



**Telecommunications Licence Conditions**

**for**

**Nitel Limited**

# **JERSEY COMPETITION REGULATORY AUTHORITY**

**Class I Licence issued to  
Nitel Limited to provide switched ISVR services**

**under**

**THE TELECOMMUNICATIONS (JERSEY) LAW, 2002**

The JCRA, in exercise of the powers conferred on it by the Telecommunications (Jersey) Law, 2002, grants to the Licensee a Licence to establish, operate and maintain the Licensed Telecommunications System and provide Telecommunications Services (as these terms are defined in the Conditions of this Licence), within, to and from The Bailiwick of Jersey and subject to the Conditions, all lawful directions of the JCRA and all applicable laws, rules, regulations and Ordinances of the States of Jersey.

**DATED            22 November 2002**

## CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1 A word or expression that is used in the Licence and the Conditions and is also used in the Telecommunications (Jersey) Law, 2002, has, except where the context otherwise requires, the same meaning in the Licence and the Conditions that it has in the relevant Law. In addition, the expressions set out below have the meanings given to them below:

“**Access**”: means the ability to obtain a required service, facility or function;

“**BSP**”: means the British Standards Institute;

“**Conditions**”: means Conditions 1 through 13 of this Licence, as may be amended, revoked or added to by the JCRA from time to time;

“**Direction**” means a written statement issued by the JCRA with which a licensee must comply;

“**ETSI**”: means the European Telecommunications Standards Institute;

“**ISP**”: means Internet Service Provider;

“**ISVR**”: means International Simple Voice Reseller

“**ITU**”: means the International Telecommunications Union;

“**Licence**”: means this licence to run a Telecommunications System, subject to the Conditions;

“**Licence Commencement Date**”: means the date on which this Licence is signed by the JCRA;

“**Licence Fee**”: means the fee prescribed by the JCRA under Article 17 of the Telecommunications (Jersey) Law and payable by the Licensee;

“**Licensed Telecommunication System**”: means the system for the conveyance of messages through the agency of energy which the Licensee is authorised to establish, operate and maintain in The Bailiwick of Jersey;

“**Mobile Telecommunications Service**”: means the system for conveyance of messages or data through a wireless network which may also be interconnected with the Public Switched Telephone Network.

“**Licensee**”: means Nitel Limited;

“**Network**”: means a set of interconnected devices across which a telecommunicated message can be passed;

“**Numbers**”: means the formats of codes and subscriber numbers for routing telecommunications services to a network termination point, user, telecommunications equipment or customer premises equipment in The

Bailiwick of Jersey, which formats are allocated by the JCRA or by the UK's Director General of Telecommunications appointed under the Telecommunications Act.

**“Other Licensed Operator”**: means any person who, for the time being, has the benefit of a Licence granted under the Telecommunications (Jersey) Law;

**“PSTN”** means Public Switched Telephone Network

**“SMP”**: means Significant Market Power

**“Subscriber”**: means a legal or natural person who has a contract with the Licensee to receive Licensed Services. For the avoidance of doubt a subscriber does not include users of pre-paid services;

**“System”**: means, in this document, a device for the origin and completion of telecommunicated messages;

**“Telecommunications (Jersey) Law”**: means the Telecommunications (Jersey) Law, 2002

**“Telecommunications Services”**: means the provision of any Telecommunications services to the public;

**“Term”**: means, subject to Condition 11, a period of ten (10) years from the Licence Commencement Date;

**“User”**: means a consumer of Telecommunications Services.

- 1.2 In the Licence and these Conditions, unless the context indicates a contrary intention:
- (a) references to Conditions, paragraphs and subparagraphs are to Conditions, paragraphs and subparagraphs of the Conditions, as varied from time to time in accordance with the Conditions;
  - (b) a document will be incorporated into and form part of the Conditions if it is referred to in the Conditions, and reference to such a document is to that document as varied from time to time;
  - (c) headings used for conditions, paragraphs and subparagraphs are for ease of reference only and will not affect the interpretation of the Conditions;
  - (d) references to any law, rule, regulation, Ordinance or other legal instrument includes any modification, re-enactment or legislative provisions substituted for the same;
  - (e) use of the word "includes" or "including" should be construed as being without limitation; and

- (f) the masculine gender shall include the feminine and neuter, and the singular shall include the plural, and vice versa, and words importing persons shall include firms or companies.

