

**A LICENCE GRANTED**

**BY**

**LESOTHO COMMUNICATIONS AUTHORITY**

**TO**

**LEC COMMUNICATIONS (PTY) LTD**

**FOR PROVISION OF NETWORK INFRASTRUCTURE (Wholesale)**

(In terms of section 5(1) (d) of the Act)

**Commencement Date: 04<sup>th</sup> June 2015**

**Expiry Date: 03<sup>rd</sup> June 2035**

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**M. Posholi**  
**Chief Executive Officer**  
**Lesotho Communications Authority**

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## THE LICENCE

### TERMS

1. The Lesotho Communications Authority (the “Authority”), in accordance with section, 5(1) (d) of the Communications Act 2012 (the “Act”), hereby authorizes *LEC Communications PTY Ltd* (the “Licensee”) to operate network infrastructure described herein as (the “Licensed System”), to provide services described herein as (the “Licensed Services”) and to connect the Licensed Systems to telecommunication systems within and outside Lesotho in accordance with the Conditions set out hereunder.
2. The Licensed System is fiber optic communications network infrastructure located within the Kingdom of Lesotho and connected to such local and international networks as may be necessary to provide licensed services.
3. The Licensed Services are provision of network infrastructure at wholesale level which shall entail:
  - 3.1 to lease network elements; and
  - 3.2 to lease network capacity,to any licensed network service provider on a non-exclusive basis.
4. The Licensee is authorized to connect the Licensed Systems to:
  - 4.1 Any other telecommunication system run under a Licence granted by the Authority in accordance with the Act;

- 4.2 Any telecommunication apparatus, which is approved for connection by the Authority; and
  - 4.3 Any telecommunication system authorized to operate in international commerce by any other nation, country or territory, and which operates pursuant to international telecommunications standards.
5. This Licence is issued for a period of twenty (20) years with effect from 04th June 2015 (the “Licence term”); and operations under this licence shall commence within 24 months of the issuance of this licence, unless it is revoked earlier in accordance with the conditions set out below.
6. Notwithstanding paragraph 5 of these terms, the Authority may at any time revoke this Licence by giving sixty (60) days’ notice in writing in any of the following circumstances:
  - 6.1 If the Licensee agrees in writing with the Authority that this Licence should be revoked;
  - 6.2 If any amount payable to the Authority is unpaid thirty (30) days after the Authority has notified the Licensee that the payment was overdue, provided that such notification shall not have been given earlier than fourteen (14) days after the date on which the payment was due;
  - 6.3 If the Licensee has failed to comply with any notice issued by the Authority under the Act, Rules, or the Regulations or pursuant to the terms of this Licence where the Authority has given the Licensee sixty (60) days in which to make representations in relation to the matters set out in the notice, and has taken any representations into account before taking further action;
  - 6.4 If the licensee fails to commence operations within the period stated in 5 above; or

- 6.5 If the Licensee is dissolved or enters liquidation, bankruptcy or equivalent proceedings or makes a general assignment for the benefit of creditors.
7. The Authority may renew this Licence for an additional period following the expiry of the Licence Term, provided that the Licensee has fulfilled its obligations set out in this Licence and provided further that the Authority has carried out a formal review to determine whether it is in the public interest that the Licence should be renewed.
  8. This Licence shall be held subject to the terms and conditions set out herein, provisions of the Act, Rules and Regulations adopted pursuant to the Act.
  9. The Licensee shall not assign, delegate, transfer or encumber in any manner the rights, interests or obligations under this Licence without the prior, express and written consent of the Authority.
  10. Any word, phrase or expression used in this Licence shall, unless the context requires otherwise, have the same meaning as it has in the Act.
  11. In this Licence, unless the context otherwise requires, the following terms shall have the following meanings:
    - “Act” means the Communications Act 2012;
    - “Authority” means the Lesotho Communications Authority established pursuant to the Act;
    - “Rules” means any regulations established by the Authority from time to time in accordance with the Act;
    - “Service Provider/Facility Operator” means any person licensed by the Authority to provide communication services in accordance with section 5 of the Act;

“Universal Service Fund” means a fund for provision and availability of essential information and communications technologies (ICT) services to all sections of society as determined by the Authority and/or Universal Service Fund Committee;

