



# REFERENCE INTERCONNECTION OFFER

MAIN OFFER DOCUMENT

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## INTRODUCTION

- 1.1 Under the terms of the Service and Applications Provider License and the provisions of the Communications Regulatory Act of 2012, Botswana Telecommunication Corporation (BTC) is required to offer Interconnection Services to other Licensees.
- 1.2 BTC has been designated under the Guidelines on Interconnection for the Botswana Telecommunications Sector and is required to issue a **Reference Interconnection Offer**. For the avoidance of doubt, this Offer, and its Appendices represent BTC's Reference Interconnection Offer. Any references in this Offer to a Reference Interconnection Offer shall mean BTC's Reference Interconnection Offer.
- 1.3 The resultant Interconnection Agreement shall be in accordance with the Guidelines on Interconnection for the Botswana Telecommunications Sector.
- 1.4 BTC hereby offers to interconnect the BTC Network with the network of a Licensee in accordance with the principles set out in the Guidelines on Interconnection for the Botswana Telecommunications Sector, and to supply services and facilities on the terms and conditions as provided for in this Offer. BTC undertakes to act in good faith in all the negotiations.
- 1.5 The Licensee, by requesting interconnection with BTC, warrants that it has in full force and effect the authorizations stipulated in the Guidelines on Interconnection to enter into an agreement arising from an acceptance of this Offer.
- 1.6 By requesting to interconnect with the BTC Network and accepting this RIO, the licensee undertakes to act in good faith and shall not use any Interconnection Agreement consequent upon this offer, to bypass, to refile or to dump traffic into the BTC network or sublet, assign to other service providers.
- 1.7 BTC and the Licensee recognize the necessity of effective interconnection of their Telecommunications Systems in the provision of quality telecommunications services to their respective customers.
- 1.8 BTC and the Licensee believe that a fundamental principle of interconnection is to enable both BTC customers and the Licensee's customers to communicate effectively with each other and that accordingly:
  - 1.8.1 BTC and the Licensee shall exchange information willingly in order to make interconnection effective, without prejudice to commercial confidentiality.
  - 1.8.2 BTC and the Licensee shall at all times, as far as is reasonably possible, act so as to facilitate the speedy and effective operation of interconnection services under this Offer, to the benefit of customers and to their mutual advantage.
  - 1.8.3 The Licensee will cooperate with BTC to achieve feature transparency between interconnected networks of Calls as far as is reasonably possible.
  - 1.8.4 BTC and the Licensee shall provide to each other, upon request, details of active number ranges.

- 1.8.5 BTC and the Licensee shall work jointly to ensure the overall quality of the calls which are made via an interconnection point and their own networks.
- 1.8.6 BTC and the Licensee shall adopt general principles regarding standards, techniques and methods in order to guarantee the quality on telecommunication networks and in services, as stipulated in appropriate ITU/BOCRA technical standards.
- 1.8.7 At the time of entering into this Agreement, BTC is not willing to accept that the licensee transits and terminates any international originated traffic destined for the BTC Network . Therefore, for the purpose of this Agreement the only interconnection service allowed for termination is national/locally originated traffic.
- 1.8.8 BTC and the Licensee shall treat each other in a fair and nondiscriminatory manner in all aspects of interconnection.

## 2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Offer, except if the context requires otherwise, words and expressions are as defined in Annex A.
- 2.2 In the event of conflict or ambiguity between the terms defined in the governing laws and regulations in respect of this Offer, the following order of precedence shall apply:
  - 2.2.1 The Communications Regulatory Act, 2012
  - 2.2.2 The BTC PTO License
  - 2.2.3 The Guidelines on Interconnection for Botswana Telecommunication Sector

## 3. NETWORK INTERCONNECT

- 3.1 Interconnection between the BTC Network and the Licensee Network shall be achieved through two or more interconnect points, which together form an Interconnect Path. Each interconnect link shall create a connection between one of the BTC Interconnect Nodes and one of the Licensee Interconnect Nodes.

Details of how this shall be achieved are set out in Annex D. Interconnect is available at each of the BTC Interconnect Nodes listed at Appendix D.1. The Licensee may interconnect at any two of the nodes subject to that interconnect link being bi-laterally agreed in the Network Plan as defined in clause 10 hereof. The technical standards supported by the BTC network for the purposes of Interconnect are set out in Annex D as amended from time to time.

