

SECOND FINAL DETERMINATION

The implementation of Fixed Number Portability in The Bahamas pursuant to Section 80 of the Communications Act, 2009 [ECS 15/2013]

ANNEX A

NP Service Provider Individual Operating Licence

ISSUE DATE: 29 OCTOBER 2013

[Licensee]

[Street Address]

[P. O. Box Number]

Nassau, Bahamas

**INDIVIDUAL OPERATING LICENCE (NUMBER
PORTABILITY)**

**Issued by the UTILITIES REGULATION AND COMPETITION AUTHORITY
pursuant to Section 19(2) OF THE COMMUNICATIONS ACT, 2009**

[Commencement Date]

[ECS XX/2013]

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PART A – GENERAL CONDITIONS

1 DEFINITIONS AND INTERPRETATIONS

1.1 In this Licence, except in so far as the context otherwise requires:

“The Act” or “Communications Act” means the Communications Act, 2009, as amended from time to time;

“Auditor” means the Licensee’s auditor for the time being appointed for the purpose and in accordance with the provisions of the Companies Act, Chapter 308;

“Business Rules” means the rules set out to manage the processes for porting numbers between service providers licensed by the Utilities Regulation and Competition Authority to provide voice service in The Bahamas;

“Companies Act” means the Companies Act, Chapter 308;

“Commencement Date” means the date on which this Licence enters into force;

“Customer” means the persons or entities to whom the Number Portability Administrator renders its services to including but not limited to electronic communications service providers and other undertakings licensed by the Utilities Regulation and Competition Authority;

“Disaster Recovery” means the approach the Number Portability Administrator will take in the case that its normal Number Portability Administration Service infrastructure is damaged to such an extent that it would not be possible to re-start operations to provide a service within a time period that was acceptable to Utilities Regulation and Competition Authority;

“Donor Operator” means the Service Provider providing electronic communications services to the Subscriber before porting;

“Emergency” means an emergency of any kind, including any circumstances whatever resulting from major accidents, natural disasters and incidents involving toxic or radio-active materials;

“Emergency Services” in respect of any locality means the relevant public, police, fire and ambulance services for that locality;

“Financial Year”	means the Financial Year of URCA as defined in the URCA Act;
“Government”	means the Government of The Bahamas;
“Licensed Services”	means the specified services offered by the Licensee pursuant to the grant of this Licence;
“Licensee”	means the Number Portability Administrator and where the context so admits, its Technical Partner(s) for the purposes of establishing, implementing and administering the Number Portability Systems in The Bahamas;
“Minister”	means the Minister charged with the responsibility for the electronic communications sector;
“NP”	means Number Portability;
“NP Administration Service”	means the Number Portability Administration Service to be provided by the Licensee, comprising the NP Clearinghouse and the NP Database;
“NP Agreement”	means the agreement entered into between the Licensee and the Service Providers setting out the detailed terms and conditions relating to the provision of the NP Administration Service;
“NP Database”	means the database maintained by the Licensee, holding the details of all ported numbers, along with the complete history of all transactions relating to the porting of such numbers;
“NP Clearinghouse”	means the centralized clearinghouse established to implement and operate Number Portability in The Bahamas;
“NP Framework”	means collectively the Statement of Results following the consultation on Number Portability for The Bahamas as published by URCA on November 16, 2011 – ECS 20/2011, the Final Determination on Number Portability as published by URCA on August 3, 2012 – ECS 21/2012 and any other regulatory measures pertaining to NP which may be issued by URCA from time to time;
“NP System”	means all the necessary equipment/ sub-systems engineered to provide the Licensed Services in accordance with operational/technical and quality requirements and other terms and conditions of this Licence;

“Quality of Service”	means the quality of service as evaluated on the basis of observable measure on the grade of service rendered;
“RFP”	means the Request for Proposals issued by the Utilities Regulation and Competition Authority on May 30, 2012, inviting proposals to provide a Number Portability Administration Service for The Bahamas.
“Recipient Operator”	means the Service Provider that will provide electronic communications services to the Subscriber after porting;
“Reference Database”	means the database of information containing a record of (at least) all ported numbers in The Bahamas and the Service Providers’ networks on which they reside at a particular moment in time, which information shall be used by individual Service Providers to route calls to Recipient Operators;
“Regulations”	means any regulation relating to the provision of electronic communications services issued by the Utilities Regulation and Competition Authority URCA under the Communications Act, 2009 or any other competent authority and having legislative effect;
“Service Provider”	means any person granted a licence by the Utilities Regulation and Competition Authority to provide electronic communications services, specifically voice services, in The Bahamas;
“Subscriber”	means a real or legal person having acquired electronic communications services through a subscription medium;
“Technical Partners”	means the technical partners of the Licensee for the establishment, implementation and administration of the Number Portability System in The Bahamas as notified from time to time to URCA in accordance with this Licence;
“UAT Act”	means the Utilities Appeals Tribunal Act, 2009;
“URCA”	means the Utilities Regulation and Competition Authority established under Section 3 of the Utilities Regulation and Competition Authority Act, 2009;
“URCA Act ”	means the Utilities Regulation and Competition Authority Act, 2009.

