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**2000 No. 1714****TELECOMMUNICATIONS****The Telecommunications (Licence Modification) (Mobile Data Operator Licences) Regulations 2000**

<i>Made - - - - -</i>	<i>28th June 2000</i>
<i>Laid before Parliament</i>	<i>30th June 2000</i>
<i>Coming into force - -</i>	<i>21st July 2000</i>

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in respect of measures relating to telecommunications, in the exercise of the powers conferred on him by that section, hereby makes the following Regulations:—

**Citation and commencement**

1. These Regulations may be cited as the Telecommunications (Licence Modification) (Mobile Data Operator Licences) Regulations 2000 and shall come into force on 21st July 2000.

**Interpretation**

2. In these Regulations—

“the 1984 Act” means the Telecommunications Act 1984(c);

“the Cognito licence” means the licence granted by the Secretary of State under section 7 of the 1984 Act to Cognito Limited on 12 October 1992;

“the D.I.C.E. licence” means the licence granted by the Secretary of State under section 7 of the 1984 Act to D.I.C.E. Ltd on 4 June 1992;

“the former licences” means the relevant licences in the form they were in immediately before the coming into force of these Regulations;

“the Hutchison Mobile licence” means the licence granted by the Secretary of State under section 7 of the 1984 Act to Hutchison Mobile Data (UK) Limited on 18 February 1992;

“the modified licences” means the relevant licences as amended by these Regulations;

“the Ram Mobile licence” means the licence granted by the Secretary of State under section 7 of the 1984 Act to Ram Mobile Data Limited on 18 February 1992;

“the relevant licences” means the Cognito licence, the D.I.C.E. licence, the Hutchison Mobile licence, the Ram Mobile licence and the Securicor licence; and

“the Securicor licence” means the licence granted by the Secretary of State under section 7 of the 1984 Act to Securicor Datatrak Limited on 14 August 1996.

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(a) S.I. 1996/266.

(b) 1972 c. 68.

(c) 1984 c.12, as amended by the Telecommunications (Licensing) Regulations 1997 (S.I. 1997/2930). There are other amendments to 1984 c.12 which are not relevant to these Regulations.

### Modification of the relevant licences

3. The relevant licences are hereby modified as follows—
- (a) for the Table of Contents there shall be substituted the Table of Contents set out in Schedule 1 hereto;
  - (b) in the case of the Cognito licence, the D.I.C.E. licence, the Hutchison Mobile licence and the Ram Mobile licence:
    - (i) in paragraph 1 the words “for the period specified in paragraph 2” shall be deleted;
    - (ii) in paragraph 2 after the word “duration” there shall be added the words “in the first instance but, without prejudice to Schedule 2 to this Licence, shall be subject to revocation thereafter on ten years’ notice in writing of such revocation and such notice shall accordingly not be given before the end of the fifteenth year after the granting of the Licence.”; and
    - (iii) for paragraphs 3 to 5 inclusive there shall be substituted the following paragraphs—
 

*“Interpretation*

3. The Interpretation Act 1978 shall apply for the purposes of interpreting this Licence as if it were an Act of Parliament. In this Licence, except as hereinafter provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act. For the purposes of interpreting this Licence, headings and titles shall be disregarded.

4. In this Licence, ‘Licence’ means a licence granted or having effect as if granted under section 7 of the Act.

5. For the purposes of this Licence the ‘Applicable Systems’ means any or all of the telecommunication systems run by the Licensee under this Licence unless the context otherwise requires.

6. Where this Licence provides for any power of the Secretary of State or the Director to give any direction, notice or consent or make any specification, or of the Director to make any designation or determination, it implies, unless the contrary intention appears, a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or give or make again any such direction, notice, consent, specification, designation or determination; and any reference however expressed to the Director making any determination or giving any direction or consent about any matter shall be construed as making such determination or giving such direction or consent after consultation with the Licensee and where appropriate with any other person who may have a relevant interest in the matter to which the determination, direction or consent relates.

7. Any notification which is required to be given under this Licence by the Secretary of State or the Director shall be satisfied by serving the document by post on the Licensee at the Licensee’s registered office.”;
  - (c) in the case of the Securicor licence, for paragraph 6 there shall be substituted paragraph 6 as set out in sub-paragraph (b)(iii) above;
  - (d) for Schedule 1 there shall be substituted Schedule 1 as set out in Schedule 2 hereto;
  - (e) for Schedule 2 there shall be substituted Schedule 2 as set out in Schedule 3 hereto;
  - (f) for Schedule 3 there shall be substituted Schedule 3 as set out in Schedule 4 hereto; and
  - (g) for Annex A there shall be substituted Annex A as set out in Schedule 5 hereto.

### Transitional provisions

4.—(1) So far as anything done or treated as done under or for the purposes of any provision of the former licences could have been done under or for the purposes of the corresponding provision of the modified licences, it shall have effect as if done under or for the purposes of the corresponding provision; and any direction, notice, consent, specification, designation or determination or other decision made or having effect under any provision of the former licences shall be treated for all purposes as made and having effect under the corresponding provision.

(2) Where any period of time specified in a provision of the former licences is current immediately before the coming into force of these Regulations, the corresponding provision of the modified licences shall have effect as if that period of time—

(a) ran from the date or event from which it was running immediately before the coming into force of these Regulations, and

(b) expired whenever it would have expired if the former licences had not been modified; and any rights, liabilities, obligations or requirements dependent on the beginning, duration or end of such a period as mentioned above shall be under the modified licences as they were or would have been under the former licences.

28th June 2000

*Patricia Hewitt,*  
Minister of State for Small Business and E. Commerce,  
Department of Trade and Industry

**SCHEDULE 1**

Regulation 3(a)

**TABLE OF CONTENTS****THE LICENCE****SCHEDULE 1: CONDITIONS INCLUDED UNDER SECTION 7 OF THE ACT****PART 1: Definitions and interpretation relating to the Conditions in Schedule 1****PART 2: General Conditions**

1. Requirement to Provide Connection Services including Co-Location and Facility Sharing
2. Privacy, Confidentiality and Metering Systems
3. Essential Interfaces
4. Preparation of Accounts
5. Accounting Separation for special or exclusive rights in Non-Telecommunications sectors
6. Requirement to Furnish Information to the Director
7. Notification of Changes in Shareholdings
8. Licensee's Group
9. Payment of fees

**PART A: Operators with Significant Market Power for the purposes of the Interconnection Directive**

10. Determination of Significant Market Power
11. Interconnection Agreements with Schedule 2 Public Operators including Co-location and Facility Sharing
12. Requirement to meet Requests for Access other than from Schedule 2 Public Operators
13. Requirement to Send Individual Agreements to the Director and to Publish Them

**PART B: Undue Discrimination Requirements which apply to Part A**

14. Prohibition on Undue Preference and Undue Discrimination

**PART C: Exceptions and Limitations on Obligations in Schedule 1**

15. Exceptions and Limitations on Obligations in Schedule 1

**SCHEDULE 2: REVOCATION**

**SCHEDULE 3: AUTHORISATION TO CONNECT OTHER  
TELECOMMUNICATION SYSTEMS AND APPARATUS TO THE APPLICABLE  
SYSTEMS AND TO PROVIDE TELECOMMUNICATION SERVICES BY MEANS OF  
THE APPLICABLE SYSTEMS**

**ANNEX A: THE APPLICABLE SYSTEMS**

**SCHEDULE 2**

Regulation 3(d)

**SCHEDULE 1: CONDITIONS INCLUDED UNDER SECTION 7 OF THE ACT**

**PART 1: DEFINITIONS AND INTERPRETATION RELATING TO THE  
CONDITIONS IN SCHEDULE 1**

**1. In this Schedule unless the context otherwise requires:**

“Applicable Terminal Equipment” means apparatus which is applicable terminal equipment within the meaning of regulation 4 of the Terminal Equipment Regulations 1992 or regulation 2(1)(c) of the RTTE Regulations;

“Approved Apparatus” means apparatus approved under section 22 of the Act for connection to that system or which meets the appropriate essential requirements of regulation 4 of the RTTE Regulations;

“Call Office” means telecommunication apparatus not supplied by the Licensee to any particular person but made available for use by the public or a class of the public;

“Compliant Terminal Equipment” means Applicable Terminal Equipment which at the time of being placed on the market within the European Community (“the applicable time”) satisfied the requirements of regulation 8 of the Terminal Equipment Regulations or met the appropriate essential requirements of regulation 4 of the RTTE Regulations and either—