- 3.2 On requesting interconnection from BTC, the Licensee shall:
- 3.3 Undergo due diligence checks in accordance with BTC processes, the licensee shall be required to provide BTC with company registration documents, Copies of BOCRA Licenses, Signed NDA, ITC verification, and payment of security deposit as defined in clause 8.2.
  - 3.3.1 Provide a detailed statement of its technical requirements for interconnection services in respect of this Offer. This statement of requirements must be sufficiently detailed for BTC to design a solution for the Licensee's interconnection requirements. A copy of the statement of technical requirements shall be filled with the BOCRA at the same time it is submitted to BTC;
  - 3.3.2 If the statement of requirements is considered by BTC to be insufficient to set out a comprehensive technical solution, BTC shall notify the Licensee within thirty (30) working days of receipt of the statement of requirements. This notification shall include a list of detailed questions and requests for data that are not supplied within the Licensees' statement of requirements.

- 3.3.3 If the statement of requirements is sufficient to enable BTC to design and document a comprehensive technical solution for the Licensee's interconnection requirements, BTC shall dispatch a documented solution to the Licensee within one (1) month of receipt of the satisfactory statement of requirements.
- 3.4 BTC and the Licensee shall negotiate in good faith with a view to reaching agreement on a comprehensive Network Plan within three (3) months of BTC's notification of the BTC proposed technical solution being received by the Licensee, unless otherwise agreed between BTC and the Licensee in writing.
- 3.5 Once the technical solution is agreed between BTC and the Licensee, the plan shall become known as the Network Plan and included in the proposed Interconnection Agreement between BTC and the Licensee. The licensees shall lodge with the BOCRA the Interconnection Agreement no later than thirty (30) days from the date of execution of the Agreement.
- 3.6 Interconnect paths shall be provided using either Customer Sited Interconnect, or over links via Licensee equipment sited at BTC collocation facilities.
- 3.7 The actual point of interconnect shall be where the BTC Network connects with the Licensee Network and shall be a physical point where the connection can be disconnected in order to conduct testing. BTC and the Licensee shall be responsible for providing sufficient capacity on an appropriate transmission medium from the point of interconnect to meet the agreed forecast traffic contained in the Network Plan. Each Licensee shall be responsible for the operation and maintenance of this transmission medium. Each Licensee shall be considered as owning the transmission equipment and other infrastructure up to the point of interconnection.
- 3.8 Separate interconnect paths may be provided to carry the traffic of each Licensee. The cost of both installation and ongoing maintenance of each Interconnect path shall be borne in full by the Operator originating the traffic on this path. Bi-directional paths may however be utilized where this represents the optimal method of handling the traffic consistent with sound engineering practices. In this instance costs for installation and ongoing maintenance shall be shared. For the avoidance of doubt, neither BTC nor the Licensee shall be obliged to convey traffic to the other over bi-directional paths. The terms and conditions for BTC Interconnect Link Services are attached in Interconnection Services.

#### **4. INTERCONNECT SERVICES**

4.1 The Interconnection Services attached to this Offer provide detail on the services BTC provide over the Interconnect under this Offer.

#### **5. CHARGING FOR INTERCONNECT SERVICES**

- 5.1 The Licensee shall be charged a termination rate of BWP0.25 for the conveyance of National calls to the BTC network.
- 5.2 Charges shall not be payable under this Offer by either Licensee to the other for unsuccessful calls. Successful calls shall be defined as those calls receiving an answer signal in the backward direction.