- 1.2 For the purpose of interpreting a Condition in this Licence:
- 1.2.1 except in so far as the context otherwise requires, words or expressions set out hereinafter shall have the meaning assigned to them in:
- (a) the Licence; and otherwise
 - (b) the Communications Act; and otherwise
 - (c) the URCA Act; and otherwise
 - (d) the UAT Act.
- 1.2.2 Subject to Condition 1.2.1, where there is a conflict between the provisions of this Licence and the Communications Act, the provisions of the Communications Act shall prevail;
- 1.2.3 References to Conditions, paragraphs, subparagraphs and appendices are to Conditions, paragraphs, subparagraphs of and to the appendices to this Licence, as modified from time to time in accordance with this Licence and the Communications Act;
- 1.2.4 A Document shall be incorporated into and form part of this Licence if it is referred to in this Licence and a reference to a document is to a document as modified from time to time;
- 1.2.5 Headings and titles used in this Licence are for reference only and shall not affect the interpretation or construction of this Licence;
- 1.2.6 References to any law or statutory instrument shall include any modification, re-enactment or legislative provisions substituted for the same;
- 1.2.7 Use of the word “include” or “including” shall be construed as being without limitation;
- 1.2.8 Expressions cognate with those referred to in this Licence shall be construed accordingly;
- 1.2.9 Words importing: (i) the singular shall include the plural and vice versa; (ii) the whole shall be treated as including a reference to any part; and (iii) any gender shall include other genders; and
- 1.2.10 Reference to persons shall include firms or companies.

2 GOVERNING LAW

- 2.1 This Licence and the legal relations between the Licensee and URCA and any claim instituted by the Licensee or URCA with respect to matters arising under or in connection with or in respect of this Licence shall be governed by and construed in accordance with the laws of The Bahamas.

3 OWNERSHIP OF THE LICENSEE COMPANY

- 3.1 The Licensee shall be duly incorporated in The Bahamas and shall be subject to the Communications Act and all other laws of The Bahamas.
- 3.2 The Licensee shall ensure that no Service Provider shall hold any equity, directly or indirectly, in the Licensee company. The Licensee shall also not likewise hold any equity or shares, in any Service Provider in The Bahamas.
- 3.3 Any change in the name of the Licensee company shall be in accordance with the provisions of Companies Act or any other relevant law for the time being in force. The Licensee shall notify URCA of such change within thirty (30) calendar days of the registration of the change of name with the Registrar of Companies.

4 COMPLIANCE

- 4.1 The Licensee shall comply with the provisions of the Communications Act and any other applicable law being in force at the time.
- 4.2 The Licensee shall comply with all the terms and conditions of this Licence as well as the orders, directions, determinations and regulatory or other measures as may be issued by URCA from time to time.
- 4.3 Neither the Licensee nor its officers, directors, employees, agents, or Legal Counsel shall in any response to URCA or any inquiry or in any application, report or any other written statement submitted to URCA, make any misrepresentation or wilful material omission on any matter within URCA's jurisdiction.

5 DURATION

- 5.1 This Licence shall come into force on the Commencement Date and shall continue in force until the fifth (5th) anniversary of the Commencement Date.

6 EXPIRATION AND RENEWAL

- 6.1 This Licence shall expire and all operating authorizations under it terminate:
- (i) upon the expiration of the Licence term, unless renewed in accordance with the provisions of this Licence, or;
 - (ii) by mutual agreement between URCA and the Licensee.
- 6.2 URCA may renew this Licence upon the expiry of the Licence term for such further period as URCA considers appropriate and as agreed by the Licensee.
- 6.3 This Licence may also be renewed on application of the Licensee made no later than six (6) months prior to the end of the term of this Licence unless the Licensee has repeatedly contravened (or failed to cure a material contravention of) any Condition of this Licence or the Communications Act or any regulatory or other measure issued by URCA.

7 NATURE AND SCOPE OF THE LICENCE

- 7.1 URCA issues this Licence to the Licensee pursuant to Section 19(2) of the Communications Act to establish, maintain, operate, manage and administer the NP Administration Service within and through the Commonwealth of The Bahamas.
- 7.2 The Licensee shall administer and manage the NP Clearinghouse, the NP Systems and the NP Database for implementation of NP Administration Service in The Bahamas in an efficient and effective manner consistent with internationally accepted best practices and any rules, decisions or determinations made by URCA from time to time.
- 7.3 The NP Administration Service established by the Licensee shall be used by all Service Providers (both existing and new) for the purpose of supporting the porting of telephone numbers between Service Providers. As part of this activity, the Licensee's system shall contain the updated porting information which will be used by the Service Providers for the purpose of routing calls to the ported end-users.
- 7.4 The Licensee and its Technical Partners must comply with all applicable data protection laws and other legal requirements in The Bahamas.
- 7.5 The Licensee shall be solely responsible for the implementation, availability and readiness of the central porting platform for the operation of the NP Administration Service and shall resolve the issues of interconnections/ interfaces in respect of present and future networks and the Number Portability System in accordance with the contractual arrangements entered into between the Licensee and the Service Providers and approved by URCA.

- 7.6 The NP Administration Service provided pursuant to this Licence shall, upon commencement, provide Fixed Number Portability only, and shall be expanded to include the provision of Mobile Number Portability Services at such time as determined by URCA subject to the terms and conditions agreed between URCA and the Licensee.
- 7.7 The Licensee shall not provide any regulated service in The Bahamas save for the NP Administration Service as mentioned above without the express written approval of URCA and which in any event shall require a separate Licence.
- 7.8 Nothing in this Licence shall relieve the Licensee of any legal requirement to obtain any additional consents, permissions, authorisations or licences that are necessary for the establishment, maintenance, operation, management and administration of Number Portability in The Bahamas.
- 7.9 The Licensee shall ensure that the administration and management of the business associated with providing the Licensed Services shall, as far as possible, be conducted from premises in The Bahamas and shall for the duration of this Licence maintain a legal presence in The Bahamas.