- (i) has not subsequently been modified so as to cease to satisfy or (as the case may be) meet those requirements as they were at the applicable time, or
- (ii) has subsequently been so modified but in such a way that it satisfied or (as the case may be) met those requirements as they were at the time of modification;

“Condition” means a Condition in this Schedule;

“Connection Service” means a telecommunication service consisting in the conveyance of any Message which has been, or is to be, conveyed by means of any of the Applicable Systems;

“End-user” means for the purposes of the definition of “Network Service” any person running a telecommunication system authorised to be connected to the Applicable Systems, not being a person running a telecommunication system under a licence granted to a particular person by the Secretary of State under section 7 of the Act;

“Essential Interface” means in relation to a Point of Connection, an interface at which in the opinion of the Director it is essential that interoperability between the Applicable Systems and the respective Operator’s telecommunication systems is available;

“Fixed Public Telephone Network” means the public switched telecommunications network which supports the transfer between Network Termination Points at fixed locations of speech and 3.1 KHz bandwidth audio information, to support inter alia;

- (i) voice telephony,
- (ii) facsimile Group III communications, in accordance with ITU-T Recommendations in the “T-Series”, and
- (iii) voice band data transmission via modems at a rate of at least 2,400 bit/s, in accordance with ITU-T Recommendations in the “V-Series”,

where access to the end-user’s Network Termination Point is via a number or numbers in the national numbering plan;

“Fixed Public Telephone System” means the telecommunication systems run by a person under a licence which has been granted under section 7 of the Act whether to a particular person, persons of a class or persons generally, and which form part of the Fixed Public Telephone Network by means of which Fixed Publicly Available Telephone Services are provided;

“Fixed Publicly Available Telephone Service” means the provision to end-users at fixed locations of a service for the originating and receiving of national and international calls, including voice telephony services and may include, in addition, access to emergency “112” services, the provision of operator assistance, directory services, provision of public-pay telephones, provision of service under special terms or provision of special facilities for customers with disabilities or with special social needs but does not include value added services provided over the Public Telephone System;

“Group” means a Parent Undertaking and its subsidiary undertaking or undertakings within the meaning of section 258 of the Companies Act 1985 as substituted by section 21 of the Companies Act 1989; and “Licensee’s Group” means a Group in respect of which the Licensee is either a Parent Undertaking or a subsidiary undertaking;

“Interconnection” means the physical and logical linking of telecommunications systems used by the same or a different organisation in order to allow the users of one organisation to communicate with users of the same or another organisation or to access services provided by another organisation irrespective of whether services are provided by the parties involved or other parties who have access to the systems;

“Interconnection Directive” means Directive 97/33/EC on interconnection in telecommunications with regard to ensuring universal service and interoperability through the application of the principles of Open Network Provision (ONP);

“Interconnection Regulations” means the Telecommunications (Interconnection) Regulations 1997 (S.I. 1997/2931);

“Interested Parties” means those persons (if any), other than the Licensee, with whom, in any particular case, the Director is required or considers it appropriate to consult;

“International Simple Resale Bearer Circuit” means a communication facility which is:

- (i) comprised both in a public telecommunication system and in an equivalent telecommunication system in a country or territory other than the United Kingdom;
- (ii) for the conveyance of Messages between:
  - (A) in the case of outbound Messages, the last point of connection within the United Kingdom at which the route of the Messages is selected and the first point of connection in any country or territory other than the United Kingdom;
  - (B) in the case of inbound Messages, the last point of connection in any country or territory other than the United Kingdom and the first point of connection in the United Kingdom at which the route of the Messages is selected;
- (iii) made available to a particular Service Provider;
- (iv) such that all of the Messages transmitted at any of the points mentioned in sub-paragraph (ii) above are received at every other such point;
- (v) such that all the points mentioned in sub-paragraph (ii) above are points of connection between telecommunication systems referred to in sub-paragraph (i) and other telecommunication systems; and
- (vi) such that all the points mentioned in sub-paragraph (ii) above are fixed by the way in which the facility is installed and cannot otherwise be selected by persons or telecommunications apparatus sending Messages by means of that facility; but
- (vii) excluding from the extent of the facility any Private Leased Circuit installed between the particular Service Provider and any other person in the United Kingdom;

“ITU-T” means the International Telecommunication Union;

“Licence” shall have the meaning it has in paragraph 4 of this Licence;

“Major Office” means the Licensee’s registered office and such other offices as the Director, having consulted the Licensee, may direct;

“Message” means anything falling within paragraphs (a) to (d) of section 4(1) of the Act;

“Metering System” means the totality of all apparatus, data, procedures and activities which the Licensee employs to determine the extent of any telecommunication services provided by means of the Applicable Systems;

“Mobile Public Telephone System” means any telecommunication system run under a licence whether granted to a particular person, persons of a class or persons generally, by means of which Publicly Available Mobile Telephone Services are provided at Network Termination Points connected to telecommunication systems which are designed or adapted to be capable of use while in motion;

“Mobile Radio Telecommunication Service” means any telecommunication service consisting in the conveyance of Messages by means of a telecommunication system where every Message that is conveyed thereby has been, or is to be, conveyed through the agency of Wireless Telegraphy to or from a telecommunication system which is designed or adapted to be capable of being used while in motion;

“Network Connecting Apparatus” means telecommunication apparatus comprised in the Applicable Systems which is not Network Termination and Testing Apparatus and is connected to another telecommunication system;

“Network Service” means any of the following:

- (i) a service consisting only of functions which enable End-users to send, receive, or both, Messages to or from one or more End-users, including functions which enable the establishment of a prior connection between such End-users;
- (ii) a service which consists only of functions which could not practically be provided to any End-user in identical form by anyone other than the Licensee, because those functions are dependent upon the functions referred to in sub-paragraph (i) above;
- (iii) any service which has been agreed by the Licensee and the Director;

“Network Termination and Testing Apparatus” means an item of telecommunication apparatus comprised in the Applicable Systems installed in a fixed position on Served Premises which enables:

- (i) Approved Apparatus to be readily connected to, and disconnected from, the Applicable Systems;
- (ii) the conveyance of Messages between such Apparatus and the Applicable Systems; and
- (iii) the due functioning of the Applicable Systems to be tested,

but the only other functions of which, if any, are:

- (A) to supply energy between such Apparatus and the Applicable Systems;
- (B) to protect the safety or security of the operation of the Applicable Systems; or
- (C) to enable other operations exclusively related to the running of the Applicable Systems to be performed or the due functioning of any system to which the Applicable Systems are or are to be connected to be tested (separately or together with the Applicable Systems);

“Network Termination Point” has the meaning given in Annex A;

“Number” means any identifier which would need to be used in conjunction with any public switched telecommunication service for the purposes of establishing a connection with any Network Termination Point, user, telecommunication apparatus connected to any Public Switched Network or service element, but not including any identifier which is not accessible to the generality of users of a public switched service;

“Operator” means any person running a telecommunication system for the purpose of providing telecommunication services;

“Parent Undertaking” has the same meaning as in section 258 of the Companies Act 1985, as substituted by section 21 of the Companies Act 1989;

“Point of Connection” means a point at which the Applicable Systems and an Operator’s system are connected;

“Private Leased Circuit” means a communication facility which is:

- (i) provided by means of one or more public telecommunication systems;
- (ii) for the conveyance of Messages between points, all of which are points of connection between telecommunication systems referred to in sub-paragraph (i) above and other telecommunication systems;
- (iii) made available to a particular person or particular persons;
- (iv) such that all of the Messages transmitted at any of the points mentioned in sub-paragraph (ii) above are received at every other such point; and
- (v) such that the points mentioned in sub-paragraph (ii) above are fixed by the way in which the facility is installed and cannot otherwise be selected by persons or telecommunication apparatus sending Messages by means of that facility;

“Public Operator” means any person who is authorised or permitted to run publicly available telecommunication systems or provide publicly available telecommunication services or both;

“Public Switched Network” means a public telecommunication system by means of which two-way telecommunication services are provided whereby Messages are switched incidentally to their conveyance, and, for the avoidance of doubt, a Public Switched Network does not include Private Leased Circuits or International Simple Resale Bearer Circuits;

“Publicly Available Mobile Telephone Services” means a telecommunication service which consists, wholly or partly, in the provision of Mobile Radio Telecommunication Services to an end-user and makes use wholly or partly of a Mobile Public Telephone System but does not include Value Added Services provided over the Public Telephone System;

“Publicly Available Telephone Service” means either Fixed Publicly Available Telephone Services or Publicly Available Mobile Telephone Services or both;

“Public Telephone System” means a Fixed Public Telephone System or a Mobile Public Telephone System, or both;

