

ORDER

1. THIS ORDER is issued by the Regulatory Authority of Bermuda ("RA") in accordance with sections 48(5), 48(8)(a) and 49(1) of the Regulatory Authority Act 2011 ("RAA"), as read with section 32(2) of the Submarine Communications Cable Act 2020 ("SCCA"), and sections 48(2), 48(4), 48(5), 48(8)(a) and 49(1) of the RAA, as read with section 56(2) of the SCCA.
2. Applications for a permit (a "protection zone installation permit") to install one or more submarine cables in a protection zone under Part 5 of the SCCA, and for the grant of a licence to land and operate a submarine cable ("a submarine cable licence") under Part 6 of the SCCA, shall be made in accordance with, and substantially in the form as set out in, Annex 1.
3. The form of any protection zone installation permit issued pursuant to Part 5 of the SCCA shall be substantially in the form as set out in Annex 2.
4. The form of any submarine cable licence issued pursuant to Part 6 of the SCCA shall be substantially in the form as set out in Annex 3.
5. This Order shall become effective on the date of its publication.
6. So ordered this 22nd day of July 2021.



Chairman, Regulatory Authority of Bermuda

ANNEX 1



**Master Application Form:
Submarine Cable Licence and/or Protection
Zone Installation Permit**

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GENERAL INSTRUCTIONS

1. This Master Application Form should be used by Applicants that wish to apply for one or both of the following:
 - i. Submarine Cable Licence (“Licence”); or
 - ii. Protection Zone Installation Permit (“Permit”).
2. The Master Application Form must be signed and dated by or on behalf of the Applicant, stating, where signed on behalf of the Applicant, the capacity of the signatory.
3. **All Applicants** must complete **Parts A and B and E** of this Master Application Form. Applicants for **Licences** must complete **Part C** and Applicants for **Permits** must complete **Part D**.

Consultancy Deposit

4. A Consultancy Deposit in the amounts set out in Annex 1 must be provided with this Master Application Form.

Provision of information to the Authority

5. At all times during the application process, Applicants are obligated to:
 - (a) provide the Authority with complete and accurate information and update as necessary; and
 - (b) provide timely responses to any requests for information issued by the Authority.

Changes to information provided

6. Applicants are obligated to notify the Authority immediately of any change in the information provided and/or any representations made in the Master Application Form following the submission of the Master Application Form, up to and including the award of the requested licence and/or permit.

Submission of the Master Application Form to the Authority

7. The Master Application Form should be submitted to the address below:
[ADDRESS]
8. **[X]** copies of the Master Application Form should also be submitted to the Authority at:
[email]
9. All communications with the Authority regarding the Master Application Form should be conducted in writing and sent by letter or email to the addresses above.

10. There is no obligation on the part of the Authority to confirm receipt of any communication from the Applicant.

Definitions

11. In the Master Application Form, unless the context otherwise requires:

“Affiliate” means a person who directly or indirectly controls, is controlled by or is under common control of another person;

“Applicant” means the legal entity applying for a Licence or Permit;

“ECA” means the Electronic Communications Act 2011;

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

“RAA” means the Regulatory Authority Act 2011; and

“SCCA” means the Submarine Communications Cable Act 2020.

-- Please separate the front sheet, these instructions and Annex 1 from the Master Application Form prior to submitting --

MASTER APPLICATION FORM

PART A: APPLICANT'S DETAILS (ALL APPLICANTS)

General Information

Provide the following details regarding the Applicant:

Name of the Applicant in full.	
Registered address of Applicant.	
Registered number on the Bermuda Register of Companies.	
Name, address, primary contact telephone number (including, where possible, any mobile number) and electronic mail address of the person to whom correspondence or enquiries concerning the application should be directed.	

