



BERMUDA
REGULATORY
AUTHORITY

Submarine Cable Communications Operating Licence

*(issued pursuant to section 16 of the Electronic
Communications Act 2011)*

Licensee: Cable and Wireless Network
Services Limited

Address: Clarendon House
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Hamilton, HM 12
Bermuda

Licence Number: SubCOL202001 Rev 1.0
Issue Date: 28 October 2020

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The Regulatory Authority of Bermuda (the “Authority”), in the exercise of the authority conferred upon it by the Electronic Communications Act 2011, hereby grants to Cable and Wireless Network Services Limited a licence to provide certain Electronic Communications Services specified herein, within the territorial limits of Bermuda and between Bermuda and other countries, subject to the terms of this Licence, the Electronic Communications Act 2011, the Regulatory Authority Act 2011, and any Regulations, General Determinations, Adjudicative Decisions, Orders, and Directions made or issued in accordance with these Acts.

1 DEFINITIONS

In this Licence, unless the context otherwise requires:

“**Affiliate**” means any entity that directly or indirectly Controls, is Controlled by or is under common Control with another legal person;

“**Associated Facilities**” means those associated services, physical infrastructures and other facilities or elements associated with electronic communications in Bermuda that enable or support the provision of services via an electronic communications network or service or have the potential to do so, and includes buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, cabinets and such other facilities that may be specified by the Authority;

“**Associated Services**” means those services associated with electronic communications in Bermuda which enable or support the provision of services by means of electronic communications or have the potential to do so, as specified by the Authority;

“**Authority**” means the Regulatory Authority of Bermuda;

“**Authorized Submarine Cable Operator**” means any operator of a submarine cable landing in Bermuda which:

- (a) was lawfully established before the coming into force of the Submarine Communications Cable Act 2020 (“SCCA”), and/or whose submarine cable installations and operations in Bermuda have been “grandfathered” pursuant to SCCA section 80 and are therefore not required to hold a licence, permit or other authorization under the SCCA; or
- (b) has obtained a Submarine Cable Licence pursuant to Part 6 the SCCA.

“**Condition**” means a condition, including a Transitional Condition set forth in Annex A, of this Licence;

“**Control**” (including cognates) means:

- (a) the power, whether held directly or indirectly, to exercise decisive influence over the Licensee, including by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; and
- (b) shall, in any event, be deemed to exist in any case involving the ownership of 25 percent or more of the shares, stock or other securities or voting rights, including

through an agreement or arrangement of any type;

“**ECA**” means the Electronic Communications Act 2011;

“**Electronic Communications Services**” means a service normally provided for remuneration which consists wholly or mainly of the conveyance of signals by means of electronic communications networks, including the distribution and provision of subscription audiovisual services;

“**End-user**” means a person that uses goods or services provided by a communications provider on a retail basis;

“**ICOL**” means Integrated Communications Operating Licence as defined in Section 18 of the ECA;

“**International Wholesale Services**” means Electronic Communications Services that are provided to an ICOL holder solely by means of submarine cables landing in Bermuda that are operated by the Licensee or an Affiliate of the Licensee.

“**Licence**” means this Submarine Cable Communications Operating Licence granted to Cable and Wireless Network Services Limited;

“**Licensee**” means Cable and Wireless Network Services Limited and, for the avoidance of doubt, does not include any Affiliates of the Licensee unless otherwise stipulated in this Licence;

“**Other Licensee**” means another licensee that holds an Individual Licence;

“**Person**” means a natural person or any company or association or body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued in its own name or in the name of an officer or other person;

“**RAA**” means the Regulatory Authority Act 2011;

“**SCCA**” means the Submarine Communications Cables Act 2020.

“**SubCOL**” means a Submarine Cable Communications Operating Licence that is issued to an Authorized Submarine Cable Operator or its Affiliate and authorizes the SubCOL holder to provide International Wholesale Services to ICOL holders solely by means of the SubCOL holder’s, or its Affiliate’s, capacity on international submarine cables landing in Bermuda (but, for the avoidance of doubt, does not include the provision of any additional electronic communications networks or services within Bermuda);

“**Transitional Condition**” means the Condition set forth in Annex A of this Licence; and

2 INTERPRETATION

For the purpose of interpreting this Licence:

- (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them in the Licence, the ECA, RAA and Interpretation Act 1951;
- (b) where there is any conflict between the provisions of this Licence and the ECA or RAA, the provisions of the ECA or RAA, as the case may be, shall prevail;
- (c) terms defined herein and in the ECA and RAA have been capitalized;
- (d) references to Conditions and Annex A are to Conditions and Annex A of the Licence, as modified from time to time in accordance with the Licence and the ECA;
- (e) a document referred to in this Licence shall be incorporated into and form part of the Licence and a reference to a document is to the document as modified from time to time;
- (f) headings and titles used in this Licence are for reference only and shall not affect its interpretation or construction;
- (g) references to any law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;
- (h) expressions cognate with those used in this Licence shall be construed accordingly;
- (i) use of the word "include" or "including" is to be construed as being without limitation; and
- (j) words importing the singular shall include the plural and vice versa, and words importing the whole shall be treated as including a reference to any part unless explicitly limited.