## **CONDITIONS**

### **1. PROVISION OF SERVICES**

- 1.1 The Licensee shall be required to negotiate in good faith with persons making bona fide requests to purchase Licensed Services. Subject to any Rules or Regulations on interconnection and to other provisions of this Licence, the Licensee shall, within three (3) months of a request by a requesting Service Provider, enter into an agreement to provide to the requesting Service Provider licensed services.
- 1.2 The obligation in [1.1] shall not apply in the event that, it is not, in the Authority’s view, reasonable to require the Licensee to enter into such an agreement in the particular circumstances, including, but not limited to circumstances:
  - 1.2.1 Beyond the Licensee’s control;
  - 1.2.2 Where the provision of the service would expose any person engaged in its provision to undue risk to health or safety; or
  - 1.2.3 Where it is not reasonably practicable;
  - 1.2.4 The Licensee shall file each agreement with the Authority, certifying that service is offered on a nondiscriminatory, and reasonable terms, including those relating to charges.

### **2. SERVICE PROVISION TO OTHER PARTIES**

- 2.1 The Licensee shall permit any telecommunication operator to connect, upon payment of a fee, its telecommunication system to the Licensee's Systems so as to enable the provision of such operator's licensed services.
- 2.2 The obligation in [2.1] shall not apply in the event that, it is not, in the Authority's view, reasonable to require the Licensee to comply with such an obligation in particular circumstances, including, but not limited to circumstances:
  - 2.2.1 Beyond the Licensee's control;
  - 2.2.2 Where the provision of the service would expose any person engaged in its provision to undue risk to health or safety; or
  - 2.2.3 Where it is not reasonably practicable.

### **3. PROVISION OF MAINTENANCE SERVICES**

- 3.1 The Licensee shall provide or ensure the provision of Maintenance Services, on the reasonable request of any person to whom it provides Licensed Services.
- 3.2 The obligation in Condition [3.1] shall not apply in the event that it is not, in the Authority's view, reasonable to require the Licensee to provide the service requested by means of the Licensed Systems in the particular circumstances, including, but not limited to circumstances:
  - 3.2.1 Beyond the Licensee's control;
  - 3.2.2 Where the provision of the service would expose any person engaged in its provision to undue risk of health or safety; or
  - 3.2.3 Where it is not reasonably practicable.

#### **4. INTERRUPTIONS OF THE LICENSED SERVICES**

- 4.1 Subject to Conditions [4.2] and [4.3] below, the Licensee shall not intentionally interrupt the operation of the Licensed Systems (or any part thereof), in the normal course of business, nor may it in the normal course of business suspend the provision of any type of Licensed Service without having first provided reasonable advance notice to persons affected by such interruption or suspension.
- 4.2 The provision in Condition [4.1] shall not apply if, in the Authority's view, the interruption or suspension is due to an emergency, national security, or circumstances beyond the Licensee's control.
- 4.3 The provision in Condition [4.1] shall not apply if, in the Authority's view, the interruption or suspension is to a Licensed Service supplied by the Licensee to a person whose system is endangering the integrity of the Licensed Systems.

#### **5. PUBLIC EMERGENCIES**

- 5.1 In case of a situation of emergency or local, regional or national crisis such as earthquakes, floods, riots, or similar events which require special attention on the part of the Licensee, the Licensee shall provide the necessary services to the Government giving priority to the activities required to overcome the emergency.
- 5.2 For this purpose, the Licensee shall co-ordinate with and follow the instructions of the Authority in accordance with relevant laws. Within nine (9) months following the issue of this Licence, the Licensee shall develop procedures it will follow in the event of any

such emergency and shall update whenever necessary and avail such procedures upon request from the Authority.

- 5.3 In case of emergency or crisis being related to aspects of national security, the Licensee shall co-ordinate with the Commissioner of Police who shall make any request in writing and provide the necessary services in accordance with the instructions of the Authority or the competent entity indicated thereby in accordance with the relevant laws.
- 5.4 The Licensee shall be entitled to reimbursement by the Government on its direct costs for the provision of the services mentioned in Conditions 5.1 and 5.3 above if such costs are reasonable and are shown to have been incurred to the satisfaction of the Authority.

## **6. CHARGES**

- 6.1 The charges made to any person for the provision of:
- 6.1.1 Licensed Services; and
  - 6.1.2 Any other service which may be specified from time to time by the Authority, shall be based on the pricing approved by the Authority.
- 6.2 The Licensed Services shall be provided on standard terms and conditions (which must include provision for an effective dispute resolution mechanism) to any person on request.
- 6.3 The Licensee shall file proposed charges, terms and conditions for provision of licensed services to the Authority for approval prior to inception of business.

- 6.4 The Licensee shall file, whenever it makes changes to its rates, charges, and terms and conditions upon which it proposes to offer the Licensed Services.