“RTTE Regulations” means the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (S.I. 2000/730);

“Relevant Company” means:

- (i) the Licensee; or
- (ii) a Parent Undertaking in relation to the Licensee;

“Relevant Terminal Apparatus” means:

- (i) “Terminal Apparatus”, that is to say any telecommunication apparatus installed on Served Premises except a Call Office; and
- (ii) any other telecommunication apparatus connected to the apparatus referred to in sub-paragraph (i) above constituting a system run under a Licence by the person using that Terminal Apparatus;

“Schedule 2 Public Operator” means a Public Operator who:

- (A) is a Licensee whose name has been notified to the European Commission, by the United Kingdom, as an organisation covered by Annex II of the Interconnection Directive;
- (B) is authorised to provide switched and unswitched bearer capabilities to Users upon which telecommunication services depend; and
- (C) does any of the following:
  - (AA) runs public switched systems, or provides publicly available telecommunication services, or both, and in doing so controls the means of access to one or more Network Termination Points identified by one or more unique numbers in the Specified Numbering Scheme;
  - (BB) provides leased lines to User’s premises;
  - (CC) makes available International Simple Resale Bearer Circuits;
  - (DD) runs public switched systems, or provides publicly available telecommunication services, or both, and in doing so controls the means of access, for the services concerned, to one or more end-users identified by one or more unique identifiers within an internationally recognised numbering and addressing plan;
  - (EE) provides publicly available telecommunication services and in doing so controls the means of access for the services concerned, to one or more end users identified by one or more unique numbers in the Specified Numbering Scheme; or
  - (FF) provides publicly available switched or unswitched bearer services between telecommunication systems run by one or more third parties;

“Served Premises” means a single set of premises in single occupation where apparatus has been installed for the purpose of the provision of telecommunication services by means of the Applicable Systems at those premises;

“Service Provider” means any person who is in the business of providing telecommunication services of any description;

“Shares” has the same meaning as in section 259(2) of the Companies Act 1985, as substituted by section 22 of the Companies Act 1989, and the term “Shareholding” shall be construed accordingly;



“Specified Numbering Scheme” means a scheme for the allocation and re-allocation of Numbers for the purposes of the switched Applicable Systems and the systems of other licensed Operators which is specified by the Director for the purpose of this Licence and described in a list kept for that purpose by him and made available by him for inspection by the general public;

“Subsidiary” has the meaning given to it in section 736 of the Companies Act 1985 as substituted by section 144(1) of the Companies Act 1989;

“Terminal Equipment Regulations” means the Telecommunications Terminal Equipment Regulations 1992 (S.I. 1992/2423);

“United Kingdom” includes any area to which the provisions of the Act apply by virtue of section 107;

“Users” means individuals or organisations using or requesting Publicly Available Telecommunication Services;

“Value Added Service” means any service which is provided by means of the Applicable Systems, not being a service which consists wholly in the provision of any Network Services; and

“Wireless Telegraphy” has the same meaning as in the Wireless Telegraphy Act 1949.

2. Expressions cognate with those referred to in this Schedule shall be construed accordingly.

3. Any reference in any Condition in this Schedule, however expressed, to the Director notifying the Licensee about any matter, affording the Licensee an opportunity to make representations, taking representations made by the Licensee into account, or explaining, or giving reasons for any matter to the Licensee, shall be without prejudice to any obligation of due process or similar obligation which the Director is or may be under by virtue of any rule or principle of law or otherwise.

4. Subject to paragraph 5 below, if the Director is considering whether a determination, direction or consent under any Condition in this Licence is appropriate, he shall notify the Licensee and any Interested Parties of his proposed decision or the options which he is considering, and his reasons, and give them a reasonable opportunity to make representations. On making or refusing a determination or direction or giving or refusing consent, he shall notify the Licensee and Interested Parties of the determination, direction or consent or refusal, as the case may be, and his reasons.

5. Paragraph 4 does not apply in relation to any determination, direction or consent the procedure for which is otherwise set out in this Licence or in or under any enactment.

6. Where the Director makes a determination for the purposes of Part A of Schedule 1, or decides that such a determination shall no longer apply, the procedure shall be as follows:

- (a) the Director shall serve upon the Licensee a notice, with reasons, informing the Licensee that it appears to the Director that the Licensee is an Operator having Significant Market Power for the purposes of the Interconnection Directive as referred to in Condition 10;
- (b) the notice in sub-paragraph (a) above shall be copied to Interested Parties at the same time as being served upon the Licensee;
- (c) the Licensee and Interested Parties shall be given a period of not less than 28 days in which to make representations;
- (d) the representations made by the Licensee or Interested Parties, or both, shall be published in such manner as the Director considers appropriate to bring such representations to the attention of the Licensee and Interested Parties (having regard to the wish of the Licensee or any Interested Party to keep matters contained in any representation confidential);
- (e) the Licensee and Interested Parties shall be given a further period of not less than 28 days in which to make any observations on the representations which have been published;
- (f) when the Director has considered the representations and any observations made, he shall prepare a draft decision and statement of reasons for that decision and send it to the Licensee, and any Interested Party who has submitted representations or observations, or both, giving those persons a period of not less than 14 days within which to comment; and

- (g) after considering any comments received, the Director shall inform the Licensee of his decision, with reasons, and publish such decision in the same manner he published the representations referred to in paragraph 6(d) above.

## **PART 2: GENERAL CONDITIONS**

### **Condition 1**

#### **REQUIREMENT TO PROVIDE CONNECTION SERVICES INCLUDING CO-LOCATION AND FACILITY SHARING**

**1.1** Subject to paragraphs 1.3 and 1.4 and any exercise by the Director of his functions under regulation 6(3) or 6(4) of the Interconnection Regulations, the Licensee shall to the extent requested by an Operator which is a Schedule 2 Public Operator, negotiate with that Operator with a view to concluding an Interconnection agreement (or an amendment to an existing agreement) within a reasonable period, whereby the Licensee agrees:

- (a) to connect, and keep connected, to any of the Applicable Systems, or to permit to be so connected and kept connected, the Operator's telecommunication system and accordingly to establish and maintain such one or more Points of Connection as are reasonably required and are of sufficient capacity and in sufficient number to enable Messages conveyed or to be conveyed by means of any of the Applicable Systems to be conveyed in such a way as conveniently to meet all reasonable demands for the conveyance of Messages between the Operator's system and the Applicable Systems; and
- (b) to provide such other telecommunication services (including the conveyance of Messages which have been, or are to be, transmitted or received at such Points of Connection), information and other services which, to the extent the parties do not agree (or the Licensee is not in any event so required under or by virtue of another Condition), the Director may determine are reasonably required (but no more than reasonably required) to secure that Points of Connection are established and maintained and to enable the Operator effectively to provide the Connection Services which it provides or proposes to provide.

**1.2** The Licensee or the Operator may at any time request the Director to make a direction in order:

- (a) to specify issues which must be covered in an Interconnection agreement;
  - (b) to lay down specific conditions to be observed by one or more parties to the agreement; or
  - (c) if he thinks fit, to set time limits within which negotiations are to be completed,
- and a direction under this paragraph operates as an exercise by the Director of the power of direction conferred by regulation 6(3) or 6(4) of the Interconnection Regulations as the case may be.

**1.3** The Licensee shall:

- (a) comply with the requirements of any direction given to the Licensee under paragraph 1.2 or under regulation 6(3) or 6(4) of the Interconnection Regulations in relation to any negotiations or agreement to which it is or is intended to be a party;
- (b) comply with the requirements of any direction given to the Licensee under regulation 6(6) or 6(7) of the Interconnection Regulations in relation to any Interconnection dispute;
- (c) where the Director specifies conditions based on essential requirements pursuant to regulation 7(1) of the Interconnection Regulations for inclusion in any Interconnection agreement to which the Licensee is a party, forthwith secure the incorporation of those terms and conditions in such an agreement;
- (d) comply with any requirement made by the Director as a last resort under regulation 6(10) of the Interconnection Regulations to interconnect in order to protect essential public interests, and comply with any terms set by the Director for such purpose;
- (e) comply with any decision by the Director under regulation 10(2) of the Interconnection Regulations; and
- (f) comply with any facility or property sharing arrangement, or both, specified by the Director in accordance with regulation 10(3) of the Interconnection Regulations.

**1.4** Paragraph 1.1 above does not apply to the extent that the Director has consented to limiting such obligation on a temporary basis and on the grounds that there are technically and commercially viable alternatives to the Interconnection requested, and that the requested Interconnection is inappropriate in relation to the resources available to meet the request.