3 SCOPE OF THE LICENCE

3.1 This Licence grants the Licensee, which for avoidance of doubt is an Authorized Submarine Cable Operator, the right to provide certain Electronic Communications Services within the territorial limits of Bermuda and between Bermuda and other countries, which services shall be limited to the Licensee's provision of International Wholesale Services to ICOL holders solely by means of the Licensee's, or its Affiliate's, capacity on international submarine cables landing in Bermuda.

3.2 This Licence does not grant the Licensee the right to establish, construct or operate an Electronic Communications Network or provide any additional Electronic Communications

Services in Bermuda that fall outside the scope of the services authorized by Condition 3.1.

- 3.3** This Licence does not grant the Licensee, and shall not be construed as an entitlement on the part of the Licensee to, any licences or permits for the use of radio spectrum, radio stations or radio apparatus.
- 3.4** Nothing in this Licence shall relieve the Licensee of the obligation to comply with any other requirement at law or practice to obtain any additional consents, permissions, authorizations, licences or permits as may be necessary to provide Electronic Communications Services or exercise the Licensee's rights or discharge its obligations under this Licence, including any applicable requirements under the SCCA.

4 GRANT AND DURATION OF THE LICENCE

- 4.1** The Licence is valid and effective from the date hereof and shall remain in effect until the earlier of:
- (a) 28 October 2035;
 - (b) the date on which the Licensee surrenders the Licence in accordance with Condition 15.2; or
 - (c) the date on which the Licence is revoked or terminated pursuant to Sections 18(5) or 18(6) of the ECA or Section 93 of the RAA;
- 4.2** The Licence may be renewed for an additional term or terms pursuant to Section 18(4) of the ECA.

5 FEES, CONTRIBUTIONS AND PENALTIES

- 5.1** The Licensee shall pay to the Authority such Government authorization fees as may be prescribed pursuant to Section 52 of the RAA and the Government Fees Act 1965.
- 5.2** The Licensee shall pay to the Authority such Regulatory Authority fees as may be prescribed pursuant to Section 11 of the ECA and Section 44 of the RAA.
- 5.3** The Licensee shall make such contributions to support the provision of Universal Service as may be specified in Regulations made by the Minister pursuant to Section 34 of the ECA.
- 5.4** The Licensee shall pay to the Authority any penalties and interest that may be imposed on the Licensee by the Authority for failure to make any payment due under this Licence and for any other contraventions of this Licence or the Applicable Regulatory Framework.

6 COMPLIANCE

The Licensee shall comply with:

- (a) the terms of this Licence, including Annex A;
- (b) the terms of any associated licences, authorizations and permits issued by the Authority to the Licensee;
- (c) the Applicable Regulatory Framework, including, but not limited to, any applicable:
 - (i) Regulations made by the Minister;
 - (ii) Administrative Determinations made by the Authority pursuant to section 9(2)(c) of the ECA;
 - (iii) Universal Service obligations imposed in accordance with Part 6 of the ECA;
 - (iv) obligations imposed by the Authority to interconnect with the Electronic Communications Networks of other ICOL holders and any Other Licensees that may be designated by the Authority for this purpose by the Authority, promptly and on reasonable terms and conditions;
 - (v) Ex Ante Remedies imposed by the Authority in accordance with Part 4 of the ECA;
 - (vi) obligations imposed by the Authority to provide performance bonds in respect of compliance with any of the Conditions of the Licence, associated licences, authorizations and permits, or other requirements specified by the Authority;
- (d) the Convention and any other international agreements relating to Electronic Communications to which Bermuda is a party; and
- (e) the ECA, the RAA, the SCCA and any other applicable law, enactment, regulations or order in effect in Bermuda to which the Licensee is subject.

Where there is an irreconcilable conflict among any of the instruments identified above, the following order of precedence shall apply: Acts of Parliament, Regulations and Orders made by the Minister, international agreements that apply to Bermuda, General or other Administrative Determinations made by the Authority, and this Licence.