## 6. NEW SERVICES

- 6.1 BTC or the Licensee may, at any time, request from the other an agreement to interconnect their respective Networks for the provision of any service or facility which the other provides either to itself or under an Interconnect Agreement with another Licensee. Such requests shall be clearly marked as a request for a new service pursuant to this clause 6.
- 6.2 Following a request pursuant to clause 6.1, BTC or the Licensee shall, in accordance with the provisions of Clause 1.8.9, offer the other the service or facility on its then current standard terms subject to notification being provided to the BOCRA.
- 6.3 If the Licensee requests from BTC an offer for interconnection for the provision of a service which BTC is obligated to provide under the terms of the Guidelines on Interconnection, BTC and the Licensee shall enter into good faith negotiations for the provision of such service.
- 6.4 The Requesting Licensee shall provide BTC with a written statement of its requirements at the time of its request, BTC shall acknowledge receipt of such requests not later than ten (10) working Days after receipt.
- 6.5 Not later than one (1) Month, unless otherwise agreed by BTC and the Licensee, after receipt of statement of requirements, BTC shall confirm whether the statement of requirements is sufficient. If not, BTC shall request any further clarification it may reasonably require.
- 6.6 Subject to the Requesting Licensee's statement of requirements being sufficient, BTC shall confirm in writing whether it accepts an obligation to enter into an agreement not later than two (2) Months after the receipt of the statement of requirements unless otherwise agreed by the Licensees.
- 6.7 If BTC does accept an obligation to do so, BTC and the Licensee shall endeavor to agree the technical and commercial aspects of interconnection within one-hundred- and-twenty (120) Calendar Days after receipt of the statement of requirements
- 6.8 If BTC does not accept an obligation, a Dispute may be deemed to have arisen between the Licensees, and the Licensees may invoke the provisions of clause 17 hereof. Negotiations to agree terms for interconnection should nevertheless continue pending resolution of the Dispute.
- 6.9 If the request is for a new interconnect service, the agreed technical and commercial terms shall be incorporated into a revision to this Reference Interconnect Offer and submitted to the BOCRA for approval.
- 6.9.1 Any withdrawal of an interconnection service shall be notified to BOCRA with an explanation and timeline and to the Licensee at least one (1) month in advance of the proposed date of withdrawal.

## 7. MEASUREMENTS OF TRAFFIC VOLUME

- 7.1 The responsibility for traffic volume measurements shall reside with Both BTC and the Licensee.
- 7.2 Both BTC and the Licensee shall ensure that it records measurements of traffic volumes in sufficient detail to meet its obligations as outlined in the Interconnection Services schedule attached hereto.

## 8. BILLING AND PAYMENT

- 8.1 BTC and the Licensee shall bill and reimburse the other in accordance with the procedures outlined in Annex B.

- 8.2 BTC shall require the licensee to pay a refundable deposit or to provide other financial security amounting to BWP 509,000.00. Failure to pay the Deposit will be a material breach of the Agreement. The Deposit may be applied to any overdue amount(s) for any Service(s). BTC shall return any remaining Deposit to Licensee when all Services end and all debts are settled.
- 8.3 The minimum acceptable call volume from the Licensee terminating on the BTC Network shall be 678,750 minutes per month at the standard interconnect rate as per the standard BTC prices. At the beginning of every month BTC shall bill and the Licensee shall prepay a fixed charge equivalent to the 678,750 minutes every month for a minimum period of thirty-six months.
- 8.4 The charges in this Offer are exclusive of government taxes unless such charges are stated to be inclusive of government taxes. However, government taxes shall be charged on invoices resulting from an acceptance of this Offer.
- 8.5 Invoices are due and payable in Botswana Pula. Invoices for additional usage above the minimum guaranteed 678,750 minutes are payable within thirty (30) Calendar Days (the Due Date) from the date of invoice. The licensee shall be required to pay the P509,000.00 monthly regardless of whether they attained the minimum 678,750 monthly minutes.
- 8.6 Subject to clause 8.2 above, BTC and the Licensee shall provide to the other, invoices of all amounts due to it, calculated in accordance with the standard BTC prices.

## **9. NETWORK DESIGN AND PLANNING**

- 9.1 Network design and planning of the Network Interconnect shall be in accordance with the Network Plan as agreed between BTC and the Licensee.

## **10. NETWORK ALTERATION AND DATA MANAGEMENT AMENDMENT**

- 10.1 At least one (1) calendar months' notice shall be provided by the Requesting Licensee for each Network Alteration request. BTC shall, if in a position to accept the Network Alteration proposed, provide an estimate of the costs involved within one (1) calendar month of receipt of a Network Alteration request.
- 10.2 Where the network alteration is agreed, the requesting party shall be liable for the cost of the changes approved on both networks.
- 10.3 Where the alteration is part of a planned upgrade program each Licensee shall pay its own costs for changing its system to continue to convey calls.
- 10.4 Network Alterations shall be carried out within the timescales laid down in this clause. If a Requested Licensee believes that it is not in a position to proceed with the requested Network Alteration, either within the timescales requested or in any circumstances, the Requesting Licensee shall be advised within two (2) weeks of receipt of the request. In these circumstances BTC and the Licensee shall make all reasonable efforts to resolve the situation, including recourse to the dispute resolution process as per clause 17.