**1.5** So long as section 11 of the Restrictive Trade Practices Act 1976 is still in force, an agreement made pursuant to this Condition shall not contain any restrictive provision, unless, before the agreement is made, the Director has consented to the inclusion of such a provision. For the purposes of this paragraph, a provision in an agreement is a restrictive provision if by virtue of the existence of such a provision (taken alone or with other provisions) the agreement is one to which the Restrictive Trade Practices Act 1976 would apply but for paragraph 1(1) of Schedule 3 to that Act.

**1.6** The Licensee shall comply with any request by the Director under regulation 6(5) of the Interconnection Regulations to inspect any Interconnection agreement entered into by the Licensee in its entirety.

**1.7** Where the Director so directs the Crown shall be treated for the purposes of this Condition as a Schedule 2 Public Operator.

## **Condition 2**

### **PRIVACY, CONFIDENTIALITY AND METERING SYSTEMS**

**2.1** Subject to other provisions of this Licence, the Licensee shall take all reasonable steps to safeguard the privacy and confidentiality of:

- (a) any Message conveyed for a consideration by means of the Applicable Systems; and
- (b) any information acquired by the Licensee in relation to such conveyance.

**2.2** The Licensee shall take all reasonable steps to ensure the accuracy and reliability of any Metering System used in connection with the Applicable Systems and shall, in relation to any metering System, keep such records as the Director has specified and notified to the Licensee.

## **Condition 3**

### **ESSENTIAL INTERFACES**

**3.1** The Licensee shall take full account of such standards, if any, as are listed in the Official Journal of the European Communities as being suitable for the purposes of Interconnection.

**3.2** The Director may, having first notified the Licensee of his proposal and given the Licensee not less than 28 days in which to make representations, specify an Essential Interface. In making such a specification the Director will consider whether the Relevant Standard is inappropriate for the particular application for any reason.

**3.3** Where in pursuance of paragraph 3.2 the Director specifies an interface as an Essential Interface, and the Licensee thereafter makes that interface available to a Schedule 2 Public Operator, it shall do so in such a manner as it considers appropriate, but shall ensure such availability is in compliance with the Relevant Standard if the Schedule 2 Public Operator so requires.

#### **3.4**

- (a) For the purposes of paragraph 3.3 “Relevant Standard” means:
  - (i) standards listed in the Official Journal of the European Communities, if any, as being suitable for the purposes of Interconnection, or in the absence of such standards;
  - (ii) standards adopted by European standardisation bodies such as the European Telecommunications Standards Institute (ETSI) or the European Committee for Standardisation/European Committee for Electrotechnical Standardisation (CEN/CENELEC), or in the absence of such standards;
  - (iii) international standards or recommendations adopted by the International Telecommunication Union (ITU), the International Organisation for Standardisation (ISO) or the International Electrotechnical Committee (IEC), or in the absence of such standards;

- (iv) any other standard specified by the Director after notifying the Licensee of his proposal and allowing the Licensee adequate time, being not less than 28 days, in which to make representations, provided that the Director shall not specify a standard if an appropriate European or other international standard is expected to be promulgated within a reasonable time, including, by way of example, if the European Telecommunications Standards Institute have published a work programme for the development of such a standard;

to the extent that such a standard is necessary to ensure interoperability.

- (b) Where in pursuance of paragraph 3.4(a)(iv) the Director specifies a standard as a Relevant Standard, he shall include in that Relevant Standard a technical specification, using all reasonable endeavours to obtain the agreement of the Licensee and other relevant licensees to a technical specification applicable to that Relevant Standard, being a specification defined if possible by reference to:
  - (i) standards listed in the Official Journal of the European Communities, if any, as being suitable for the purposes of the Interconnection, or in the absence of such standards;
  - (ii) standards adopted by European standardisation bodies such as the European Telecommunications Standards Institute (ETSI) or the European Committee for Standardisation/European Committee for Electrotechnical Standardisation (CEN/CENELEC), or in the absence of such standards;
  - (iii) international standards or recommendations adopted by the International Telecommunication Union (ITU), the International Organisation for Standardisation (ISO) or the International Electrotechnical Committee (IEC).

**3.5** Where the Director has been unable in accordance with paragraph 3.4(b) to secure the agreement of the Licensee and other relevant licensees to a technical specification within a period not exceeding 3 months from the date he first sought the agreement of the Licensee and other relevant licensees under that paragraph, the Director shall adopt for inclusion in the Relevant Standard an appropriate technical specification which has been promulgated by a recognised standards body, including, by way of example, the European Telecommunications Standards Institute, or the British Standards Institute, or other such body as the Director considers to be representative of all relevant telecommunications interests and has notified the Licensee and other relevant licensees.

**3.6** The Director shall specify a Relevant Standard in pursuance of paragraph 3.5 only if the owners of relevant intellectual property rights have agreed to grant any necessary licences in respect thereof to the Licensee on reasonable terms.

**3.7** For the avoidance of doubt this Condition shall not:

- (a) without prejudice to paragraph 3.3, prevent the Licensee using such interfaces as it considers appropriate in relation to the Applicable Systems; or
- (b) where it makes available to a Schedule 2 Public Operator an interface which the Director has specified as an Essential Interface, require the Licensee to comply with the Relevant Standard if the Schedule 2 Public Operator does not require it to do so.

**3.8** When implementing an Essential Interface, the Licensee shall not be obliged to conform with the Relevant Standard if to do so would necessitate the Licensee:

- (i) acquiring apparatus, software or other goods or supplies of any kind, or implementing any operation, incompatible with, as the case may be, apparatus, software or such other goods or supplies already in use at the time, or the subject of contracts for their procurement for use, in connection with the Applicable Systems, or, in the case of an operation, incompatible with any other operation being carried out at the time in connection therewith; or
- (ii) incurring any cost, or having to resolve technical difficulties, disproportionate to the benefits to be gained from the implementation of the Relevant Standard,

provided that the Licensee shall take reasonable steps to incorporate the Relevant Standard in its plans for network development, with a view to implementation of that Standard in connection with the Applicable Systems, but without the Licensee incurring any incremental expenditure which, but for the implementation of the Relevant Standard, would not have been incurred.

**3.9** It is a precondition of any obligation on the Licensee under this Condition that an equivalent Condition to this Condition is included in the respective Licences of all Schedule 2 Public Operators running telecommunication systems that are connected to the Applicable Systems.

#### **Condition 4**

### **PREPARATION OF ACCOUNTS**

**4.1** The Licensee shall maintain accounting records in such a form that its business of providing the services authorised in Schedule 3 to this Licence is separately identifiable or separately attributable in the books of the Licensee, being records sufficient to show and explain the transaction of that part of the Licensee's business.

#### **Condition 5**

### **ACCOUNTING SEPARATION FOR SPECIAL OR EXCLUSIVE RIGHTS IN NON-TELECOMMUNICATION SERVICES**

**5.1** Where the Licensee has special or exclusive rights for the provision of services in sectors other than telecommunications, within the meaning of Article 8(1) of the Interconnection Directive, and the Licensee's annual turnover from its telecommunications activities in the Community exceeds 50 million euros, the Licensee shall keep, draw up, submit to independent audit, and publish, separate accounts for telecommunications activities in the Community, to the extent that would be required if the telecommunications activities in question were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to their telecommunications activities including an itemised breakdown of fixed assets, or have structural separation for the telecommunications activities.

#### **Condition 6**

### **REQUIREMENT TO FURNISH INFORMATION TO THE DIRECTOR**

**6.1** Without prejudice to any other provision in this Licence relating to the provision of information, the Licensee shall furnish to the Director, in such manner and at such times as the Director may reasonably request, such information in the form of documents, accounts, estimates, returns and without prejudice to the generality of the foregoing, such other information as he may reasonably require for the purpose of verifying that the Licensee is complying with these Conditions and for statistical purposes.

**6.2** In making any such request the Director shall ensure that no undue burden is imposed on the Licensee in procuring and furnishing such information and, in particular, that the Licensee is not required to procure or furnish information which would not normally be available to it unless the Director considers that the particular information is essential for the purposes referred to in paragraph 6.1.

**6.3** The Licensee shall permit the Director and any person authorised by him in writing to inspect the Applicable Systems at any reasonable time for the purpose of verifying whether:

- (a) the Licensee is running the Applicable Systems in accordance with this Licence; or
- (b) the connection or the proposed connection of any other telecommunication system to the Applicable Systems causes or would cause any contravention of the licence under which that other system is run.

**6.4** The Licensee shall provide financial information to the Director promptly on request and to the level of detail required by the Director under Part IV of Schedule 3 to the Interconnection Regulations.