7 PROVISION OF SERVICES

7.1 The Licensee shall provide the Electronic Communications Services authorised by this Licence in a manner that:

- (a) does not prejudice or obstruct, or is likely to prejudice or obstruct, navigation by ships at sea or aircraft on the ground or in the air; and
- (b) does not interfere with the operation of Electronic Communications Networks and the provision of Electronic Communications Services by Other Licensees.

7.2 The Licensee shall:

- (a) provide the Authority with information, in such manner and format as the Authority may require, that separately identifies the personnel, Associated Facilities and Associated Services relating to the provision of the Electronic Communications Services authorised by this Licence that are located in Bermuda and those that are located outside of Bermuda; and
- (b) comply with any General Determinations or Directions made by the Authority requiring the Licensee to locate in Bermuda some or all of the personnel, Associated Facilities and Associated Services relating to the provision of any or all of the Electronic Communications Services authorised by this Licence.

7.3 The Licensee shall maintain in Bermuda the original files of all Personal Data (as such term is defined under section 2(1) of the ECA) relating to the provision of the Electronic Communications Services authorised by this Licence. The Licensee shall ensure that all such Personal Data are capable of being accessed by the Government of Bermuda in real time. The Authority may, with the approval of the Minister, waive this Condition in whole or in part if, and to the extent that, the Authority determines that:

- (a) appropriate inter-governmental arrangements are in place that provide the Government of Bermuda and the Authority with access to such Personal Data on the same terms and conditions and within the same timeframes as if such Personal Data were located in Bermuda; and
- (b) a waiver would be in the public interest, not unduly discriminatory in respect of other similarly situated licensees, and consistent with requirements of Schedule 2 of the ECA.

7.4 The Licensee shall report planned and unplanned outages of the Electronic Communications Services authorised by this Licence in accordance with any requirements established by the Authority.

7.5 The Licensee shall procure such insurance or post such performance bonds as the Authority may reasonably require to ensure that any works undertaken by the Licensee are completed and that any property abandoned by the Licensee or that has fallen into disrepair is removed from public property.

7.6 Upon the revocation or termination of the Licence, the Licensee shall make reasonable efforts to sell the Licensee's Electronic Communications business and assets, and facilitate the transfer of the Licensee's Bermudian staff employed in Bermuda, to another provider of Electronic Communications in Bermuda.

8 NATIONAL SECURITY, EMERGENCIES AND LAW ENFORCEMENT

8.1 The Licensee shall cooperate with, and at the lawful Direction of the Governor, Minister or Authority, shall provide assistance to the relevant Government ministries responsible for national security and emergency services.

8.2 The Licensee shall, at the Direction of the Governor, Minister or the Authority, give Telecommunications of the relevant Government ministries responsible for national security and emergency services priority over all other Telecommunications.

8.3 The Licensee shall comply with the Authority's Directions regarding the location and concealment of the Licensee's Electronic Communications facilities to protect them from accidental or malicious injury.

8.4 The Licensee shall comply with the requirements of Schedule 2 of the ECA.

9 SIGNIFICANT MARKET POWER

9.1 If the Authority determines that the Licensee possesses Significant Market Power in a relevant market, the Licensee shall promptly comply with each Ex Ante Remedy or obligation imposed on the Licensee by the Authority pursuant to Sections 23 and 24 of the ECA, until the remedy or obligation is removed pursuant to Section 25 of the ECA.

9.2 With regard to any market in which the Licensee has been determined to possess Significant Market Power, the Licensee shall comply with the following requirements unless they are specifically waived by an Administrative Determination of the Authority:

(a) not to unduly discriminate in relation to the provision of Interconnection or Access, in particular, by applying equivalent conditions in equivalent circumstances to Other Licensees providing equivalent services, and providing them with services and information (including technical specifications and network-related information) under the same conditions and of the same quality as it provides for its own services or those of its Affiliates, subsidiaries or partners;

(b) not to adopt any technical specifications that would unreasonably or unnecessarily obstruct or impede the ability of Other Licensees to interconnect with the Licensee's facilities or Access parts of the Licensee's network that are subject to Ex Ante Remedies imposed on the Licensee pursuant to Sections 23 and 24 of the ECA; and

(c) enter into an Interconnection agreement with an Other Licensee within 90 days of receipt of a reasonably detailed written request for Interconnection or within such other time frame as may be required by the Authority or any Ex Ante Remedy imposed on the Licensee by the Authority pursuant to Sections 23 and 24 of the

ECA; provided, however, that the Licensee shall not be required to enter into an Interconnection agreement or provide Interconnection service if the Authority determines that Interconnection would be technically infeasible, could reasonably be expected materially to impair the quality of any of the Licensee's Electronic Communications Services, or would threaten the integrity, security or interoperability of the Licensee's Electronic Communications Network.