8 PAYMENT OF FEES AND CONTRIBUTIONS

- 8.1 URCA shall not charge a fee for the issuance of this Licence to the Licensee.
- 8.2 The Licensee shall pay to URCA the following fees and contributions notified by URCA from time to time in accordance with the Communications Act:
- 8.2.1 any URCA Fees;
 - 8.2.2 the Communications Licence Fees notified by URCA on behalf of the Minister; and
 - 8.2.3 the Tribunal Fee payable pursuant to Schedule 3 of the UAT Act.
- 8.3 For each Financial Year of this Licence, any annual fees payable by the Licensee under section 92(1) of the Communications Act shall be based on the following accounts:
- 8.3.1 the last available audited accounts; or
 - 8.3.2 where the last audited accounts are not available or those accounts do not include any Relevant Turnover, accounts certified by an accountant in possession of a practising certificate issued by the Bahamas Institute of Chartered Accountants.
- 8.4 The annual fees calculated in accordance with Condition 8.3 shall be paid in advance on the first day of the Financial Year, with any adjustment due as a result of the audited accounts for that Financial Year becoming available being paid to URCA (or deducted from any other payment due to URCA) on the first day of the next Financial Year.

8.5 Without prejudice to Condition 9.1, in the event of a default by the Licensee in the payment of any fees when due under this Licence:

8.5.1.1 the Licensee shall pay to URCA interest under section 94 of the Communications Act;
and

8.5.2 URCA may revoke this Licence under the provisions of the Communications Act.

9 INFORMATION, AUDIT, INSPECTION AND ACCESS

9.1 Without prejudice to any other provision of this Licence, the Licensee shall furnish or procure to be furnished to URCA, in such manner and at such times as URCA may request, information, documents, accounts, estimates, returns and without prejudice to the generality of the foregoing, such other information as URCA may reasonably require for the purposes of (i) exercising the functions assigned to it by or under the Communications Act; (ii) verifying that the Licensee is complying with the Licence Conditions; and (iii) keeping statistical records.

9.2 The Licensee shall permit URCA to inspect and if required to make copies of records, documents and accounts relating to the Licensee's business for the purpose of enabling URCA to perform its functions under the Communications Act and the Conditions of this Licence.

9.3 The Licensee shall also submit information to URCA pursuant to the Communications Act and any order or direction issued by URCA from time to time.

9.4 Without prejudice to the generality of Condition 9.1, the Licensee shall, furnish to URCA within three (3) months of its financial year end a "Financial Statement". There will be appended to the Statement, a report from the Licensee's Auditor stating whether in his opinion the methods of allocation of costs, assets and liabilities are reasonable and whether the Statement has been properly prepared applying those methods and is adequate for the purposes specified in Condition 9.5;

9.5 In this Condition, "Financial Statement" means an accounting statement, the purposes of which are to set out and fairly present the costs (including capital costs), revenue and financial position of the Licensee's services including a reasonable assessment of the assets employed in and liabilities attributable to those services. The level of desegregation as between services specified in, and in relation to the financial information contained in the Statement shall be of such level as URCA may require from time to time.

9.6 The Licensee shall permit URCA or its authorised representative to access, inspect and conduct performance tests on the components of the NP Administration Service and shall provide the necessary facilities for testing, continuous monitoring of the system, as required by URCA or its authorised representative(s). URCA shall give reasonable prior notice to the Licensee except in

circumstances where giving such a notice will defeat the purpose of the inspection.

- 9.7 URCA may conduct an inquiry either *suo-moto* or on receipt of a complaint to determine whether there has been any breach of the Conditions of the Licence and for such inquiry the Licensee shall extend all reasonable facilities required for the determination of the breach (if any) without any hindrance.

10 BREACH OF LICENCE

- 10.1 Where URCA has reason to believe that the Licensee has failed to comply with any Condition under this Licence, URCA may exercise all powers and duties as are afforded to or required of URCA under the Communications Act or any other relevant law and may take any action as is permitted to it under such laws against the Licensee.

11 NOTICES

- 11.1 Notices to the Licensee under the Conditions of this Licence shall be in writing and sent by post or hand to the address shown at the front of this Licence or any other relevant address known to URCA or sent by facsimile if URCA and the Licensee agree beforehand that they will use facsimile for transmission of specific notices.
- 11.2 Unless otherwise provided in this Licence, any service of process, petitions, claims and other communications requested or permitted pursuant to this Licence shall also be made in writing and shall be considered validly made when delivered by hand or by courier or electronic means to the Licensee at the Licensee's address provided to URCA for contact.
- 11.3 Notices to URCA under the Conditions of this Licence shall be in writing and sent to the Chief Executive Officer of URCA by post or hand to the business address of URCA or by facsimile.

12 CHANGE IN CONTROL

- 12.1 The Licensee shall obtain URCA's approval to any change in control of the Licensee prior to the change in control occurring.
- 12.2 Without limiting URCA's ability and duty to apply the merger control provisions in sections 70 to 78 of the Communications Act, URCA may object to a change in control where in URCA's opinion the acquirer would not meet the criteria referred to in, or set by URCA pursuant to section 26 of the Communications Act.