## **11. NETWORK SAFETY AND PROTECTION**

- 11.1 Each Licensee is responsible for the safe operation of its Network and shall take all reasonable and necessary steps in its operation and implementation of this Offer to ensure that its Network does not:

- 11.1.1 Endanger the safety or health of employees, contractors, agents or customers of the other Licensee; or
- 11.1.2 Damage, interfere with or cause any deterioration in the operation of the other Licensee's Network.
- 11.1.3 Neither BTC nor the Licensee shall connect or knowingly permit the connection to its Network of any equipment or apparatus, including, but not limited, to any terminal equipment that is not approved by the other party and by BOCRA.
- 11.1.4 The Network and services provided under the agreement shall not be sub-let or transferred to a third party by either of the parties outside of this agreement.

## **12. NUMBERING**

- 12.1 Each Licensee shall use numbers in accordance with the Numbering Plan issued by the BOCRA.
- 12.2 Where CLI is passed for presentation purposes, the presentation shall comply with all the requirements of the Guidelines on Interconnection.
- 12.3 BTC and the Licensee's number ranges shall be detailed in the Network Plan.

## **13. QUALITY OF SERVICE**

- 13.1 BTC shall provide Interconnection Services at the same quality of service level as for similar services provided to BTC retail operation.
- 13.2 For call conveyance services, BTC and the Licensee shall use their reasonable endeavors to meet the target grade of service as specified in the Service Level Offer. For specific routes, and in accordance with the Guidelines on Interconnection, the target grade of service for specific routes can be varied from the standard and agreed between BTC and the Licensee as set out in the Network Plan.
- 13.3 BTC and the Licensee shall use their reasonable endeavors to meet the Quality-of-Service measures set out in the Service Level Offer for elements of the calls carried on their network.
- 13.4 A period of two (2) weeks of the specified Grade of Service being persistently breached on a particular interconnect link shall require a review of the network routing and interconnection capacity to be reviewed by BTC and the Licensee within one (1) calendar month.

## **14. PROVISIONING, OPERATION AND MAINTENANCE**

- 14.1 The procedures for the installation and testing of the initial Interconnect as well as for the continued operation and maintenance thereof shall be governed by the provisions of the Operations and Maintenance Manual.

## **15. PROVISION OF INFORMATION**

- 15.1 Subject to the obligations of BTC or the Licensee's confidentiality to a Third Party, either may request, and the other shall provide, information on protocols in use by that other Licensee which are required for interconnection, conveyance of Calls or the provision of services specified in this Offer if such other Licensee has relevant information and the provision of such information is necessary as a consequence of the absence or

- incompleteness of international standards.
- 15.2 Notwithstanding any provision of this Offer BTC or the Licensee shall not be obliged to provide information which is subject to a confidentiality obligation to a Third Party unless such Third-Party consents to such disclosure and BTC or the Licensee, as appropriate, have taken all reasonable steps to secure the consent of such Third Party.
- 15.3 The Disclosing Licensee shall use reasonable endeavors to ensure that information disclosed is correct to the best of its knowledge at the time of provision of such information.
- 15.4 BTC and the Licensee shall disclose information in accordance with this clause 17 on a non-discriminatory basis and each shall provide the same information to the other as it does to those licensees with whom it interconnects.
- 15.5 Subject to clause 24 hereof, the Receiving Licensee shall indemnify the Disclosing Licensee and keep it indemnified against all liabilities, claims, demands, damages, costs and expenses arising as a consequence of any failure by the Receiving Licensee to comply with any reasonable conditions imposed and expressly identified and notified to Receiving Licensee, including those relating to confidentiality as per clause 20, by the Disclosing Licensee at the time when the information was provided.
- 15.6 Nothing in this Offer shall require a Licensee to do anything in breach of any statutory or regulatory obligation of confidentiality, including without prejudice to the generality of the foregoing, any obligation pursuant to Botswana legislation or regulation
- 15.7 BTC shall not be liable for third party claims arising out of breaches in confidentiality and any security caused by the Licensee