**6.5** In this Condition "documents" includes, without prejudice to the generality thereof, drawings, designs, plans or specifications.

**Condition 7****NOTIFICATION OF CHANGES IN SHAREHOLDINGS**

**7.1** The Licensee shall notify the Secretary of State if an undertaking becomes a Parent Undertaking in relation to the Licensee.

**7.2** Subject to paragraph 7.3, the Licensee shall notify the Secretary of State of:

- (a) any change in the proportion of the Shares held in a Relevant Company by any person; and
- (b) the acquisition of any Shares in a Relevant Company by a person not already holding any such Shares, and the proportion of any such Shares held by that person immediately after that acquisition.

**7.3** The Licensee shall be obliged to notify the Secretary of State of any acquisition of Shares or change in the Shareholding of a Relevant Company by any person only if, by reason of that acquisition or change, the total number of Shares in that Relevant Company held by that person otherwise than as trustee or nominee for another person together with any Shares held by any nominee or trustee for that person immediately after that change or acquisition:

- (a) exceeds 15 per cent of the total number of Shares in that company (where it did not exceed 15 per cent prior to that change or acquisition);
- (b) exceeds 30 per cent of the total number of Shares in that company (where it did not exceed 30 per cent prior to that change or acquisition); or
- (c) exceeds 50 per cent of the total number of Shares in that company (where it did not exceed 50 per cent prior to that change or acquisition),

provided that where a Relevant Company is a public company as defined in section 1 of the Companies Act 1985, the obligation shall be discharged by forwarding to the Secretary of State as soon as practicable all information in respect of that acquisition or that change as is entered on or received for entry on the register required to be maintained by that Relevant Company under section 211 of the Companies Act 1985.

**7.4** In any case referred to in paragraph 7.1 or 7.2, notification shall be given by a date which is 30 days prior to the taking effect of such change or acquisition, as the case may be, or as soon as practicable after that date.

**Condition 8****LICENSEE'S GROUP**

**8.1** Without prejudice to the Licensee's obligations under these Conditions in respect, in particular, of anything done on its behalf, where:

- (a) the Director determines either:
  - (i) that a member of the Licensee's Group has done something which would, if it had been done by the Licensee, be prohibited or not be authorised under these Conditions; or
  - (ii) that a 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 these Conditions and that neither the Licensee nor the member has met that further requirement; and
- (b) the Director is not satisfied that the Licensee has taken all reasonable steps to prevent any member acting in that way,

then the Director may direct the Licensee to take such steps as the Director deems appropriate for the purpose of remedying the matter, including refraining from carrying on with that member such commercial activities connected with telecommunications as the Director may determine.

**8.2** Where these Conditions apply in respect of the Applicable Systems they do not apply in respect of any other telecommunication system, whether run by the Licensee or another.

**8.3** Where any person becomes a member of the Licensee's Group then the Licensee shall not be subject to paragraph 8.1 before that is reasonably practicable but shall be so not later than one year after that person becomes such a member or such later date as the Director may determine.

**8.4** This Condition shall not apply to any particular member of the Licensee's Group if and to the extent that the Director so determines.

## **Condition 9**

### **PAYMENT OF FEES**

**9.1** Subject to paragraph 9.2 below, the Licensee shall pay the following amounts to the Secretary of State at the times stated:

- (a) on the grant of this Licence the sum of £6,000;
- (b) on 1 April 2000 and annually thereafter a renewal fee of (at the option of the Director) either £3,000 (the subsequent renewal fees being adjusted to take account of any fall or increase in the value of money since that date) or such amount which shall represent a fair proportion, to be determined each year by the Director according to a method that has been disclosed to the Licensee in a written statement, of the estimated costs to be incurred in that fiscal year by the Director in the regulation and enforcement of telecommunication licences and in the exercise of his other relevant functions under the Act. The first renewal fee shall be increased by the proportion which the period from the date of granting of this Licence until the next following 1 April bears to the period of one year; and
- (c) when the Director so determines, on 1 January 2001 and annually thereafter, a special fee which shall represent a fair proportion, to be determined by the Director according to a method that has been disclosed to the Licensee in a written statement of the amount, if any, by which the aggregate of:
  - (i) the costs estimated to have been already incurred in that fiscal year by the Director in the regulation and enforcement of telecommunication licences and in the exercise of his other relevant functions under the Act;
  - (ii) the costs estimated to have been already incurred in that fiscal year by the Competition Commission following licence modification references under section 13 of the Act; and
  - (iii) the estimated costs to be incurred in the remainder of that fiscal year:
    - (A) by the Director in the regulation and enforcement of telecommunication licences and in the exercise of his relevant other functions under the Act; and
    - (B) by the Competition Commission following licence modification references under section 13 of the Act,exceeds the renewal fee for that year.

**9.2** The aggregate of the renewal fee and the special fee for any fiscal year shall not exceed:

- (a) 0.08 per cent of the relevant annual turnover attributable to the licenseable activities of the Licensee in the United Kingdom (as described in a written statement given to the Licensee by the Director) in the financial year before the last complete financial year of the Licensee before the renewal fee is payable (the "relevant turnover"); or
- (b) £3,000 (adjusted in the manner described in paragraph 9.1(b))

whichever is the greater (the "normal aggregate fee"), unless the Director determines that the costs incurred in any fiscal year by him and the Competition Commission in respect of the Licensee's activities exceed the normal aggregate fee, by virtue of the costs of licence modification references under section 13 of the Act, in which case the aggregate of the renewal fee and the special fee for the following year shall be such amount (not exceeding 0.4 per cent of the relevant turnover) as the Director determines is sufficient to take account of that excess as well as the normal aggregate fee.

**PART A: OPERATORS WITH SIGNIFICANT MARKET POWER FOR THE  
PURPOSES OF THE INTERCONNECTION DIRECTIVE**

**Condition 10**

**DETERMINATION OF SIGNIFICANT MARKET POWER**

**10.1** Part A applies to the Licensee where the Director has determined the Licensee to be an Operator having Significant Market Power pursuant to regulation 4(1) of the Interconnection Regulations. Such determination shall be made in accordance with the procedure set out in paragraph 6 of Part 1 of Schedule 1 of this Licence if such determination is made after that paragraph has come into force.

**10.2** Where this Part applies, Condition 1 shall no longer apply to the Licensee.

**10.3** The Conditions in this Part apply to the Licensee only in respect of the relevant market or markets in which the Director has determined the Licensee to be an Operator having Significant Market Power.

**Condition 11**

**INTERCONNECTION AGREEMENTS WITH SCHEDULE 2 PUBLIC OPERATORS  
INCLUDING CO-LOCATION AND FACILITY SHARING**

**11.1** Subject to paragraphs 11.6 and 11.7 and any exercise by the Director of his functions under regulation 6(3) or 6(4) of the Interconnection Regulations, the Licensee shall offer to enter into an agreement with an Operator which is a Schedule 2 Public Operator, or offer to amend such an agreement, as the case may be, within a reasonable period, if such Operator requires it:

- (a) to connect, and keep connected, to any of the Applicable Systems, or to permit to be so connected and kept connected, the Operator's telecommunication system and accordingly to establish and maintain such one or more Points of Connection as are reasonably required and are of sufficient capacity and in sufficient number to enable Messages conveyed or to be conveyed by means of any of the Applicable Systems to be conveyed in such a way as conveniently to meet all reasonable demands for the conveyance of Messages between the Operator's system and the Applicable Systems; and
- (b) to provide such other telecommunication services (including the conveyance of Messages which have been, or are to be, transmitted or received at such Points of Connection), information and other services which, to the extent the parties do not agree (or the Licensee is not in any event so required under or by virtue of another Condition), the Director may determine are reasonably required (but no more than reasonably required) to secure that Points of Connection are established and maintained and to enable the Operator effectively to provide the Connection Services which it provides or proposes to provide.

**11.2** The Licensee or the Schedule 2 Public Operator may at any time request the Director to make a direction in order:

- (a) to specify issues which must be covered in an Interconnection agreement;
- (b) to lay down specific conditions to be observed by one or more parties to the agreement; or
- (c) if he thinks fit, to set time limits within which negotiations are to be completed,

and a direction under this paragraph operates as an exercise by the Director of the power of direction conferred by regulation 6(3) or 6(4) of the Interconnection Regulations, as the case may be.

**11.3** The Licensee shall secure that the agreement or amendment referred to in paragraph 11.1 above is offered on terms and conditions which are reasonable.