13 APPROVAL OF JOINT VENTURES

- 13.1 The Licensee shall give particulars of any of the agreements or arrangements to which this Condition applies for approval of URCA before the coming into effect of such agreements or arrangements.
- 13.2 These agreements are Agreements or arrangements between the Licensee and any person:
- a) for the establishment or control of any corporate body for the purpose of:
 - i. providing electronic communications services in The Bahamas which requires a Licence; or
 - ii. the production of electronic communications equipment for supply in The Bahamas where that production would not otherwise exist in relation to the supply of electronic communications equipment of any description in The Bahamas;
 - b) for the establishment of a partnership for any of the purposes and in any of the circumstances specified in paragraph (a) above;
 - c) in the nature of a joint venture for the purpose of providing electronic communications services that require a Licence.

14 ASSIGNMENT OF LICENCE

- 14.1 The Licensee shall not sub-licence, transfer, assign or grant any right interest or entitlement in this Licence to another party without the prior written approval of URCA.
- 14.2 A person to whom a Licence is to be transferred or assigned shall apply to URCA for a Licence to carry on the relevant electronic communications undertakings on the prescribed application form and shall satisfy the conditions set down by URCA before any such transfer or assignment of a Licence may be considered. Such conditions shall include, but are not limited to, conditions necessary and appropriate to ensure the continued provision of NP Administration Service, without interruption, to all relevant Service Providers. Without limitation of the foregoing, any person to whom this Licence is to be transferred shall be required to enter into appropriate contractual arrangements approved by URCA with all Service Providers required to offer Number Portability.
- 14.3 Where the Licensee seeks to transfer or assign its Licence to another person, it shall comply with all terms and conditions of its Licence as at the date of transfer or assignment and shall have paid all outstanding fees to URCA.
- 14.4 Any entity that becomes a duly authorised successor or assign to the Licensee through affiliation, assignment, transfer of control, merger, liquidation, reorganisation or otherwise, shall, as a condition to such succession or assignment, be required to execute such documents as URCA deems appropriate confirming that such successor or assignee fully assumes the rights and obligations set forth in the Licence.

- 14.5 URCA may approve or refuse an application for transfer or assignment of Licence and shall in the event of a refusal, provide reasons for such refusal.
- 14.6 Condition 14.1 shall not apply to a mortgage, charge or other transaction entered into for the purpose of securing borrowing by the Licensee, such borrowing being for the purposes of establishing, operating or maintaining the Licensee's licensed system or providing the Licensed Services.

15 SUSPENSION AND REVOCATION OF LICENCE

- 15.1 Notwithstanding any contrary provision contained in this Licence and subject to section 27 of the Communications Act, URCA may at any time revoke this Licence pursuant to the Communications Act where the Licensee is in breach of any of the Conditions of this Licence and the breach has not been rectified in accordance with provisions of the Communications Act and Conditions of this Licence.
- 15.2 URCA reserves the right to take over the entire services, equipment and networks of the Licensee, revoke, terminate or suspend this Licence in the interest of public or national security or in the event of national emergency/war or low intensity conflict or similar occurrences.
- 15.3 URCA shall automatically terminate and revoke this Licence upon the occurrence of any change in the agreement between the Licensee and the Service Providers which results in the termination of the arrangement between the parties for the implementation and administration of the NP Administration Service in The Bahamas. The Licensee shall immediately notify URCA within twenty-four (24) hours of any dispute or other occurrence which may result in such termination.
- 15.4 Notwithstanding any contrary provision contained in this Licence, URCA may at any time revoke this Licence by giving the Licensee three (3) months' notice in writing in any of the following circumstances where:
- a) the Licensee agrees in writing with URCA that this Licence be revoked;
 - b) the Licensee ceases to carry on its business for which this Licence is granted for a continuous period of thirty (30) calendar days after commencement of business;
 - c) any amount payable under Condition 8.2 (Payment of Fees) is unpaid after it becomes due and remains unpaid for a period of thirty (30) calendar days after URCA has notified the Licensee in writing that the payment is due;
 - d) the Licensee has made false statements, representations or warranties in applying for the Licence;
 - e) the Licensee has contravened the provisions of any written law relevant to the electronic communications sector;

- f) the Licensee fails to commence or carry on its business for which this Licence is granted within thirty (30) calendar days of the Commencement Date of this Licence;
- g) within twelve (12) months from the Commencement Date of this Licence, the Licensee has not commenced full operation to the satisfaction of URCA provided that URCA would have given prior written notice to the Licensee specifying the details of the Licensee's default and requiring that remedial steps be taken within thirty (30) calendar days of the notice, or such further period as URCA may specify;
- h) the Licensee fails to ensure that its equipment is type approved by URCA or a body approved by or accredited to URCA;
- i) it is deemed necessary in order to protect the public interests of The Bahamas and its people or for national security reasons.
- j) the Licensee:
 - i. is unable to pay its debts;
 - ii. enters into receivership or liquidation; and
 - iii. takes any action for voluntary winding-up, or dissolution or such action is taken by any other person against it and no reasonable step has been taken to discharge same; or it enters into any scheme of arrangement (other than in any such case for the purpose of reconstruction or amalgamation) upon terms and within such period as may previously have been approved in writing by URCA or if a receiver or trustee is appointed or if any Order is made for its compulsory winding-up or dissolution.
- k) the Licensee does not fulfil the implementation plan as set out in the NPAS Agreement.

15.5 The suspension or revocation of this Licence shall take effect on the expiration of thirty (30) calendar days from the date on which the notice of URCA's order in respect of the suspension or revocation is served on the Licensee.