## **PART I: ESTABLISHMENT AND ENFORCEMENT**

### **2. SCOPE OF THE LICENCE**

- 2.1 This Licence authorises the Licensee to run a Public Telecommunications System in The Bailiwick of Jersey for the Term.
- 2.2 For the avoidance of doubt, this licence shall be non-exclusive.
- 2.3 The Licence is personal to the Licensee and the Licensee shall not:
- (a) sub-license, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other person; or
  - (b) sell or pledge any of its assets which are necessary to provide the Licensed Telecommunications system which the Licensee is obliged to provide under this Licence, unless such assets are immediately replaced with equivalent assets, without the prior written consent of the JCRA, such consent not to be unreasonably withheld.

*Condition 2.3 does not apply to:*

- (i) *a mortgage or other transaction entered into for the purpose of securing borrowings of the Licensee or an Associated Company, being borrowings for the purpose of the Licensed Telecommunications System or the provision thereof or anything incidental thereto; or*
  - (ii) *a transfer, assignment or other disposal of an interest in assets under an arrangement whereby the Licensee retains the use and benefit of such assets for the remainder of the useful life of such assets and for the duration of the License, or*
  - (iii) *a transfer, assignment or other disposal of assets made in the ordinary course of business.*
- 2.4 Subject to Condition 8 the Licensee shall notify the JCRA of the occurrence of any of the following:
- (a) any fact or event likely to materially affect the Licensee's ability to comply with any Condition including any change to the Licensed Telecommunications System which may detrimentally affect the permanence, availability or quality of the Licensed system or services;
  - (b) an insolvency-related event in respect of the Licensee or an Associated Company of the Licensee, or any preparatory steps being taken that

might lead to an insolvency-related event, immediately upon the Licensee becoming aware of the event.

2.5 The Licensee shall notify the JCRA:

- (a) of any proposed Change of Control of the Licensee forthwith upon the Licensee, or its Chairman, Chief Executive Officer, Chief Operating Officer or any Director becoming aware of the proposed change; and
- (b) in any event, on the occurrence of any Change of Control of the Licensee, within thirty days of that event.

2.6 On receipt of notification of Change of Control the JCRA may:

- (a) approve, in writing, the change or the proposed change ;
- (b) disapprove, in writing, the change or the proposed change, giving reasons; or
- (c) approve the proposed change or the change subject to the Licensee accepting a modification of the Licence under Article 18 of the Telecommunications (Jersey) Law,

and, or in addition to any of the above measures, the JCRA may issue such directions to the Licensee or invoke any of the sanctions, penalties or remedies in the Law or the Licence as the JCRA considers necessary or appropriate.

In taking action under this section, the JCRA may have regard to whether or not the JCRA would have awarded the Licence to the Licensee had the Change of Control taken effect prior to the award.

2.7 In this Condition 2, “Control” shall mean any direct or indirect possession of any power or right that enables a person or group of persons to direct, or cause the general direction of, the management or policies of the Licensee by any means and in any event. A person or group of persons shall be deemed to Control the Licensee if:

- (a) he or they exercises or controls the exercise of fifty per cent or more of the votes able to be cast at general meetings of the Licensee on all, or substantially all, matters; or
- (b) he is or they are able to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all matters or is able to appoint or remove a majority of the governing body of the Licensee; or
- (c) he or they exercises or controls the exercise of fifty per cent or more of the partnership or other ownership interests of the Licensee,

and, in each case, reference to the Licensee shall include any person or group of persons who Controls the Licensee in any of such ways, and “Change of Control” shall mean any change as a result of which any other person or group of persons acquires Control.