**11.4** To the extent that the terms and conditions of any agreement or amendment made under paragraph 11.1 cease to be reasonable, the Licensee shall, within a reasonable period, offer to the Schedule 2 Public Operator, or agree with such Operator, as the case may be, to amend the agreement so that its terms and conditions are reasonable.



**11.5** The Licensee shall:

- (a) comply with the requirements of any directions given to the Licensee under paragraph 11.2 above or under regulation 6(3) or 6(4) of the Interconnection Regulations in relation to any negotiations or agreement to which it is or is intended to be a party;
- (b) comply with the requirements of any direction given to the Licensee under regulation 6(6) or 6(7) of the Interconnection Regulations in relation to any dispute over the terms of an agreement or amendment made under paragraph 11.1 above;
- (c) where the Director specifies conditions based on essential requirements pursuant to regulation 7(1) of the Interconnection Regulations for inclusion in an Interconnection agreement to which the Licensee is a party, forthwith secure the incorporation of those terms and conditions in such an agreement;
- (d) comply with any requirement made by the Director as a last resort under regulation 6(10) of the Interconnection Regulations to interconnect in order to protect essential public interests, and comply with any terms set by the Director for such purpose;
- (e) comply with any decision by the Director under regulation 10(2) of the Interconnection Regulations; and
- (f) comply with any facility or property sharing arrangements, or both, specified by the Director in accordance with regulation 10(3) of the Interconnection Regulations.

**11.6** So long as section 11 of the Restrictive Trade Practices Act 1976 is still in force, an agreement made pursuant to this Condition shall not contain any restrictive provision, unless, before the agreement is made, the Director has consented to the inclusion of such a provision. For the purposes of this paragraph, a provision in an agreement is a restrictive provision if by virtue of the existence of such a provision (taken alone or with other provisions) the agreement is one to which the Restrictive Trade Practices Act 1976 would apply but for paragraph 1(1) of Schedule 3 to that Act.

**11.7** Paragraph 11.1 above does not apply to the extent that the Director has consented to limiting such obligation on a temporary basis and on the grounds that there are technically and commercially viable alternatives to the Interconnection requested, and that the requested Interconnection is inappropriate in relation to the resources available to meet the request.

**11.8** For the avoidance of doubt:

- (a) any question as to whether any term or condition (including a charge) is reasonable shall be decided by the Director having regard to any guidelines on the application of this Condition issued from time to time by the Director; and
- (b) in considering whether a term or condition (including a charge) is reasonable, the Director may take into account, inter alia, the effective date of the term or condition and the period during which such term or condition may already have been in effect; the Director may conclude that a reasonable charge is one which is offered or agreed, as the case may be, on terms that it take effect in agreements or amendments made under paragraph 11.1 above from the date of a complaint or the date on which the term was first offered by the Licensee or accepted by a Schedule 2 Public Operator or from any other date which is considered by the Director to be appropriate in the circumstances.

**11.9** Where the Director so directs, the Crown shall be treated for the purposes of this Condition as a Schedule 2 Public Operator.

**Condition 12****REQUIREMENT TO MEET REQUESTS FOR ACCESS OTHER THAN FROM SCHEDULE 2 PUBLIC OPERATORS**

**12.1** Except in relation to agreements with Schedule 2 Public Operators where Condition 11 applies, the Licensee shall offer to provide Interconnection to the Applicable Systems to any person running a telecommunication system under a Licence reasonably requesting it in accordance with an agreement to which this Condition applies.

**12.2** An agreement to provide Interconnection to the Applicable Systems shall provide for:

- (a) the connection to the Applicable Systems at such points, including points other than Network Termination Points on Served Premises, of telecommunication systems or telecommunication apparatus run by the person making the request; and

(b) the provision by means of the connection so made of such telecommunication services (including the conveyance of Messages which have been or are to be transmitted or received thereby), information and other services, as may reasonably be requested.

**12.3** Where the Licensee or a member of the Licensee's Group which is not a Schedule 2 Public Operator uses services or facilities equivalent to services provided by means of the Applicable Systems and to which paragraph 12.2 above applies, it shall ensure that the quality of and the terms and conditions applying to services provided to others in accordance with that paragraph shall be the same as for those provided to or used by the Licensee or a member of the Licensee's Group.

**12.4** The Licensee or the person requesting Interconnection may at any time request the Director to make a direction in order:

- (a) to specify the issues which must be covered in the Interconnection agreement; or
- (b) to lay down specific conditions to be observed by one or more parties to the agreement,

and a direction under this paragraph operates as an exercise by the Director of the power of direction conferred by regulation 6(3) of the Interconnection Regulations.

**12.5** The Licensee shall:

- (a) comply with the requirements of any direction given to the Licensee under paragraph 12.4 above or under Regulation 6(3) or 6(4) of the Interconnection Regulations in relation to any agreement to which it is or is intended to be a party;
- (b) comply with the requirements of any direction given to the Licensee under regulation 6(6) or 6(7) of the Interconnection Regulations in relation to any dispute over the terms of any agreement made under paragraph 12.2 above;
- (c) where the Director specifies a condition based on essential requirements pursuant to regulation 7(1) of the Interconnection Regulations for inclusion in an Interconnection agreement to which the Licensee is a party, forthwith secure the incorporation of those terms and conditions in such an agreement;
- (d) comply with any requirement made by the Director as a last resort under regulation 6(10) of the Interconnection Regulations to interconnect in order to protect essential public interests, and comply with any terms set by the Director for such purpose;
- (e) comply with any decision by the Director under regulation 10(2) of the Interconnection Regulations; and
- (f) comply with any facility or property sharing arrangements, or both, specified by the Director in accordance with regulation 10(3) of the Interconnection Regulations.

### **Condition 13**

#### **REQUIREMENT TO SEND INDIVIDUAL AGREEMENTS TO THE DIRECTOR AND TO PUBLISH THEM**

**13.1** On entering into an Interconnection agreement (including amendments), pursuant to Condition 11 or 12, the Licensee shall send a copy of such agreement (including amendments), to the Director.

**13.2** Either party to an agreement or amendment referred to in Condition 11.1 or 12.1 above may, within 14 days of entering into such agreement or amendment make a representation to the Director that any part of such agreement or amendment deals with its commercial strategy and require the Director to make a determination to that effect.

**13.3** A determination made in response to a requirement under paragraph 13.2 above shall specify any exclusions to be made from the agreement or amendment before it is published under paragraph 13.4 below. However, details of Interconnection charges, terms and conditions and any contributions to a universal service fund cannot be excluded from publication of the agreement or amendment.

**13.4** The Licensee shall:

- (a) where no request has been made under paragraph 13.2 above, as soon as reasonably practicable and in any event not earlier than 14 days and not later than 28 days after entering into an agreement or amendment pursuant to Condition 11.1 or 12.1; or

- (b) where a request has been made under paragraph 13.2 above, as soon as reasonably practicable and in any event not before receipt of a determination and not later than 14 days thereafter,

publish the agreement or amendment in the following manner. Except to the extent that the Director may consent to an alternative location or method of publication, the Licensee shall make available in a publicly accessible part of every Major Office, in such manner and in such place that it is readily available for inspection free of charge by members of the general public during such hours as the Secretary of State may by order prescribe that the register of Licences and final and provisional orders is to be open for public inspection under section 19(4) of the Act, or in the absence of any such order having been made by the Secretary of State, during the normal office hours, a list of all such agreements and amendments together with a notice of the address and telephone number of the person to whom any request for a copy of any or all of such list, agreements or amendments, or any part of them, may be made.

**13.5** The Licensee shall send a copy of the list referred to in paragraph 13.4 above, or (following publication) any agreement or amendment or part of them to any person who may request it within seven working days of receipt of the request.

**13.6** The Licensee shall, within a reasonable period following a request, send to any person requesting Interconnection all necessary information and specifications, in order to facilitate the conclusion of an agreement, including, to the extent that the Director may otherwise consent, information on changes planned for implementation within the next six months.

**13.7** Any information received by a Licensee from any person for the purposes of any provision in Part A shall be used only for the purpose for which it was supplied. The Licensee shall not pass such information on to other departments within the Licensee's organisation, subsidiaries or partners for which such information could provide a competitive advantage.

**13.8** The Licensee shall comply with any request by the Director under regulation 6(5) of the Interconnection Regulations to inspect in its entirety any Interconnection agreement entered into by the Licensee.