## 16. RESOLUTION OF DISPUTES

- 16.1 In the event of a dispute or difference arising between or amongst BTC and the Licensee relating to or arising out of an interconnection agreement, including the implementation, execution, interpretation, rectification, termination or cancellation of the agreement, BTC and the Licensee shall meet within ten (10) working days of written notice of the dispute or difference from one Licensee to the other (or such longer time as mutually agreed by the Licensees in writing) to negotiate in good faith in an effort to settle such dispute or difference, and if the dispute or difference is not resolved to the Licensees' satisfaction within five (5) working days of the meeting (or such longer time as mutually agreed by the Licensees in writing), the Licensees shall proceed as follows:
- 16.2 Within two (2) working days, the dispute or difference shall be referred to a joint committee of the Licensees' respective chief executive officers or alternates appointed by them. The chief executive officers or appointed alternates shall use their best endeavors to settle or resolve the dispute or difference as expeditiously as possible, but in any event within a period fifteen (15) working days of the matter being referred to them (or such longer time as mutually agreed by the Licensees in writing).
- 16.3 In the event of such dispute or difference not being settled by the parties then such a matter shall be referred to the BOCRA for determination if either or both parties so request or in the alternative if both parties agree then the matter may proceed to arbitration.
- 16.4 During any dispute or difference the parties shall keep their networks connected for the provision of services and conveyance of calls between their respective networks. No party shall disconnect the other party's network without the prior approval of the BOCRA and any party seeking to bring about such disconnection may make representations to the BOCRA. The BOCRA shall give due consideration to the matter and may seek representations from the other party prior to making any determination regarding the disconnection of the said networks.

## 17. ARBITRATION

- 17.1 Notwithstanding the provisions of Section 18 above, the Licensees shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of ten (10) working days, the said dispute or difference may be submitted to arbitration under the Arbitration Act of Botswana.
- 17.2 If the parties fail to agree on an arbitrator within ten (10) working days after the arbitration has been demanded, the arbitrator shall be nominated at the request of either of the parties by the BOCRA.
- 17.3 Any Licensee may request that a dispute or difference in terms of Section 17 be referred to arbitration by giving written notice to that effect to the other Licensee.
- 17.4 The arbitration shall be held immediately and with a view to its being completed within fifteen (15) working days after it is demanded.
- 17.5 The arbitrator shall make an award in respect of the costs of the arbitration having regard to the substantial success of each party in the outcome of the proceedings.
- 17.6 The decision of the arbitrator shall be binding on the parties to the arbitration after the expiry of a period of 30 (thirty) working days from the date of the arbitrators ruling and provided that no appeal has been lodged by any party to a competent court as provided for under the Arbitration Act of Botswana.

**18. BREACH, SUSPENSION AND TERMINATION**

- 18.1 If one Licensee's Network seriously and adversely affects the normal operation of the other Licensee's Network, or is a threat to any person's safety, the affected Licensee shall immediately inform the affecting Licensee and BOCRA. The affecting Licensee shall take immediate action to resolve the problem and in the event that normal operation is not restored in four (4) days or if the matter is extreme in terms of its impact on the Licensee's customers or the safety of personnel, the affected Licensee may suspend, to the extent necessary, such of its obligations under this Offer, and for such period as it may consider reasonable to ensure the normal operation of the affected Licensee's Network or to reduce the threat to safety. Such suspension shall be notified in writing to the BOCRA offices and by telephone to the BOCRA nominated contact point and may continue beyond twelve (12) hours unless the BOCRA instructs otherwise.
- 18.2 If either Licensee is in material breach of any Interconnection Agreement consequent upon this Offer (including failure to pay an undisputed sum due hereunder), the other Licensee may serve a written notice (the "breach notice") on the Licensee in breach specifying the breach and the time limit for such breach to be remedied. If the Licensee in breach fails to remedy the breach within twenty-eight (28) Calendar Days, or such longer period as specified in the breach notice, the Licensee not in breach may, until such breach is remedied, suspend performance of such of its obligations made under the said Interconnection Agreement as is reasonable in the circumstances. Except in the case of failure to pay an undisputed sum due hereunder or a failure to maintain the bank guarantee in accordance with clause 9.1, the Licensee in receipt of the breach notice may raise a Dispute under clause 17. In such circumstances the breach notice and any suspension or termination consequent upon this shall be in abeyance until the Dispute is resolved and will be withdrawn if required by the outcome of any Dispute resolution process. In all cases where a breach notice is issued the Licensees shall immediately notify BOCRA in writing.
- 18.3 If the Licensee in breach fails to remedy the breach within the period stated in the breach notice, the Licensee not in breach may terminate the Interconnection Agreement with the Licensee in breach on three (3) Calendar months' written notice provided always that if the Licensee in breach remedies the breach within such three (3) months' notice period, the Interconnection Agreement shall not be terminated as a result of such notice. Such termination shall be notified in writing to the BOCRA at least twenty-eight (28) Calendar Days prior to the end of the foregoing notice period and may be implemented unless the BOCRA instructs otherwise.
- 18.4 Notwithstanding clause 18.2 and 18.3 above, should BTC establish that the licensee is bypassing, refiling or dumping unauthorized traffic into the BTC Network or subletting in part or in full any of the Interconnect Agreements, BTC shall suspend all Interconnection Agreements with the Licensee, by giving 7 days notice. BTC shall thereafter terminate the contract and notify BOCRA. The Licensee shall be suspended from entering into any Interconnection Agreement with BTC for a period of thirty-six (36) month unless the BOCRA instructs otherwise.
- 18.5 The Interconnection Agreement may be terminated by either Licensee by giving one (1) months written notice if any one of the following occurs:
  - 18.5.1 The other Licensee ceases to be a Licensed operator; or
  - 18.5.2 The other Licensee is unable to pay its debts, becomes insolvent, or has ceased or threatens to cease business, or a petition for winding up or bankruptcy has been filed, a resolution for voluntary winding up has been passed or judicial manager has been appointed over the whole or substantial part of its assets or property, or any action is taken by any creditor of the other Licensee to recover, realize or enforce any security