15.6 Upon termination or revocation of this Licence by URCA, URCA shall be entitled, in accordance with the NPAS Agreement, to recover all information related to NP in The Bahamas held by the Licensee as well as other information required for the provision of NP in The Bahamas as contemplated by the NPAS Agreement.

16 MODIFICATION AND AMENDMENT OF LICENCE

16.1 Subject to section 27 of the Communications Act and Conditions 16.2 and 16.3 of this Licence, URCA may modify, amend or vary the Conditions contained in this Licence from time to time where objectively justifiable where URCA determines that such modification, amendment or variation is necessary to achieve the objectives of the Communications Act or any relevant law, or is in the public interest, taking into consideration the reasonable interest and contractual rights of the Licensee.

- 16.2 Before modifying, amending or varying the Conditions of this Licence, URCA shall give the Licensee written notice of its intention to do so together with a draft copy of the intended modification, amendment or variation and the Licensee may make representations to URCA by submitting them to URCA within the time period specified by URCA but not less than thirty (30) calendar days from the date of the written notice.
- 16.3 After expiry of the notice specified in Condition 16.2 above, URCA shall decide on the next course of action, taking into consideration any representation made by the Licensee and, *inter alia*, the principles of fair competition and equality of treatment.
- 16.4 Subject to section 27 of the Communications Act, URCA may modify, amend or vary the Conditions of this Licence or incorporate new Conditions where it is considered necessary in the interest of national security and public interest.

17 POWER TO APPOINT NUMBER PORTABILITY ADMINISTRATOR

- 18.1 Subject to section 8(1) of the Communications Act, URCA may select and appoint another administrator to manage the Number Portability Clearing House and the Number Portability Systems for implementation of Number Portability services in The Bahamas, except that in doing so URCA shall have due regard to the provisions set out in the NPAS Agreement.

PART B – OPERATING CONDITIONS

18 INSTALLATION AND ROLL-OUT OBLIGATIONS

- 18.1 The Licensee shall be responsible for the infrastructural set-up, and the implementation cost for the establishment of the NP Clearinghouse, NP Database (including but not limited to principal and Disaster Recovery back up sites), the NP System and any other components required for the functionality of the NP Administration Service in The Bahamas, in accordance with the NPAS Agreement.
- 18.2 The Licensee shall deploy the necessary facilities and resources required to implement all reasonable business processes and to carry out all functional requirements and modifications in accordance with the NPAS Agreement prior to the Commencement Date and launch date of NP Administration Service in The Bahamas.

19 PROVISION OF LICENSED SERVICES

- 19.1 The Licensee shall, during the term of this Licence, provide the NP Administration Services in accordance with the NPAS Agreement and any regulatory measures issued by URCA, and shall do so in an effective and efficient manner, including but not limited to the following:
- a) the relaying of porting-related messages between Donor and Recipient Operators and the maintaining of state information for each individual and bulk porting transaction;
 - b) management of the porting process to meet the target times;
 - c) the reception and checking of a validation interactive voice response message/short message service (SMS) from the Subscriber confirming the request to port;
 - d) the performance of porting transaction validation checks as specified in the Business Rules and functional requirements as stipulated by URCA;
 - e) advising the Subscriber of the status of their porting request by email or SMS;
 - f) the broadcasting to all Service Providers of information and changes in the Service Provider providing services to the ported numbers;
 - g) the collection of logs on all porting activities;
 - h) the collection of statistics on porting;
 - i) the storage of information on the history of each porting;
 - j) the maintenance of the NP Database of all ported numbers and the provision of downloads of this information to any Service Provider, especially new entrant Service Provider.
- 19.2 Subject to prior written approval by URCA, the Licensee may provide interconnect and NP Clearinghouse services to Service Providers to enable them connect to the NP Administration Service. Such services must be provided on non-discriminatory terms and conditions.

- 19.3 The Licensee shall assist URCA and Service Providers to understand the significance of the key Number Portability issues, analyse alternative approaches, and assist them in reaching a consensus that will be in the best interest of all stakeholders and ensure functionality of the NP Administration Service in The Bahamas.
- 19.4 The Licensee shall cooperate with the Service Providers and URCA during the implementation of the NP Administration Service in The Bahamas and shall respond reasonably, promptly and positively to implement any proposed reasonable change in structure, functionality, process/system requirements which may be necessary to ensure the establishment and on-going delivery of the NP Administration Service in The Bahamas as directed by URCA.
- 19.5 The Licensee shall be responsible for the functionality of the NP Administration Service for the entire licence period and shall manage the NP Administration Service in accordance with the Conditions of this Licence, the NPAS Agreement, the Communications Act and any relevant regulatory measures made by URCA from time to time.
- 19.6 The NP Administration Service shall be sufficiently flexible to enable it to support other number portability related queries for existing and future Service Providers with regards to both call set-up and data service delivery purposes. The NP Administration Service should be flexible, scalable and configurable to support future requirements and future enhancements to Number Portability in The Bahamas.

20 DELIVERY OF LICENSED SERVICES

- 20.1 The date of test certificate issued by URCA or any other organization authorised by URCA in this regard will be determined as the date of commissioning of the Licensed Service.
- 20.2 It shall be the responsibility of the Licensee to maintain the quality of service even during the period when notice for surrender or revocation of the Licence is pending and if the quality of service is not maintained for the lesser of a period of seven (7) consecutive days or the duration of the said notice period, it shall be treated as material breach which entitles URCA to immediately revoke the License at risk and consequence of the Licensee pursuant to Condition 15 (SUSPENSION AND REVOCATION).
- 20.3 In the event of receipt of complaints or reports to URCA which suggest a breach or non-fulfilment of the Conditions of this Licence, URCA may conduct an inquiry either *suo-moto* or on receipt of the complaint to determine whether there has been any breach of the Conditions of this Licence.

