.6 'Local IP traffic' shall mean Internet traffic which originates in the Cayman Islands on a network operated by an ISP and terminates in the Cayman Islands on a network operated by another ISP, irrespective of whether the networks in question are, fixed wireline, fixed wireless or mobile networks.
- 2.2.7 'Peering Policy' shall mean rules defined by any IXP Service Provider regarding connecting and sharing of internet traffic by IXP Members at an identified location. These rules may include but are not limited to, ports used for peering, any requirement for mandatory peering or traffic exchange by members.
- 2.2.8 'Unlawful Content' shall mean content that is unlawful or prohibited under the laws of the Cayman Islands.

### **3 Regulatory Framework**

### **3.1 Basic Principals**

3.1.1 All Internet Exchange Points in the Cayman Islands shall operate in a manner consistent with the following IXP Basic Principles:

1. The Cayman Islands would benefit from the establishment of an Internet Exchange Point (IXP).
2. All ISP members will work together to establish and maintain peering for Local IP Traffic.
3. The Internet Exchange Point or IXP, will be hosted by a neutral party.
4. Shared Costs – The IXP shall be operated as a non-profit service, prices shall be cost-based, and all costs associated with the IXP will be shared by the parties equally.
5. No party shall be advantaged or disadvantaged by the practises, contracts, policies, or pricing of the IXP.
6. Transparency–To the extent possible, the operations of the IXP will be transparent to the parties, barring commercially sensitive information.
7. Layer 2 – To enhance privacy and speed, the IXP will connect the parties together at Layer 2 of the International Organization of Standardization, Open System Interconnection stack- (“ISO OSI stack”).
8. Keep It Simple – the parties will strive to embrace simplicity in all aspects of the IXP.
9. Licensing – The IXP will be a licensed service of the Office and therefore be subject to regulatory oversight and be provided facility for dispute resolution among the parties.
10. Consensus – The IXP will be driven by consensus views of the parties in its operations, policies, and practices.

### **3.2 Scope**

3.2.1 The provisions of this Regulatory Framework shall apply with regard to any IXP Services provided in the Cayman Islands.

3.2.2 The licensing obligation under this Regulatory Framework shall apply to any entity engaged or proposing to engage in IXP Services in the Cayman Islands.

### **3.3 IXP Licensing and Fees**

3.3.1 Applications for licence will be evaluated on their merits having regard to the information provided by the applicant and to the broad licensing criteria outlined in “Part III – Licensing” of the ICT Law.

3.3.2 Applicants should use their best endeavours to ensure that all information contained in their applications and any other subsequent submissions and representations are correct and accurate in all respect, in reliance upon which the Office will consider the applications. The Office reserves the right not to accept applications which are incomplete.

3.3.3 Any entity that seeks to offer IXP Services in the Cayman Islands must apply to the Office for grant of licence to operate as an IXP Service Provider.

3.3.4 The Office will only consider applications for grant of IXP licence from companies registered in the Cayman Islands.

3.3.5 The fee for application for grant of licence to operate an IXP, is \$1,500.00 and is to be submitted along with the relevant IXP application.

3.3.6 The information to be provided for the above registration, the form to be used, and the applicable procedure and time limits shall be as prescribed by the Office. All applicants for grant of IXP Service licence shall follow the licensing procedure and submit all required documents in accordance with Annex 1 of this Regulatory Framework.

3.3.7 The licence for the provision of IXP Services shall not be used for provision of other services for which a licence or authorisation of any kind by the Office is required. An IXP Service Provider shall apply separately for any license in accordance with the Office established procedures.

3.3.8 No IXP Service Provider, shareholder in an IXP nor affiliate shall be granted licence or authorisation to operate as an Internet Service Provider (ISP) or Reseller of Internet Service.

3.3.9 3.3.9. In cases where an IXP Service Provider obtains a licence to offer other ICT services, all revenue earned from the non-IXP Service shall be clearly indicated in all financial reporting.