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- over any assets of the other Licensee or to enforce any judgment against the other Licensee.
- 19.6 In the event that the Interconnection Agreement is terminated:
- 19.6.1 All sums due or accrued or payable to each Licensee under the Interconnection Agreement up to the effective date of termination and all sums due or payable to each Licensee shall upon termination become immediately due and payable to that Licensee; and
- 19.6.2 Each Licensee shall within a reasonable time, but not more than one (1) month later, return to the other Licensee at its own expense all equipment, facilities, plant and other property of the other Licensee used under the Interconnection Agreement in good working condition, fair wear and tear only excepted; and
- 19.6.3 Each Licensee shall within a reasonable time, but not more than one (1) month later, remove all of that Licensee's equipment, facilities, plant and other property located on the other Licensee's premises used under the Interconnection Agreement; and
- 19.6.4 Any bank guarantee that has been established pursuant to the Interconnection Agreement shall be cancelled by the Licensee in whose favour such bank guarantee is made, subject to the fulfilment of the obligations set out in this clause 19.5.
- 19.7 If one (1) month after the expiry of the Interconnection Agreement, a Licensee fails to recover equipment in good condition (fair wear and tear excepted) because of the acts or omissions of the other Licensee (or a Third Party appearing to have control of a site where such equipment is situated) the first Licensee may demand reasonable compensation from the other Licensee which shall be paid by the other Licensee within ten (10) Calendar Days of the date of the demand.
- 19.8 A Licensee shall be entitled to charge the other Licensee all reasonable costs incurred in repossessing or acquiring a replacement of any equipment, facilities, plant and other property which the other Licensee has failed to return under clause 19.5.2 within one month of the date of termination and/or of acquiring a replacement of any equipment which is returned in a damaged or defective condition.
- 19.9 A Licensee may remove the other Licensee's equipment, facilities, plant and other property located on its premises if not removed by the other Party within one month after the date of termination.
- 19.10 On termination of the Interconnection Agreement, each Party must, at its own expense, deliver to the other Party or, if not possible, destroy or erase all documents or other forms of storage which comprise or contain the other Party's Confidential Information or from which the other Party's Confidential Information can be reproduced.
- 19.11 Termination of the Interconnection Agreement shall not be deemed a waiver of a breach of any term or condition of the Interconnection Agreement and shall be without prejudice to a Licensee's rights, liabilities or obligations that have accrued prior to such termination.
- 19.12 Notwithstanding the termination of the Interconnection Agreement certain sections as shall be specified in the Interconnection Agreement shall continue in full force and effect.
- 19.13 A Licensee's right to terminate or suspend performance of the Interconnection Agreement in accordance with this clause 19 is without prejudice to any other rights or remedies available to that Licensee.

## 19. CONFIDENTIALITY

- 19.1 BTC and the Licensee shall conclude a Non-Disclosure Agreement (NDA) as part of the Interconnection Agreement. This will follow normal practice and provide for the non-disclosure of confidential information to third parties except to the BOCRA and as provided for under Botswana Law.
- 19.2 Information provided by one Licensee to the other for the purposes of interconnection shall only be used by that Licensee for the purposes of interconnect and shall not be made generally available within the other Licensee's company.
- 19.3 This contract shall be subject to all applicable rules and legislature in Botswana.