## **7. QUALITY OF SERVICE REQUIREMENTS**

- 7.1 The Licensee shall meet the quality of service requirements which shall be agreed with licensees to whom it provides licensed services, which shall not be below quality of service requirements prescribed by the Rules.
- 7.2 The Licensee shall ensure that it maintains information records for the purpose of satisfying the Authority that the Licensee is meeting the agreed quality of service requirements. The Licensee shall make reports of its performance as may be required by the Authority.

## **8. BILLING ACCURACY**

- 8.1 The Licensee shall provide to the Authority an independent certification that its billing system does in fact capture true and correct charges.
- 8.2 The Licensee shall not render any bill in respect of any Licensed Service unless every amount stated in the bill is derived in accordance with Condition [8.1].
- 8.3 The Licensee shall keep billing records for the purpose of satisfying the Authority that the billing process complies with Condition [8.2]. The Licensee shall retain the records for at least three (3) years from the date on which they came into being.
- 8.4 In order for the Authority to be satisfied that the billing process has the characteristics as set out above, the Authority (or an

independent auditor appointed by the Authority at its own discretion) may require the Licensee to:

- 8.4.1 Furnish the Authority with any information it requires;
- 8.4.2 On reasonable notice, allow the Authority (or any person authorised by the Authority) access to any relevant premises of the Licensee; and
- 8.4.3 On reasonable notice, allow the Authority (or any person authorized by the Authority) to examine or test the whole or any part of the billing process.

## **9. INTERCONNECTION, CO-LOCATION AND SHARING OF FACILITIES**

The Licensee may enter into interconnection, co-location and facilities sharing agreements as prescribed by the Rules.

## **10. PRIVACY AND CONFIDENTIALITY**

- 10.1 The Licensee shall use all reasonable endeavours to ensure the privacy and confidentiality of information and business secrets obtained in the course of its business from any person to whom it provides Licensed Services and any person with whom it has an interconnection agreement by establishing and implementing reasonable procedures for maintaining confidentiality of such information.
- 10.2 The Licensee shall develop and maintain confidentiality procedures to ensure that the requirements of Condition [10.1] are being met.
- 10.3 The Licensee shall not use or allow use of any apparatus constituting the Licensed Systems (except for the purposes of enforcement of a court order) which is capable of recording,

silently monitoring, or intruding into transmission of any messages unless the licensee complies with Condition [10.4] and [10.5] below.

10.4 Except as directed by a competent court of law, the Licensee shall make every reasonable effort to inform the parties to whom or by whom a live speech telephone call is transmitted before recording, silently monitoring or intrusion into such call has begun that the call is to be or may be recorded, silently monitored or intruded into.

10.5 The Licensee shall maintain a record of the means by which the parties to whom or by whom a live speech telephone call is transmitted have been informed that the call is to be or may be recorded, silently monitored or intruded into. The Licensee shall furnish to the Authority such information on request.

## **11. FAIR COMPETITION**

11.1 Without prejudice to other obligations imposed on the Licensee under this Licence, the Licensee shall not engage in any activities, whether by act or omission, which have, or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in relation to any business activity relating to the Licensed Services. Without limiting the generality of the foregoing, any such act or omission shall include:

11.1.1 Any abuse by the Licensee, either independently or with others, of a dominant position which unfairly excludes or limits competition between the Licensee and any other party;

11.1.2 Entering into any contract or engaging in any concerted practice with any other party, which

unfairly prevents, restricts or distorts competition;  
or

11.1.3 Effecting anti-competitive changes in the market structure, and in particular anti-competitive mergers and acquisitions in the communications sector.

11.2 The Licensee shall maintain such records as are necessary in order to provide evidence of significant transfers between itself and any other business.

## **12. PROHIBITION OF UNDUE DISCRIMINATION**

12.1 Without prejudice to the obligations imposed on the Licensee under this Licence, the Licensee shall not (whether in respect of the rates or other terms and conditions applied or otherwise) show undue preference to, or exercise undue discrimination against, particular service provider regarding the provision of the licensed Services.

12.2 The Licensee may be deemed to have shown undue discrimination if it unfairly favours to a material extent a business carried on by it in relation to the provision of the Licensed Services so as to place at a significant competitive disadvantage persons competing with that business.

12.3 The Authority shall determine any question relating to whether any act done or course of conduct by the Licensee amounts to undue preference or undue discrimination.