3.3.10 Under no circumstances shall an IXP licence be used as reason for non-payment of fees as per the conditions of other licence(s) held by the IXP Service Provider.

3.3.11 Provision of IXP Services relating to the exchange of Local IP Traffic shall be delivered on a not-for-profit basis. IXP Service Providers shall only charge Members cost-based fees for exchange of Local IP Traffic.

3.3.12 IXP Service Providers shall not be required to pay Royalty Fees for provision of services relating to the exchange of Local IP Traffic.

### **3.4 IXP Participation**

3.4.1 Every IXP Service Provider shall define and publish its membership policy and make it available to the public.

3.4.2 Every IXP Service Provider shall allow all ISPs licensed by the Office to connect to the IXP for the purpose of exchanging Local IP Traffic and in order to do so, acquire and have in place the necessary infrastructure to facilitate such exchange.

3.4.2.1 If an IXP Service Provider decides that it is unable or that it is inappropriate to allow an ISP to connect to its infrastructure, the IXP Service Provider must notify the Office within seven days of such decision with reasons. Notwithstanding any decision of an IXP Service Provider, the Office reserves the right to mandate acceptance of ISP Members by exercise of its relevant authority in Law.

3.4.3 No IXP Service Provider shall make access to the IXP contingent upon the use of the services or facilities of any particular network or service provider.

### **3.5 IXP Ownership and Shareholding**

3.5.1 IXP Service Provider licences will not be issued to any ISP or Reseller of Internet service licensee, nor to any shareholder, affiliate, director or person having a link to such licensees, where in the opinion of the Office such link does not align with the third (3) Basic Principle.

3.5.2 IXP Service Provider licence will not be issued to an entity that:

- a. is not Caymanian controlled;
- b. has less than sixty per cent (60%) beneficial ownership by Caymanians; and
- c. has less than sixty per cent (60%) of its directors as Caymanians.

### **3.6 IXP Operations**

- 3.6.1 An IXP Service Provider shall establish an advisory board consisting of representatives of each of its ISP Members, and must give effect to the greatest extent practicable to the consensus of that board on any matters relating to the exchange of local Internet traffic, provided, however, that the operator of the IXP may submit for the Office's review and approval alternative methods of determining the consensus of the ISPs on matters relating to the exchange of local Internet traffic.
- 3.6.2 All infrastructure, management and other personnel of the IXP shall be located in Cayman Islands.
- 3.6.3 In further fulfilment of Basic Principle 3, IXPs must be located in premises which are not owned or operated by an ISPs or Resellers of Internet service or by a shareholder, affiliate or director of such licensee.
- 3.6.4 IXP infrastructure shall be located in premises that meet or exceed minimum Cayman Islands building code standards for category 4 hurricane wind ratings and minimum seismic event ratings. The premises shall have multiple independent back-up power supplies, fire suppression and environmental controls, access to terrestrial communications infrastructure and in any case cannot be located on a ground level floor.
- 3.6.5 IXP Service Providers shall make every effort to mitigate single points of failure in the IXP network; provide high-availability and a high grade of service to their Members. The performance of which will be the subject of the IXPs service agreements. The Office may necessarily establish standards and regulations under its authority in the interest of protection of critical national infrastructure or to define appropriate quality of service standards.
- 3.6.6 IXP Service Providers shall develop and implement a business continuity plan and a disaster recovery plan for all IXP operations and services to ensure continuity of service.
- 3.6.7 IXP Service Providers are not restricted from offering other services as long as;
- a. those services do not interfere with the exchange of internet traffic;
  - b. the IXP Service Provider does not make access to the IXP contingent upon the use of any other services or facilities; or
  - c. those services are not offered or made possible by unauthorised access to Members internet traffic.
- 3.6.8 An IXP Service Provider shall define its Peering Policy, including rules regarding traffic exchange, and make it available to the public. This Peering

Policy shall apply to every IXP Member without any discrimination to Members or prospective Member.