For purposes of Condition 9.2, "Access" shall have the meaning ascribed to it by Section 24(8) of the ECA.

10 PRIVACY OF COMMUNICATIONS

- 10.1** The Licensee shall take all reasonable measures to ensure the privacy of all Telecommunications.
- 10.2** Except as otherwise provided in the ECA or any other applicable enactment, the Licensee may not intercept, or willfully divulge the content of, any Electronic Communications.

11 CONFIDENTIALITY OF PERSONAL DATA

- 11.1** The Licensee shall abide by the requirements of Sections 29 and 31 of the ECA, the Personal Information Protection Act 2016, any other applicable enactment and any General Determinations made by the Authority in relation to the confidentiality of customer information or the security of customer data.
- 11.2** The Licensee shall not make use of any End-User or Subscriber information, network and traffic data, or any other information obtained from Other Licensees as a result of entering into Interconnection and other agreements with such Other Licensees, other than for the purpose for which such information and data were provided. The Licensee shall implement reasonable internal measures, including by limiting access to physical records, systems and processes where appropriate, to safeguard and maintain the confidentiality of any such data that is commercially or competitively sensitive.

12 INFORMATION, AUDITS AND INSPECTION

- 12.1** In addition to the information required by Section 53 of the RAA, the Licensee shall promptly provide the Authority with any documents, accounts, reports, returns, estimates or other information required by the Authority to carry out its responsibilities under the RAA and ECA, including but not limited to information regarding (a) the services or equipment provided to Users, Other Licensees and Persons with Class Licences; (b) the rates and charges for such services and equipment; (c) copies of contracts with Other Licensees; (d) statistics regarding usage of the Licensee's Electronic Communications Services; (e) relevant activities, operations, or shareholdings of any Related Persons; and (f) any arrangements or relationships between the Licensee and any Related Persons that the Authority determines to be relevant to competition in the sector. For purposes of Condition 12.1, "Related Person" shall mean any entity that directly or indirectly owns, is directly or indirectly owned by, or is under common ownership with, the Licensee, as evidenced by the ownership of five per cent or more of the shares, stock or other securities or voting rights of the owned entity, including through an arrangement of any type.

- 12.2** The Licensee shall permit the Authority or Persons designated by the Authority to examine, investigate or audit, or procure such assistance as the Authority may require to conduct an examination, investigation or audit of, any aspect of the Licensee's business.
- 12.3** Subject to the provisions of Section 92 of the RAA, the Licensee shall permit the Authority or Persons designated by the Authority to enter the Licensee's premises, and shall facilitate access by them to premises used by the Licensee, to conduct an inspection, examination, investigation or audit of the Licensee.
- 12.4** The Licensee shall place a complete copy of this Licence on the Licensee's website or, if no such website exists, in a conspicuous place in the Licensee's principal place of business such that it is readily available for inspection free of charge by members of the general public during normal office hours.

13 MODIFICATION OF THE LICENCE

The Licence may be modified:

- (a) with the mutual consent of the Licensee and the Authority;
- (b) by the Authority pursuant to the provisions of Section 51 of the RAA and Section 9(2)(c)(i) of the ECA; and
- (c) by the Authority following an enforcement proceeding, pursuant to the provisions of Section 93 of the RAA.

14 ENFORCEMENT AND REVOCATION

- 14.1** The Authority may initiate enforcement proceedings pursuant to Section 93 of the RAA and Section 18(5) of the ECA if there is reason to believe that the Licensee has contravened the terms of this Licence or the Applicable Regulatory Framework. The Licensee shall participate in good faith in such enforcement proceedings. Upon finding that the Licensee has contravened this Licence or the Applicable Regulatory Framework, the Authority may, among other things, issue a warning, direct the Licensee to remedy the contravention or make restitution, impose financial penalties up to ten per cent of the Licensee's total annual turnover, or modify or suspend this Licence.
- 14.2** The Authority may revoke or terminate this Licence in accordance with the provisions of Sections 18(5) and 18(6) of the ECA. If this Licence is revoked or terminated, the Licensee shall make reasonable efforts to transition affected Subscribers and Other Licensees to alternative providers of Electronic Communications Service.