## 20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 Except as otherwise expressly provided in this Offer or the Interconnection Agreement, all trademarks, inventions, patents, copyrights, designs, design rights, trading names (whether registered or not) and all other intellectual property rights (intellectual property) shall remain in the ownership of the person creating or owning the same and nothing in this Offer or the Interconnection Agreement shall confer or be deemed to confer on either Licensee any rights or licenses in the intellectual property of the other Licensee or of any third party.
- 20.2 Without prejudice to section 21.1, neither Licensee shall be entitled to use any trademarks or service marks (whether registered or not) of the other Licensee in any document or other medium, without the prior written consent of the other Licensee.

## 21. REVIEW

- 21.1 The RIO and any interconnection agreement consequent upon it shall be reviewed and updated periodically following approval by the BOCRA. BTC and/or the Licensee may seek to amend the Interconnection Agreement by serving on the other a review notice if:
  - 21.1.1 Either Licensee's license is materially modified (whether by amendment or replacement); or
  - 21.1.2 Any obligations contained within the Guidelines on Interconnection are materially altered; or
  - 21.1.3 A material change occurs in the law or regulations governing telecommunications in Botswana; or
  - 21.1.4 The Interconnection Agreement makes express provision for a review or the Licensees agree in writing that there shall be a review; or
  - 21.1.5 A material change occurs, including enforcement action by the regulatory authority, which affects or reasonably could be expected to affect the commercial or technical basis of this Offer or any Interconnection Agreement made pursuant to it.
- 21.2 A review notice shall set out in reasonable detail the issues to be discussed between BTC and the Licensee.
- 21.3 A Licensee may initiate a general review of the Interconnection Agreement by serving a review notice during the period of three (3) months commencing from the effectiveness date of the RIO.
- 21.4 The charges for Interconnect Services shall, in any case, be reviewed on an annual basis commencing on 1st of January to be applied on 1<sup>st</sup> of April of each year. Any changes shall be approved by the BOCRA.

- 21.5 A review shall take place immediately following the BOCRA mandated changes to this Offer in order to incorporate these mandated changes into this Offer and the Interconnection Agreement. Any such changes shall be effective based on the timeframes as set out in the revised Offer.
- 21.6 Upon service of a review notice, BTC and the Licensee shall forthwith negotiate in good faith the matters to be resolved with a view to agreeing the relevant amendments to the Interconnection Agreement.
- 21.7 For the avoidance of doubt, BTC and the Licensee agree that notwithstanding service of a review notice, the Interconnection Agreement shall remain in full force and effect.
- 21.8 If BTC and the Licensee fail to reach agreement on the subject matter of a review notice the provisions of clause 17 hereof shall apply.
- 21.9 BTC and the Licensee shall enter into an agreement to modify or replace the Interconnection Agreement in accordance with what is agreed between the Licensees and subject to the BOCRA's approval.
- 21.10 All variations to the agreement must be done in writing.

## **22. FORCE MAJEURE**

- 22.1 In the event of either of the parties being unable to perform any of their obligations in terms of the Interconnection Agreement through force majeure, which affects the performance of the Agreement directly and which includes, but is not limited to lightning strikes, blockades, earth quakes, sabotage, lockouts, industrial strikes, late delivery by subcontractors due to force majeure, accidents to machinery, fire, flood, tempest, war or any other occurrence which could not be foreseen or overcome, the following shall apply:
  - 22.1.1 The party experiencing the force majeure shall notify the other party within five (5) working days of the date on which the force majeure situation occurs, of the nature, extent and anticipated duration of the force majeure;
  - 22.1.2 The party experiencing the force majeure shall use its best endeavors to obviate or remove the force majeure in the shortest time practical and shall in any event not refrain from the due performance in terms of the Interconnection Agreement of such of its obligations as may remain unaffected by the force majeure;
- 22.2 Should the period of the delay due to force majeure be in excess of three (3) months, either Licensee shall have the right to cancel the Agreement or the part thereof affected by event of Force Majeure by way of one (1) month's written notice to that effect to the other party;
- 22.3 At the expiry of the one (1) month notice, unless in the meantime it shall have been agreed otherwise, this Agreement shall be terminated automatically.