21 ANCILLARY SERVICES

- 21.1 The Licensee shall work in conjunction with the Service Providers to ensure that the NP

Administration Service inter-operates with the Service Providers in the most cost effective and efficient manner. The Licensee shall work with the Service Providers to manage the security and availability of these interconnections.

- 21.2 The Licensee shall provide access to the NP Database, value added services and interconnect services to Service Providers, the Government and such other persons only subject to the approval or direction of URCA. Ancillary interconnect and Clearinghouse services offered to smaller Service Providers to enable them to connect to the Number Portability System and benefit from hosted routing services shall be made available and provided by the Licensee.
- 21.3 The terms and conditions for any ancillary interconnect and Clearinghouse services and other ancillary services provided by the Licensee must be approved by URCA pursuant to Condition 22 (TARIFFS).

PART C – COMMERCIAL CONDITIONS

22 Tariffs

- 22.1 The Licensee shall provide the NP Administration Service at the charges and upon the terms and conditions set out in the NPAS Agreement approved by URCA and shall not depart therefrom without prior written approval by URCA of the proposed changes.
- 22.2 Without prejudice to the provisions of Condition 21.2 above, the Licensee shall lodge with URCA for approval a schedule of tariffs and any variation thereto for the provision of ancillary and valued added services (other than charges for the NP Administration Service itself, in respect of which Condition 22.1 shall apply) rendered to Service Providers to enable them to interconnect with the NP System. The schedule of tariffs shall in respect of each kind of service that the Licensee proposes to offer provide details of:
- a) the description of the service;
 - b) details of the nature and amounts of charges payable for the service;
 - c) the method adopted for determining the charges; and
 - d) the method adopted for collection of the charges.
- 22.3 The schedule must be precise and detailed enough to be used to determine the nature and amounts of charges payable for the supply of each particular service. The tariffs must be in a form approved by URCA who, subject to Condition **Error! Reference source not found.**, will provide written reasons in the event of non-approval.
- 22.4 URCA shall communicate to the Licensee its decision on the notice of tariffs or any application for changes thereto within thirty (30) days from the date of receipt of the notice by URCA.
- 22.5 The Licensee shall not commence with levying the charges in the proposed schedule of tariffs lodged with URCA until approval for the tariffs is given by URCA. Failure by URCA to communicate its decision to the Licensee within the timeline herein specified shall be deemed to constitute an approval of the tariff or changes thereto and the Licensee shall, in that event, be at liberty upon the expiry of the said timeline to implement the tariff structure or the revisions thereto.

23 THE NPAS AGREEMENT

- 23.1 The Licensee shall no later than thirty (30) calendar days from the Commencement Date of this Licence execute an agreement with all Service Providers requiring access to the NP Administration Service, which agreement shall indicate and stipulate the responsibilities and roles of each of the Parties in respect of the NP Administration Service in The Bahamas (the “NPAS Agreement”).
- 23.2 The NPAS Agreement shall be in a form acceptable to and approved by URCA. URCA may by Determination issued under the Communications Act require amendments to the terms of the NPAS Agreement where necessary in line with the requirements for the Number Portability System in The Bahamas.

PART D – TECHNICAL CONDITIONS

24 TECHNICAL REQUIREMENTS

- 24.1 The technical components for the NP Administration Service shall be set up and configured to meet the Number Portability requirements of The Bahamas, as defined in the RFP, the Business Rules, and the NPAS Agreement, and customized to meet the specified process needs and other connectivity requirements of the Service Providers.
- 24.2 Without prejudice to the provisions of Condition 24.1 above, the Licensee shall adhere to any further technical conditions and regulatory requirements for the NP Administration Service as directed by URCA in accordance with the Communications Act, both during the periods before and after the launch of the Number Portability services in The Bahamas.
- 24.3 The Licensee shall not after the Commencement Date of this Licence provide additional facilities for any value addition or systems upgrade that the technology permits at a later date without the prior approval of URCA.

25 INTERCONNECTION AND INTERWORKING WITH SERVICE PROVIDERS

- 25.1 The Licensee shall be required to interconnect, cooperate and work constructively with all Service Providers to provide the NP Administration Service to Service Providers in The Bahamas as mandated by URCA. The Licensee shall be bound to interconnect and interwork with all stakeholders in order to provide all Service Providers with the NP Administration Service without any discrimination in line with the principles of fairness, competitive neutrality, non-discrimination and equality of access pursuant to terms and conditions negotiated in good faith between them.
- 25.2 The Licensee shall ensure that a new entrant into the market or third parties, as directed by URCA from time to time, are connected to the NP Administration Service in line with the principles of fairness, competitive neutrality, non-discrimination and equality of access pursuant to terms and conditions negotiated between them.
- 25.3 The Licensee shall give any new entrant or third parties, as directed by URCA from time to time, access to any reference database of all ported numbers and shall provide such entrant or third parties with all information in order to ensure that they do not suffer any disadvantage as a result of their future entry into the electronic communications market.

26 QUALITY OF SERVICE

- 26.1 The Licensee shall ensure that it meets the minimum Quality of Service (QoS) thresholds as set out in the NPAS Agreement or any other regulatory measure issued by URCA in accordance with the Communications Act.