- 2.8 The Licensee shall supply to the JCRA, in relation to itself and any Associated Company which Controls the Licensee:
- (a) a copy of its annual return on the same date on which it is required to be filed in accordance The Bailiwick of Jersey Law,
  - (b) a copy of its annual report and accounts on the same date on which it is circulated to the shareholders of the relevant body corporate; and
  - (c) where the relevant body corporate is not incorporated in The Bailiwick of Jersey, any returns, reports, accounts or other information under the laws of any applicable jurisdiction which are, in the opinion of the JCRA, analogous or equivalent to the above, at such times and in such forms as the JCRA directs from time to time.
- 2.9 The Licensee shall comply with any other requirement in law or practice to obtain any additional consents, permissions, authorisations or licences as may be necessary for the provision of the Licensed Telecommunications System and for the exercise of its rights or discharge of its obligations under this Licence.
- 2.10 The Licensee shall ensure that:
- (a) the administration and management of the business associated with the establishment, maintenance and operation of the Licensed Telecommunications System shall be conducted from The Bailiwick of Jersey; and
  - (b) its business is conducted in a manner which the JCRA is satisfied is on a normal commercial basis and at arm's length from the business of any of its shareholders or Associated Companies.

### **3. LICENCE FEE**

- 3.1 The Licensee shall pay the Licence Fee in the manner directed by the JCRA.
- 3.2 Without prejudice to any other remedies of the JCRA under this Licence or the Laws, if the Licensee fails to pay any amount due to the JCRA under this Condition 3 by the due date, the unpaid amount will accrue interest daily from the due date to the date of payment at four percentage points above the published base rate of the Bank of England.

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

- 4.1 For the purpose of monitoring the Licensee's compliance with the Conditions and the Laws, the Licensee shall provide to the JCRA in the manner and at the times required by the JCRA, any documents, accounts, returns, estimates, reports or other information including but not limited to the documents, accounts, returns, estimates, reports and other information specified in this Licence.

- 4.2 The Licensee shall, within ninety days of the Licence Commencement Date, provide the JCRA with a comprehensive report on its use of the radio frequency spectrum, and the anticipated future use, and provide updates on the report as requested by the JCRA from time to time.
- 4.3 The JCRA may require an examination, investigation or audit of any aspect of the Licensee's business relating to the Licensed Telecommunications System or its compliance with the Conditions and the Laws, and the Licensee shall provide any assistance requested by the JCRA in relation to any such examination, investigation or audit. The JCRA may issue directions with regard to the manner in which such an examination, investigation or audit is carried out.
- 4.4 In particular, the JCRA may authorise a person to carry out an examination, investigation or audit or may require the Licensee to arrange for an examination, investigation or audit of any aspect of the Licensed Telecommunications System to ensure compliance with the Conditions. The Licensee shall allow the JCRA's authorised representative to attend at, enter and inspect any premises under the Licensee's or any of its Associated Companies' control, and to take copies of any documents and to acquire any information in the control of the Licensee or any of its Associated Companies, as may be required in order to carry out the examination investigation or audit.
- 4.5 The Licensee shall bear all reasonable costs associated with any examination, investigation or audit conducted under this Condition 4.

## **5. COMPLIANCE**

- 5.1 In addition to the Conditions, the Licensee shall comply with:
- (a) any obligation imposed on it by the Laws or by any law, regulation, rule or Ordinance; and
  - (b) any direction duly issued by the JCRA under the Laws or by any law, regulation, rule, Ordinance or this Licence.

## **6. MODIFICATION**

- 6.1 The JCRA may from time to time modify, delete or add to any condition in this Licence. Any modification, deletion or addition to the Conditions shall be made in accordance with Article 18 of the Telecommunications (Jersey) Law and any other requirements under any applicable law.