15 DISCONTINUATION OF SERVICE; SURRENDER OF LICENCE

- 15.1** Subject to any Ex Ante Remedies imposed on the Licensee pursuant to Sections 23 and 24 of the ECA, the Licensee shall not discontinue the general provision of any Electronic Communications Service unless the Licensee first provides the Authority and affected Subscribers and Other Licensees with no less than 60 days advance notice, or such other greater or lesser notice as the Authority may determine, of the discontinuation of service.

The Licensee shall make such reasonable efforts as the Authority may require to transition affected Subscribers and Other Licensees from the discontinued Electronic Communications Service to a reasonable alternative service provided by either the Licensee or an Other Licensee.

- 15.2** The Licensee may surrender the Licence, with the agreement of the Authority. The Licensee shall submit a request to surrender the Licence no less than 180 days, or such lesser period as the Authority may allow, in advance of the date on which the Licensee proposes to surrender the Licence. If the Authority agrees to the surrender of the Licence, the Licensee shall make such reasonable efforts as the Authority may require to transition affected Subscribers and Other Licensees to alternative providers of Electronic Communications Services.

16 ASSIGNMENT

The Licensee shall not sub-license, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other Person, including an Affiliate of the Licensee, without the prior written authorization of the Authority.

17 CHANGE OF CONTROL

The Licensee shall not complete any proposed change in Control of the Licensee without first obtaining the prior written authorization of the Authority.

18 INDEMNIFICATION

- 18.1** The Licensee shall indemnify the Authority against all actions, claims and demands which may be brought or made by any Person in respect of any injury or death of any Person or damage to any property arising from any act of the Licensee permitted or authorised by the Licence. The Authority shall provide the Licensee with notice of any such actions, claims and demands, but the Authority's failure to do so shall not relieve the Licensee of any obligations imposed on the Licensee by this Condition.

- 18.2** The Licensee shall indemnify the Government of Bermuda for the reasonable costs of repairing, restoring or replacing any Electronic Communications Networks or Electronic Communications Services used by the Government that are damaged, interrupted or otherwise interfered with, either directly or indirectly, by the Licensee.

19 FORCE MAJEURE; OTHER EVENTS

- 19.1** If the Licensee is prevented from complying with the Licence by acts of God, war, warlike operations, terrorist act, epidemic, pandemic, quarantine, civil commotion, major strikes or any other significant or protracted industrial action, fire, tempest or any other causes beyond the Licensee's control:
- (a) the Licensee shall notify the Authority, as promptly as reasonably practicable, of the obligations of the Licence with which the Licensee cannot comply, the expected duration of the event of force majeure, and the measures the Licensee is taking to overcome the consequences of the event of force majeure; and

(b) the Authority may suspend such obligations of the License as the Authority concludes the Licensee cannot comply with for as long as the event of force majeure continues.

19.2 In addition to events of force majeure, the Licensee shall notify the Authority of any fact or event likely to affect materially the Licensee's ability to comply with any Condition of this Licence, or an insolvency-related fact or event in respect of the Licensee or any Affiliate, or any preparatory steps being taken that might lead to an insolvency-related event, immediately upon becoming aware of such fact or event.

20 NOTICES

20.1 Unless the Authority determines otherwise, notices to the Licensee under the Licence shall be in writing and sent by registered letter to the address shown on the cover page of the Licence to the attention of the Senior Director Legal & Regulatory.

20.2 Unless the Authority determines otherwise, notices to the Authority under the Licence shall be in writing and sent by registered letter to the Chief Executive of the Authority at the business address of the Authority.

ANNEX A

TRANSITIONAL CONDITION

A1 PERSONNEL, FACILITIES AND SERVICES

A1.1 Until such time as the Authority makes a General Determination to the contrary, the Licensee shall maintain in Bermuda all of the personnel, Associated Facilities and Associated Services relating to the provision of the Electronic Communications Services authorized by this Licence that were located in Bermuda as at the date of this Licence. The Authority may, with the approval of the Minister, waive this Transitional Condition in whole or in part if, and to the extent that, the Authority determines that:

- (a) there are insufficient human or other resources available in Bermuda to enable the Licensee to continue to comply with this Transitional Condition; or
- (b) continued compliance with this Transitional Condition would be economically impractical, deprive Bermuda of new and innovative services or result in higher prices for Bermudian consumers; and
- (c) a waiver would be in the public interest and not unduly discriminatory in respect of other similarly situated licensees.

A1.2 Until such time as the Authority makes a General Determination to the contrary, the Licensee shall provide the Authority with no less than 120 days advance notice, or such other notice as the Authority may determine, before employing outside of Bermuda any personnel, Associated Facilities and Associated Services relating to the provision of the Electronic Communications Services authorized by this Licence.