26.2 Subject to sections 8(1) and 27 of the Communications Act, URCA may monitor the performance level of the Licensee and review this Condition in the interests of public and national security.

27 LOCATION OF NUMBER PORTABILITY SYSTEM

27.1 The NP Administration Service shall be provided to Service Providers in The Bahamas in accordance with the NPAS Agreement.

27.2 The Licensee shall provide to URCA specific details of location, configuration of the Number Portability System and the associated interworking connectivity specifications and the Licensee shall not change the location of these sites without the prior written approval of URCA.

PART E – GENERAL CONDITIONS

28 ARBITRATION AND DISPUTE RESOLUTION

28.1 The Licensee shall include in the standard terms and conditions on which it provides the NP Administration Service in The Bahamas provisions giving parties who have entered into contracts with it for the provision of the NP Administration Service the opportunity to refer to URCA any and all disputes arising in relation to the services provided under those standard terms and conditions. The dispute resolution procedures and the method of appointment of the neutral evaluators shall be in accordance with any Alternative Dispute Resolution (ADR) Guidelines issued by URCA.

28.2 URCA shall resolve any dispute between the Licensee and Service Providers relating to the provision of the Licensed Services in accordance with any ADR Guidelines issued by URCA.

29 PROHIBITION OF CERTAIN LICENSEE ACTIVITIES

29.1 The Licensee shall not on the strength of this Licence engage in the provision of any other service regulated under the Communications Act other than the Licensed Service as defined in this Licence.

29.2 Nothing contained in this Licence shall preclude the Licensee from engaging in advertising and promotional activities relating to the NP Administration Service.

29.3 Nothing contained in this Licence shall preclude the Licensee from taking necessary measures to prevent illegal, objectionable, obscene, unauthorized content, messages or communications or any other content, messages or communications infringing copyright or intellectual property rights in any form from being carried via its infrastructure, consistent with the established laws of The Bahamas or any regulatory measure issued by URCA. If the Licensee becomes aware of

breaches of this Condition or specific instances of such infringement are reported to the Licensee by relevant enforcement agencies, the Licensee may block or filter such content, messages or communications and cooperate with and notify the appropriate authorities and parties, including but not limited to, URCA, law enforcement agencies and other Service Providers in accordance with the laws of the Commonwealth of The Bahamas. Any damage arising out of default on the part of the Licensee in this regard shall be borne by the Licensee.

- 29.4 The Licensee shall comply with all data protection and lawful interception of communications laws and regulations in force in The Bahamas from time to time. Any damage arising out of default on the part of Licensee in this regard shall be borne by the Licensee.
- 29.5 Nothing contained in this Licence shall preclude the Licensee from cooperating with and, at the lawful direction of the Governor-General, the Minister, the Attorney General, URCA or any lawfully authorised official of a public body, shall provide assistance to the relevant Government ministries and national or local government agencies responsible for national security and emergency services. Any damage arising out of default on the part of Licensee in this regard shall be borne by the Licensee.
- 29.6 Where any confidential information is divulged to the Licensee for proper implementation of the Service Agreement, it shall be binding on the Licensee and its employees and agents to maintain its secrecy and confidentiality.
- 29.7 Save as expressly provided for in this Licence, all data and information relating to Number Portability or the NP Administration Service belongs to The Bahamas and shall not be shared or made available to any party located outside The Bahamas without URCA's prior and express written approval.

30 PROHIBITION OF PREFERENCE AND DISCRIMINATION

- 30.1 The Licensee shall not (whether in respect of the charges or other terms and conditions applied or otherwise) show preference to, or discriminate against, any person of any class or description with respect to the provision of the Licensed Services.
- 30.2 The Licensee shall be deemed by URCA to have shown such preference or to have exercised such discrimination if, *inter alia*, URCA adjudicates that the Licensee favours to a material extent a Service Provider to which it provides its Licensed Services so as to:
- (a) directly or indirectly impose unfair purchase or selling prices or other unfair trading conditions;
 - (b) limit markets or technical development or the provision of services to the prejudice of one Service Provided over another;

- (c) apply dissimilar conditions to equivalent transactions with one Service Provider over another, thereby placing the other Service Provider at a competitive disadvantage;
- (d) make the conclusion of contracts subject to acceptance by one Service Provider over another of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- (e) without objective justification, limiting or impeding access to the NP System in circumstances where access is essential for the provision of an electronic communications service by a Service Provider.

30.3 Any question relating to whether any act done or course of conduct pursued by the Licensee amounts to such preference or discrimination shall be determined by URCA, but nothing done in any manner by the Licensee shall be regarded as preference or discrimination if and to the extent that the Licensee is required to do that thing in that manner by or under any Condition of this Licence.