- 3.6.9 Notwithstanding 3.6.8, IXP Service Provider must connect ISPs to the infrastructure equipment at Layer 2 of the ISO OSI stack; and the IXP shall not access, interrupt or otherwise use the ISP's traffic for any purpose other than what is minimally necessary to facilitate delivery of IXP service.
- 3.6.10 ISPs shall be responsible for procuring, at their own expense, the necessary facilities to connect to the IXP.
- 3.6.11 Every IXP Service Provider shall define the technical requirements and statistics that show the value of the provided services. The provider shall be liable for the accuracy of the shared information.
- 3.6.12 Every IXP Provider shall define its pricing policy, provide a copy to the Office and also make it available to the public.
- 3.6.13 Notwithstanding any pricing policy established by the IXP Service Provider, the IXP shall charge ISPs and non-ISP Members cost-based fees only, for connection to and use of the IXP for exchange of Local IP Traffic.
- 3.6.14 The Office shall have the right to develop specific quality of service standards for IXP Providers, if it considers it necessary to do so.
- 3.6.15 IXP Providers shall notify the Office and any other authorised entity, without undue delay, if it becomes aware of any cyber or other threats to its infrastructure or its Member's infrastructure. For this part, an authorised entity includes the relevant Member.
- 3.6.16 IXP Service Providers shall refer any third parties complaining against Unlawful Content or Infringing Content on any IXP Member's network to the competent authorities in the Cayman Islands and also notify the Office.
- 3.6.17 IXP Service Providers shall report financial, technical, governance or any other information with the Office as required in its licence.

### **3.7 The Office's Powers**

- 3.7.1 Any violation of the provisions of this IXP Regulatory Framework shall be subject to the actions and penalties that the Office may take or impose under URC and ICT Laws, relevant Regulations or licence conditions but without prejudice to any penalties that may be imposed under any other applicable law in the Cayman Islands.

- 3.7.2 Unless otherwise specified in this Framework, mentioned provisions shall be mandatory and not subject to any modification through contractual agreement.
- 3.7.3 This Framework can be amended from time to time at the discretion of the Office.
- 3.7.4 The Office may issue guidelines, model IXP contracts or clauses, policies, guides, recommendations or other texts aimed at:
  - 3.7.4.1 Clarifying any aspect of this Framework;
  - 3.7.4.2 Providing guidance to IXP Service Providers, Members and the public in general on any aspect of IXP operation;
  - 3.7.4.3 Establishing the Framework by setting out implementation provisions.

### **3.8 Coming into Force of the Framework**

- 3.8.1 Subject to the provisions of paragraph 3.8.2 below, this Framework shall be considered to be in force seven calendar days after its publication in the form of a final determination on the Office's website.
- 3.8.2 An IXP or prospective IXP Service Provider's obligation or opportunity to apply to the Office pursuant to Part 3.3 above, shall come into force seven calendar days after the present Regulatory Framework's entry into force. Notwithstanding this, eligible parties may apply for a licence upon the coming into force of the Framework.

## **IXP Regulatory Framework**

### **Annex 1: Application Criteria**

The prescribed application form to be submitted in support of grant of IXP Service Provider licence will include but not be limited to the following requirements:

1. Payment of the full application fee of \$1,500.00.
2. That the relevant application form, be completed in full and signed by an authorised representative of the Applicant.
3. Provision of the management and operational structure of the applicant.
4. Provision of certified copy of a valid company registration and certified Register of Members.
5. Provision of details of the applicant's members shareholding or interest in other ICT Licensees.
6. Provision of details of the applicant's parent, subsidiary or affiliate's ICT operations in the Cayman Islands or any other jurisdiction.
7. Provision of details of technical experience and competency necessary to fulfil the expectations of an IXP Service licence.
8. Provision of description of services to be provided at the IXP.
9. Provision of details of the applicant's IXP and other ICT related operations in any other jurisdiction.
10. Provision of proof available Capital Expenditure and Operational Expenditure as necessary to establish and operate and IXP.

END