## **23. LIMITATION OF LIABILITY**

- 23.1 This clause 23 shall regulate the liability of one Licensee to the other under this RIO.
- 23.2 In performing their obligations under the Interconnection Agreement, the Licensees shall exercise the reasonable skill and care of a competent telecommunications operator/provider of the service and to comply with its obligations under the Interconnection Agreement.
- 23.3 Subject to clauses 23.5 and 23.6, neither Licensee shall be liable to the other Licensee (whether in contract under statute or otherwise for any cause other than for willful or deliberate breach, negligence, acts or omissions) for:

- 23.3.1 Any loss (whether direct or indirect) of profits, revenue, business, anticipated savings, wasted expenditure, or goodwill; or
- 23.3.2 Any other consequential or indirect liability, loss or damage, suffered by the other Licensee and arising from or in connection with the Interconnection Agreement.
- 23.4 Subject to clauses 23.2 and 23.3, if a Licensee ("Breaching Licensee") is in breach of any of its obligations under the Interconnection Agreement (excluding obligations arising under the Interconnection Agreement to pay monies in the ordinary course of business), or otherwise (including liability for negligence or breach of statutory duty), the Breaching Licensee's liability to the other Licensee shall be limited to the Botswana Pula equivalent of US\$ 2, 000, 000.00 (two-million United States Dollars) for any one incident or US\$ 4, 000, 000.00 in any one calendar year for more than one such incident.
- 23.5 Neither Licensee limits its liability for death or personal injury caused by its own negligence.
- 23.6 Neither Licensee shall be liable to the other to the extent that liability is incurred in connection with an action, claim or demand brought or made against the other Licensee in relation to an act or omission relating to or arising out of the Interconnection Agreement by a Third Party to whom the other Licensee provides a telecommunication service under a contract, where that liability could legally have been excluded or where that liability could legally have been reduced in that contract by the other Licensee.
- 23.7 Each provision of this clause 23 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.
- 23.8 For the avoidance of doubt, neither Licensee shall be liable for any breach of the Interconnection Agreement caused by the delay or failure of any supplier to deliver equipment to that Licensee at the prescribed time.

## 24. ASSIGNMENT OF RIGHTS AND OBLIGATIONS

- 24.1 Without prejudice to the License Agreement no rights, benefits or obligations made under an Interconnection Agreement may be assigned or transferred, in whole or in part, by a Licensee without the prior written consent of the other Licensee, such consent not to be unreasonably withheld.
- 24.2 The assigning Licensee shall give notice to the other licensee of any assignment permitted to be made with the other licensee's consent as soon as practicable. No assignment shall be effective without the prior written consent of the BOCRA.

## 25. NOTICES

- 25.1 A notice shall be duly served if:
- 25.1.1 delivered by hand, and exchanged for a signed receipt, at the time of actual delivery;
- 25.1.2 sent by facsimile, upon its receipt being confirmed;
- 25.1.3 sent by recorded delivery post, five (5) working Days after the Day of posting.
- 26.2 Except if otherwise specifically provided all notices and other communications relating to an acceptance of this Offer shall be in writing and shall be sent as follows:

If to the Licensee:  
Appointed Interconnection Personnel  
The Licensee Address  
Telephone:  
Facsimile:  
Email:

If to BTC:

Chief Commercial Officer  
P O Box 700, Gaborone  
Telephone: + 267 3958000  
Email: interconnect@btc.bw

or to such other addresses as the Licensees may notify from time to time pursuant to this clause 26.

## **26. WAIVER**

- 26.1 The waiver of any breach of, or failure to enforce, any term or condition resulting from an acceptance of this Offer shall not be construed as a waiver of any other term or condition of this Offer. No waiver shall be valid unless it is in writing and signed on behalf of the Licensee making the waiver.

## **27. SEVERABILITY**

- 27.1 The invalidity, unenforceability of any provision in the Interconnection Agreement shall not affect the validity or enforceability of the remaining provisions.

## **28. AMENDMENTS**

- 28.1 Amendments and supplements to those elements of the Offer required by the Guidelines on Interconnection, including its Annexes, Appendices and Interconnection Services, shall be issued with not less than twenty-eight(28) days notices subject to the approval of the BOCRA.

## **29. GOVERNING LAW**

- 29.1 The interpretation, validity and performance of any Interconnection Agreement pursuant to this Offer shall be governed in all respects by the laws of the Republic of Botswana, including the Telecommunications Law.

### **30. DURATION**

30.1 This Offer shall take effect as from 01<sup>st</sup> June 2023 and shall continue in effect until superseded by a revised Offer approved by the BOCRA.