31 MEMBERS OF LICENSEE'S GROUP, ASSOCIATES AND TECHNICAL PARTNERS

31.1 Without prejudice to the Licensee's obligations under these Conditions in respect in particular to anything done on its behalf:

- a) any Associate of the Licensee, Technical Partner or member of the Licensee's Group does anything which the Licensee is prohibited from doing under the Conditions of this Licence or fails to do anything which the Licensee is in the circumstances required to do; or
- b) any Associate, Technical Partner or Member of the Licensee's Group has done something which would, if it had been done by the Licensee, require the Licensee to take or refrain from taking a particular action under this Licence and neither the Licensee nor the Associate, Technical Partner or Member has met that further requirement; and
- c) URCA is of the reasonable opinion:
 - i. that in consequence, the Licensee is seeking to or is in a material and substantial way avoiding obligations which would apply under these Conditions if the thing had been done or not done by the Licensee; and
 - ii. that having regard to the powers granted to it by Section 8 of the Communications Act, it ought to make a direction under this Condition,

then URCA may direct the Licensee to take such steps as URCA deems appropriate for the purpose of remedying the matter, including but not limited to restraining the Associate, Technical Partner(s) or Member of the Licensee's Group from continuing with the act or

refraining from carrying on by or with that member or Associate such commercial activities connected with the Licensee's businesses as URCA may determine.

- 31.2 For the purposes of this Condition a person is an Associate of the Licensee if he is a subsidiary of or another body corporate controlled by it.

32 CONFIDENTIALITY OF INFORMATION

- 32.1 The Licensee shall only employ encryption equipment connected to the NP System for specific requirements that have been evaluated and pre-approved by URCA. Such encryption equipment and the corresponding operational procedures shall comply with international and industry standards.

- 32.2 Subject to the Conditions of this Licence, the Communications Act or any other law of The Bahamas, the Licensee shall take all necessary steps to safeguard the privacy and confidentiality of any business or other information about a third party to whom it provides the Licensed Services or a Subscriber of a third party from whom it has acquired such information by virtue of the Licensed Services provided and the Licensee shall use its best endeavours to ensure that:

- a) no person acting on behalf of the Licensee divulges or uses any such information except as may be necessary in the course of providing such Licensed Service to the third party; and
- b) no such person receives such information other than is necessary for the purpose of providing Licensed Services to the third party.

- 32.3 The provisions of Condition 32.2 above shall not apply where:

- a) the information relates to a specific party and that party has consented in writing to such information being divulged or used, and such information is divulged or used in accordance with the terms of that consent; or
- b) the divulgence of information is to enable the Licensee to comply with any court Order or directive made by appropriate authorities pursuant to any existing data protection or lawful interception of communications laws and regulations of The Bahamas; or
- c) the information is already open to the public and otherwise known.

- 32.4 The Licensee shall take necessary steps to ensure that the Licensee and any person(s) acting on its behalf observe confidentiality of customer information.

33 EXCEPTIONS AND LIMITATIONS ON OBLIGATIONS

33.1 Unless the context otherwise requires, the Licensee's obligations under this Licence shall have effect subject to the following exceptions and limitations:

- a) The Licensee is not obliged to do anything that URCA shall determine not to be practicable after due representation has been made thereon to URCA by the Licensee.
- b) The Licensee shall not be held to have failed to comply with an obligation imposed upon it by or under this Licence if and to the extent that the Licensee is prevented from complying with that obligation by law, any physical, topographical or other natural obstacle, the actions of the Government or Governmental Agency or as a result of fire, explosion, accident, emergency, riot, war, civil commotion or insurrection or any other cause outside the Licensee's control.
- c) In the event that any of the circumstances specified above causes damage to the Licensee's infrastructure, the Licensee shall be obligated to repair or rebuild the infrastructure pursuant to a timetable and work plan to be established by the Licensee and approved by URCA, and subject to adequate changes in the provisions of this Licence at the instance and discretion of URCA.

34 LIMITATION OF LIABILITY

34.1 Subject to Condition 34.2 and notwithstanding any contrary provision of this Licence, URCA shall not be liable in contract, tort or otherwise to the Licensee or any third party whomsoever for any indirect, contingent or consequential loss or damage or for loss of profit, business, revenue, goodwill, opportunities or anticipated savings, cost of capital, cost of substitute service, facilities or products, or down-time costs, consequent upon the issuance, actualization or any Condition of this Licence or any act taken by URCA in connection with or pursuant to this Licence or any other matter related howsoever thereto.

35 LEGAL AND REGULATORY FRAMEWORK OF THE NUMBER PORTABILITY SYSTEM

35.1 The Licensee and Service Providers shall be required to implement, operate and execute the Number Portability System in The Bahamas in accordance with all the component documentation that prescribe the legal, regulatory, operational guidelines and rules for the Number Portability System in The Bahamas.

PART F – SECURITY CONDITIONS

36 SECURITY PROVISIONS

- 36.1 The Licensee shall provide necessary facilities depending upon the specific situation at the relevant time to the Government to counteract espionage, subversive act, sabotage or any other unlawful activity.
- 36.2 The Licensee shall ensure protection of privacy of communication and ensure that unauthorized interception of messages does not take place.
- 36.3 URCA or its representative(s) and designated security agencies will have access to the Number Portability Database, transactions and messages relating to the porting of Subscribers and access to Licensee's network subject to the procedure set out in the data protection or lawful interception of communications laws and regulations in force in The Bahamas.
- 36.4 The Licensee shall maintain all commercial records with regard to the messages exchanged on the network. Such records shall be archived for at least five (5) years for security reasons, will be made available to URCA within two (2) working days of a written request from URCA and may be destroyed thereafter unless directed otherwise by URCA.
- 36.5 The Licensee shall take adequate and timely measures to ensure that information transacted through its network is secure and protected. The Licensee shall ensure that the system has defined security management processes and controls for a number of different roles ranging from system administrators, Government agencies and for the Service Providers. The Licensee shall ensure that the Number Portability System is protected from unauthorized access. The data and system integrity should be ensured. The data centres should conform to the highest industry norms and necessary ISO certifications.