## **PART B: UNDUE DISCRIMINATION REQUIREMENTS WHICH APPLY TO PART A**

### **Condition 14**

#### **PROHIBITION ON UNDUE PREFERENCE AND UNDUE DISCRIMINATION**

**14.1** Where a determination has been made which applies to the Licensee for the purposes of Part A of this Licence, the Licensee shall not unduly discriminate or show undue preference in the manner set out below:

- (a) the Licensee shall not (whether in respect of the charges or other terms or conditions applied or otherwise) show undue preference to, or exercise undue discrimination against, particular persons or persons of any class or description (in any market) as respects Interconnection of any description which the Licensee provides pursuant to Part A;
- (b) the Licensee may be deemed to have shown such undue preference or to have exercised such undue discrimination if it unfairly favours to a material extent a business carried on by it in relation to the provision of any telecommunication service referred to in paragraph 14.1(a) above so as to place at significant competitive disadvantage persons competing with that business; and
- (c) any question relating to whether any act done or course of conduct pursued by the Licensee amounts to such undue preference or such undue discrimination shall be determined by the Director, but nothing done in any manner by the Licensee shall be regarded as undue preference or undue discrimination if and to the extent that a Licensee is required or permitted to do such thing in that manner by or under any provision of this Licence.

**PART C: EXCEPTIONS AND LIMITATIONS ON OBLIGATIONS IN SCHEDULE 1****Condition 15****EXCEPTIONS AND LIMITATIONS ON OBLIGATIONS IN SCHEDULE 1**

**15.1** Unless the context otherwise requires and subject to paragraph 15.8, the Licensee's obligations under these Conditions have effect subject to the following exceptions and limitations.

**15.2** The Licensee is not obliged to do anything which is not practicable.

**15.3** The Licensee shall not be held to have failed to comply with an obligation imposed upon it by or under these Conditions if and to the extent that the Licensee is prevented from complying with that obligation by any physical, topographical or other natural obstacle, by the malfunction or failure of any apparatus or equipment owing to circumstances beyond the control of the Licensee, by the act of any national authority, local authority or international organisation or as the result of fire, flood, explosion, accident, emergency, riot or war.

**15.4** The Licensee shall not be obliged to connect, or to keep connected to the Applicable Systems, or to permit to be so connected or kept connected any telecommunication system or telecommunication apparatus or to provide any telecommunication services or to permit the provision of any service if the person to or for whom that is done or is to be done:

- (a) has not entered or will not enter into a contract for the purpose with the Licensee for reasons other than the unreasonable refusal of the Licensee to agree terms for the purpose but this paragraph does not apply in a case where the Director is satisfied that:
  - (i) the Licensee has not published standard terms and conditions which it proposes to apply for the purpose in question, or the transaction is not fit to be governed by such terms and conditions; and
  - (ii) the Licensee has unreasonably refused to agree terms and conditions for this purpose;
- (b) is, or in the Director's opinion has given reasonable cause to believe that he may become:
  - (i) in breach of a contract with the Licensee for the provision of telecommunication services by the Licensee; or
  - (ii) in default in regard to any debt or liability owed to the Licensee in respect of any such contract;
- (c) is using, or permitting the use of, apparatus so connected for any illegal purpose or has done so in the past and is likely to do so again; or
- (d) has obtained, or attempted to obtain any telecommunication service from the Licensee by corrupt, dishonest or illegal means at any time.

**15.5** Nothing in these Conditions shall prevent the Licensee from withdrawing from, or declining to provide to, any person any telecommunication service which the Licensee has notified the Director that it is providing in a limited area, or to a limited class of customers, for the purpose of evaluating the technical feasibility of, or the commercial prospects for that service.

**15.6** Nothing in these Conditions shall require the Licensee to provide any telecommunication service, or to provide any telecommunication service of any particular class or description, if it provides instead a service, or a service of a class or description which satisfies the purposes of that requirement at least to the same extent.

**15.7** This Condition shall apply without prejudice to any limitation or qualification of the requirements imposed by or under any other Condition.

**15.8** This Condition does not apply to:

Condition 1 (Requirement to provide Connection services);

Condition 5 (Accounting Separation for special or exclusive rights in non-telecommunication sectors);

Condition 6.4 (Requirement to Furnish Information to the Director);  
Part A (Operators with Significant Market Power for the purpose of the Interconnection Directive);  
Part B (in relation to Part A services).

**15.9** Only paragraphs 15.1, 15.2, 15.3 and 15.7 apply to:

Conditions 6.1, 6.2 and 6.3 (Requirement to Furnish Information to the Director);  
Condition 8 (Licensee's Group);  
Condition 9 (Payment of fees).

### **SCHEDULE 3**

Regulation 3(e)

#### **SCHEDULE 2: REVOCATION**

**1.** Notwithstanding paragraph 2 of the Licence the Secretary of State may at any time revoke this Licence by at least 30 days' notice given to the Licensee in writing in any of the following circumstances:

- (a) if the Licensee agrees in writing with the Secretary of State that this Licence should be revoked;
- (b) if either
  - (i) an undertaking has become a Parent Undertaking in relation to the Licensee; or
  - (ii) a change or acquisition of a description specified in paragraphs 7.2 and 7.3 of Condition 7 of Schedule 1 to this Licence has taken place;and either
  - (iii) the Licensee has duly notified the Secretary of State in accordance with those paragraphs; or
  - (iv) the Licensee has failed to notify the Secretary of State that such event, change or acquisition has taken place in accordance with an obligation under that Condition;and
  - (v) the Secretary of State has notified the Licensee in writing that he is minded to revoke this Licence on the grounds either that:
    - (A) the event, change or acquisition would in his opinion be against the interests of national security or relations with the government of a country or territory outside the United Kingdom; or
    - (B) the Licensee has committed a breach of Condition 7 of Schedule 1; and
  - (vi) the event, change or acquisition has not been reversed or remedied within 30 days of the receipt or by the Licensee of such notification;
- (c) if, following a change or acquisition of the type referred to in Condition 7 of Schedule 1 to this Licence, the Secretary of State considers, or the Director has notified the Secretary of State that the Director considers, that the Licensee is relying, has relied or is likely to rely on this Licence in circumstances in which an effect of such reliance is, was or may be that the Licensee or any member of the Licensee's Group is or was relieved wholly or in part of any obligation, limitation or restriction imposed by a Licence issued to the Licensee or any member of the Licensee's Group;
- (d) where the Licensee has failed to comply with a final order (or a provisional order confirmed) under section 16 of the Act and the Secretary of State has given the Licensee not less than 30 days' notice in writing that, if the Licensee fails to comply with the order within that period of 30 days, he intends to revoke the Licence, provided that no such notice of intention shall be given where the question of the validity of the order is the subject of any court proceedings and where that question becomes so subject during the 30 day notice period, that period shall cease to run until the final disposal of those proceedings (including any Appeal);

- (e) if the Licensee:
    - (i) is deemed to be unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986 as applied for the purposes of this licence by paragraph 2(b)), convenes any meeting with its creditors generally with a view to the general readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of its creditors generally;
    - (ii) enters into administration, receivership or liquidation; or
    - (iii) ceases to provide telecommunication services of the type authorised in paragraph 3 of Schedule 3 to this Licence;
  - (f) if the Licensee or any other person takes any action for the voluntary winding-up or dissolution of the Licensee;
  - (g) if the Licensee enters into any scheme of arrangement under the Insolvency Act 1986 (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 the Secretary of State);
  - (h) if an administrator, receiver, trustee or similar officer of the Licensee, or of all or any material part of the revenues and assets of it, is appointed;
  - (i) if any order is made for the compulsory winding-up or dissolution of the Licensee; or
  - (j) if any amount payable under Condition 9 of Schedule 1 is unpaid 30 days after it becomes due and remains unpaid for a period of 14 days after the Secretary of State notifies the Licensee that the payment is overdue.
2. For the purposes of paragraph 1(e)(i), in applying section 123 of the Insolvency Act 1986:
- (a) if a written demand served on the Licensee is satisfied prior to the expiry of the notice of revocation the Secretary of State shall not revoke the Licence; and
  - (b) the figure of “£750”, or such other money sum as may be specified from time to time pursuant to sections 123(3) and 416 of the Insolvency Act 1986, shall be deemed to be replaced by “£250,000” or such higher figure as the Director may from time to time determine.
3. In this Schedule:
- (a) “Group” means a Parent Undertaking and its subsidiary undertaking or undertakings within the meaning of section 258 of the Companies Act 1985 as substituted by section 21 of the Companies Act 1989; and “Licensee’s Group” means a Group in respect of which the Licensee is either a Parent Undertaking or a subsidiary undertaking; and
  - (b) “Parent Undertaking” has the same meaning as in section 258 of the Companies Act 1985 as substituted by section 21 of the Companies Act 1989.
4. For the purposes of this Schedule “Appeal” includes further appeal and application for leave to appeal or further to appeal.