## **13. ACCOUNTING REQUIREMENTS**

- 13.1 Within six (6) months after the issue of this Licence, the Licensee shall submit to the Authority an accounting system that shall allow the licensee to keep proper records of its operations in accordance with International Financial Reporting Standards.
- 13.2 Within ninety (90) days of the end of the Licensee's financial year, the Licensee shall submit to the Authority its balance sheet, profit and loss statements, cash flows and other related statements as of the end of such financial year. The submission shall include certification by independent auditors stating that such financial statements fairly present the financial position of the Licensee as at the dates indicated and were prepared in accordance with International Accounting Standards.
- 13.3 The Authority may request the Licensee to submit other accounting information it may require in order to effectively supervise and enforce the terms of this Licence.

#### **14. REQUIREMENTS TO PROVIDE INFORMATION**

- 14.1 The Licensee is required to maintain such information as will enable the Authority to carry out its functions under the Act. The Licensee shall submit to the Authority such periodic reports, statistics, statement of operations and other data, as the Authority may from time to time direct. The Authority shall have the right to request additional specific information necessary to effectively supervise and enforce compliance with the provisions of the Act and the terms and conditions of this Licence and the Licensee shall provide such information.
- 14.2 In making a request for information, the Authority shall balance its regulatory and enforcement obligations under the Act against the burden imposed on the Licensee in procuring and furnishing such information.
- 14.3 The Authority shall have the right to publish information which it received under this Condition unless, following

representations by the Licensee, it is satisfied that the information is of such confidential nature that its disclosure would have a material adverse effect on the Licensee's business.

## **15. INSPECTION**

- 15.1 The Licensee shall grant unhindered access to all its premises, facilities, installations, files and records to all officers authorized by the Authority for inspection purposes.
- 15.2 The Licensee shall provide to the Authority details of its premises, facilities, installations, and networks.
- 15.3 The Authority may request additional information on premises, facilities, installations, and networks.

## **16. NOTIFICATION OF CHANGE IN SHAREHOLDING**

- 16.1 The Licensee shall notify the Authority if any entity becomes a parent undertaking or controlling entity in relation to the Licensee.
- 16.2 In any case referred to in Condition [16.1] above, notification shall be given by a date which is thirty (30) days prior to the taking effect of such change or acquisition, as the case may be, or as soon as practicable.
- 16.3 In the event that the Authority disapproves of the change in shareholding, it shall notify the Licensee within thirty (30) days of receipt of notification. The Authority may within sixty (60) days of notifying the Licensee of its disapproval, having taken into account representations made by interested parties, and giving reasons for its decision, prohibit the change in shareholding where it believes it is in the public interest to do so.

## **17. PRE-NOTIFICATION OF JOINT VENTURES**

17.1 The Licensee shall notify the Authority not later than sixty (60) days before the taking effect of any of the agreements or arrangements to which this condition applies, giving particulars of the agreements or arrangements.

17.2 The agreements and arrangements are:

17.2.1 An agreement with any person for the establishment or control of any body corporate for the purpose of:

17.2.1.1 The running of a communication system which requires a Licence under the Act; or

17.2.1.2 Providing communication services in Lesotho which necessarily involves control over all or a portion of such a system.

17.2.2 An agreement for the establishment of a partnership for any of the purposes and circumstances mentioned in [17.2.1] above.

17.2.3 Any other agreement or arrangement in the nature of a joint venture for the purpose of running a communication system which requires a Licence under the Act or for the purpose of providing communication services in Lesotho which necessarily involves controlling all or a portion of such a system.

17.3 In the event that the Authority disapproves of the arrangements referred to above, the Authority shall inform the Licensee in writing within thirty (30) days after such notification. The Authority may, within sixty (60) days of

giving notice of its disapproval, having taken into account representations made by interested parties and giving reasons for its decision, prohibit the parties from entering into such arrangements where it believes it is in the public interest to do so.

## **18. LICENCE FEES**

18.1 The Licensee shall pay to the Authority such fees as are prescribed by the Rules.

## **19. UNIVERSAL SERVICE OBLIGATIONS**

19.1 The Licensee shall pay fees into the Universal Service Fund as prescribed by the Authority in accordance with the Act.

19.2 The licensee shall meet any other Universal Service obligations as required by the Authority from time to time subject to reasonable compensation from the above mentioned fund.

## **20. INTERNATIONAL OBLIGATIONS**

20.1 The Authority may designate the Licensee to participate in and be signatory to operating agreements relating to international telecommunication organizations to which Lesotho is a party.

20.2 The Licensee may on its own accord participate in international telecommunication organizations as a sector member, private sector member, or associate member subject to the approval by the Authority.