## **7. ENFORCEMENT AND REVOCATION**

- 7.1 The JCRA may at any time revoke this Licence in accordance with the provisions and procedures set out in Articles 19 and 20 of the Telecommunications (Jersey) Law. The JCRA may also take any action to

enforce any condition of this Licence in accordance with Article 19 of the Telecommunications (Jersey) Law or any direction issued relating to this Licence.

## **8. EXCEPTIONS AND LIMITATIONS ON THE LICENSEE'S OBLIGATIONS**

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

## **9. INTEGRITY OF THE NETWORK**

- 9.1 The Licensee shall take all reasonable steps to ensure the integrity of the network and may refuse to provide the Telecommunications Services which it is obliged to provide in accordance with Condition 12 of this Licence to a particular User if providing those Services would or would be likely to cause damage or interference to the Licensed Telecommunications System.
- 9.2 The Licensee shall provide details with regard to any proposed refusal to the JCRA. The JCRA shall issue a determination on the matter.

## **10. MATTERS OF INTEREST TO JERSEY**

- 10.1 The Licensee shall, in connection with its establishment, operation and maintenance of the Licensed Telecommunications Systems take reasonable steps to prevent any Telecommunications Services from being used in, or in relation to, the commission of offences against the laws of The Bailiwick of Jersey.
- 10.2 The Licensee shall establish and maintain the capability to intercept Messages transmitted over the Licensed Telecommunications System and to provide information regarding the use of Telecommunications Services, in order to be able to meet the requirements of The Bailiwick of Jersey Law.

## **11. TERM AND RENEWAL**

- 11.1 The Licence commences on the Licence Commencement Date and continues, subject to the Licensee's compliance with the Conditions and the Laws and subject to any revocation or suspension by the JCRA, for the Term.

## **PART II: PUBLIC SERVICE CONDITIONS**

## **12. CONSUMER PROTECTION**

- 12.1 The Licensee shall, in the manner and at the times specified by the JCRA, publish the standard terms and conditions, including tariffs under which it provides each category of Telecommunications Services to Subscribers and Users. In the absence of any other direction from the JCRA, the Licensee shall ensure that a current statement of all applicable terms and conditions is:
- (a) filed with the JCRA; and
  - (b) promptly made available for inspection at the request of any member of the public or promptly sent to them by post on request.
- 12.2 The JCRA may direct the Licensee to change the Licensee's standard terms and conditions from time to time.
- 12.3 The Licensee shall safeguard the privacy and confidentiality of all Messages transmitted over the Licensed Telecommunications System and the Telecommunications Services provided shall comply with all applicable laws from time to time regarding the protection of personal data and shall comply with any directions issued by the JCRA for the purposes of protecting the interests of its Subscribers or Users.
- 12.4 The Licensee shall provide each of its Subscribers with an acceptable level of itemised billing for international calls, at no additional charge, except where a Subscriber has accepted terms of contract specifying no itemization for all or certain classes of calls. On request by a Subscriber, the Licensee shall also provide itemised billing for local calls at a reasonable charge. The itemised bill produced by the Licensee shall in all cases provide sufficient detail to facilitate verification of charges incurred by the Subscriber in using the Telecommunications Services. Calls which are free of charge to the user, including calls to helplines, need not be identified in the Subscriber's itemised bill.
- 12.5 The Licensee shall participate in good faith in any dispute resolution procedure established by the JCRA for the resolution of disputes.

**PART III: CONDITIONS APPLICABLE TO ALL LICENSEES**

**13. MISUSE OF DATA**

- 13.1 The Licensee shall not make use of network or traffic data, traffic profiles or any other data of any nature which become available to it directly or indirectly as a result of entering into Interconnection arrangements or otherwise as a result of carrying Messages, in any way which, in the reasonable opinion of the JCRA, would unduly prefer the interests of any business carried on by the Licensee or an Associated Company of the Licensee, or place Other Licensed Operators at an unfair disadvantage.