#### SCHEDULE 4

Regulation 3(f)

#### **SCHEDULE 3: AUTHORISATION TO CONNECT OTHER TELECOMMUNICATION SYSTEMS AND APPARATUS TO THE APPLICABLE SYSTEMS AND TO PROVIDE TELECOMMUNICATION SERVICES BY MEANS OF THE APPLICABLE SYSTEMS**

1. Nothing in this Licence removes any need to obtain any other licence that may be required under any other enactment.

##### **Connection authorisation**

2. Subject to paragraph 1, this Licence authorises the connection to the Applicable Systems of:

- (a) any telecommunication system run under a Licence;
- (b) any telecommunication system run by the Crown;
- (c) telecommunication apparatus of every description which is comprised in a telecommunication system mentioned in paragraphs 2(a) and 2(b); and

- (d) any hearing aid.

### Service authorisation

3. Subject to paragraph 1 this Licence authorises the provision of telecommunication services consisting in the conveyance by Wireless Telegraphy of Data Messages including switching incidental to such conveyance except:

- (a) Conditional Access Services:
  - (i) provided or intended to be provided to another person; or
  - (ii) provided for the Licensee's own use if it provides any Conditional Access Services to another person by means of telecommunication systems run under another licence but which could also come within the description of the Applicable Systems authorised to be run by this Licence; and
- (b) Access Control Services
  - (i) provided or intended to be provided to another person; or
  - (ii) provided for the Licensee's own use.

### Definitions and Interpretation

4. In this Schedule, unless the context otherwise requires:

“Access Control Services” means those telecommunication services which are:

- (i) telecommunication services other than
  - (A) Conditional Access Services; or
  - (B) Network Services

provided to a person providing telecommunication services under a Licence, by means of which the supply to end-users of a Relevant Other Telecommunication Service of any description may be controlled; and

- (ii) described in paragraph 4 of Schedule 3 to the Licence entitled “Class Licence for the Running of Telecommunication Systems for the Provision of Access Control Services” granted by the Secretary of State under section 7 of the Telecommunications Act 1984 on 27 August 1999 or any successor thereto;

“Conditional Access Services” means telecommunication services (including services which are treated as telecommunication services pursuant to regulation 8(2) of and paragraph 1(b) of Schedule 1 to the Advanced Television Services Regulations 1996 (SI 1996/3151)):

- (i) by means of which access to Digital Television Services may be controlled so that only those viewers who are authorised to receive such services do so; and
- (ii) fall within the definition of “Conditional Access Services” given in paragraph 4(b) of the licence entitled “Class Licence for the Running of Telecommunication Systems for the Provision of Conditional Access Services” granted by the Secretary of State under Section 7 of the Telecommunications Act 1984 on 7 January 1997 or any successor thereto;

“Digital Television Services” has the same meaning as in Directive 95/47/EC of the European Parliament and the Council of 24 October 1995 on the use of standards for the transmission of television signals;

“Data Message” means a Message which is conveyed in a digital form and which does not consist in live speech;

“Message” means anything falling within paragraphs (a) to (d) of section 4(1) of the Act;

“Network Service” means any of the following:

- (i) a service consisting only of functions which enable end-users to send, receive, or both, Messages to or from one or more end-users, including functions which enable the establishment of a prior connection between such end-users;
- (ii) a service consisting only of functions which could not practically be provided to any end-user in identical form by anyone other than the Licensee, because those functions are dependent upon the functions referred to in sub-paragraph (i) above; or
- (iii) any service which has been agreed by the Licensee with the Director;

“Relevant Other Telecommunication Services” mean telecommunication services, whether supplied by the Licensee or any other party, but not including:

- (i) any of the services specified in section 72(2)(a) to (f) of the Broadcasting Act 1990 other than licensable programme services specified in section 46(1) of that Act which are conveyed for reception at different times in response to requests made by different users of the service;
  - (ii) Digital Television Services; or
  - (iii) Network Services; and
- “Wireless Telegraphy” has the same meaning as in the Wireless Telegraphy Act 1949.

5. Expressions cognate with those referred to in this Schedule shall be construed accordingly.

## SCHEDULE 5

Regulation 3(g)

### ANNEX A

#### THE APPLICABLE SYSTEMS

1. The Applicable Systems are telecommunication systems of every description within the United Kingdom provided that a system (“the System”) is an Applicable System only to the extent that it satisfies each of the following conditions:

- (a) the System is one by means of which Messages are conveyed or are to be conveyed:
  - (i) from one Network Termination Point to another such Point;
  - (ii) from a Network Termination Point to another place which is neither a Network Termination Point nor a Call Office or from such a place to such a Point;
  - (iii) between a place which is neither a Network Termination Point nor a Call Office and another such place where their conveyance is not by way of provision of a service to another person; or
  - (iv) between a Call Office and any other place;
 but in any case not beyond a Network Termination Point;
- (b) none of the apparatus comprised in the System is Relevant Terminal Apparatus installed on premises occupied by a person to whom there are provided telecommunication services by means of the System.

2. In this Annex:

“Approved Apparatus” means in relation to any system apparatus approved under section 22 of the Act for connection to that system or which meets the appropriate essential requirements of regulation 4 of the RTTE Regulations;

“Call Office” means telecommunication apparatus not supplied by the Licensee to any particular person but made available for use by the public or a class of the public;

“Message” means anything falling within paragraphs (a) to (d) of section 4(1) of the Act;

“Network Connecting Apparatus” means telecommunication apparatus comprised in the Applicable Systems which is not Network Termination and Testing Apparatus and is connected to another telecommunication system;

“Network Termination and Testing Apparatus” means an item of telecommunication apparatus comprised in the Applicable Systems installed in a fixed position on Served Premises which enables:

- (i) Approved Apparatus to be readily connected to, and disconnected from, the Applicable Systems;
  - (ii) the conveyance of Messages between such Apparatus and the Applicable Systems; and
  - (iii) the due functioning of the Applicable Systems to be tested,
- but the only other functions of which, if any, are:

- (A) to supply energy between such Apparatus and the Applicable Systems;
- (B) to protect the safety or security of the operation of the Applicable Systems; or
- (C) to enable other operations exclusively related to the running of the Applicable Systems to be performed or the due functioning of any system to which the Applicable Systems are or are to be connected to be tested (separately or together with the Applicable Systems);



“Network Termination Point” means any point:

- (i) within an item of Network Connecting Apparatus at which energy in any of the forms specified in section 4(1) of the Act is conveyed directly to or from apparatus comprised in a telecommunication system other than one in which that Network Connecting Apparatus is comprised; or
- (ii) within an item of Network Termination and Testing Apparatus at which such energy is conveyed directly to any Relevant Terminal Apparatus;
- (iii) which in the case of a radio based telecommunication system, is the last point at which Messages are transmitted or the first point at which Messages are received in the form of electromagnetic signals, by apparatus run by a person other than the Licensee and lawfully connected to that system;

“RTTE Regulations” means the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000;

“Relevant Terminal Apparatus” means:

- (i) “Terminal Apparatus”, that is to say any telecommunication apparatus installed on Served Premises except a Call Office; and
- (ii) any other telecommunication apparatus connected to the apparatus referred to in sub-paragraph (i) above constituting a system run under a Licence by the person using that Terminal Apparatus; and

“Served Premises” means a single set of premises in single occupation where apparatus has been installed for the purpose of the provision of telecommunication services by means of the Applicable Systems at those premises.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the telecommunications licences granted to Cognito Limited, D.I.C.E. Ltd, Hutchison Mobile Data Limited, Ram Mobile Data Limited and Securicor Datatrak Limited for the provision of telecommunication services consisting in the conveyance by means of telecommunication systems of data messages using wireless telegraphy. The Schedules to the licences are replaced by the Schedules set out in the Regulations. The amendments are being made to these licences as part of the implementation in the United Kingdom of Directive 97/13/EC of the European Parliament and of the Council on a common framework for general authorisations and individual licences in the field of telecommunications (O.J. No. L199, 26.7.97, p.32), which requires that conditions in all telecommunications licences of a similar type should be harmonised, except where objectively justified in particular instances.

A Regulatory Impact Assessment is available and can be obtained from Communications and Information Industries Directorate, Department of Trade and Industry, 151 Buckingham Palace Road, London SW1W 9SS.

The licences modified by these Regulations may be inspected at the Library of the Office of Telecommunications (OFTEL), 50 Ludgate Hill, London EC4M 7JJ.



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**STATUTORY INSTRUMENTS**

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