Management Information

Provide the following information for all directors and senior executives of the Applicant:

Legal name of person	Role (applicant, etc.)	Principal business office address

Ownership

Identify all significant legal interests in the Applicant (shareholders or partners owning 5% or more):

Person	Legal Interests

Affiliates

Provide legal names for all the Applicant's Affiliates (including Affiliates of the Applicant and the Applicant's owners), if any:

Entity	Affiliates
Owner 1:	
Owner 2:	
Owner 3:	
Owner 4:	
Owner 5:	

PART B: ELIGIBILITY CHECKLIST (ALL APPLICANTS)

Prior to submitting an application for a Licence or a Permit, the Applicant must complete the following checklist to confirm the Applicant's eligibility.

All Applicants	Confirm (Tick)
The Consultancy Deposit has been provided to the Authority.	<input type="checkbox"/>
The Applicant is a company or a limited liability company that it is registered with the Bermuda Register of Companies.	<input type="checkbox"/>
The Applicant (or owner or beneficial owner or an associated individual acting as a director or in a senior management role) has not been found by decision of the Authority to be in material non-compliance with any applicable laws, regulations or administrative decision of the Authority, including non-payment of Authority or Government fees.	<input type="checkbox"/>
(b) The Applicant (or owner or beneficial owner or an associated individual acting as a director or in a senior management role) has not been the subject of insolvency proceedings in Bermuda or other jurisdiction within the past five years.	<input type="checkbox"/>
(c) The Applicant (or owner or beneficial owner or an associated individual acting as a director or in a senior management role) has not been found guilty of an offence under the SCCA, ECA or RAA or an indictable offence within the past 15 years.	<input type="checkbox"/>

PART C: PROTECTION ZONE PERMIT APPLICATION (PERMIT APPLICANTS ONLY)

Applicant may provide additional information in an annex to the Master Application Form below.

Commercial

A description of the Applicant's business goals, objectives and mission.	<input type="checkbox"/>
A description of the Applicant's ownership structure, and what experience the Applicant and its owners have in installing and operating submarine cables.	<input type="checkbox"/>
The proposed route or routes, in the territorial waters of Bermuda, of the submarine cable or cables specified in the application.	<input type="checkbox"/>
Additional information on economic aspects of the proposed installation including: <ul style="list-style-type: none">the party or parties responsible for the installation of the proposed cable, andthe party or parties responsible for the maintenance and repair of the proposed installation.	<input type="checkbox"/>

Financial

Provide the following information regarding the Applicant's financial plan:

A summary description of the Applicant's financial plan for two years following the award of the Permit.	<input type="checkbox"/>
Any significant changes in the Applicant's financial status that have occurred over the past six months.	<input type="checkbox"/>
Any material changes in the Applicant's financial status that are reasonably likely to occur over the next 12 months.	<input type="checkbox"/>
Any other financial information that is relevant to consideration of the Applicant's proposed business.	<input type="checkbox"/>

Technical

Provide the following information on the technical capabilities of the Applicant:

The anticipated start and completion dates for installation of the system.	<input type="checkbox"/>
The technical description of the system which is proposed to be installed by the Applicant, together with all relevant information, such as relating to: <ul style="list-style-type: none">The 'Wet Link';	<input type="checkbox"/>

<ul style="list-style-type: none"> • Cable Landing Point; • Backhaul; • Terminal Station; • Technical Points of Interconnection; and • Such other information as the Applicant considers appropriate. 	
<p>The location information of the system which is proposed to be installed by the Applicant, such as relating to:</p> <ul style="list-style-type: none"> • Cable Landing Stations; • Landing Points; • Shore end protection; • Cable Protection Zone; • Route Position List & high-level Diagrammes; • Known Cable Crossings; and • Such other information as the Applicant considers appropriate. 	<input type="checkbox"/>
<p>Additional technical aspects of the system:</p> <ul style="list-style-type: none"> • design capacity of proposed installation; • proposed cable depth and burial of installation, including the proposed width of any trench surrounding the installation(s); • any additional measures designed to minimise future damage to the cable; • compliance with international best practice recommendations—through reference to relevant International Cable Protection Committee (ICPC) recommendations; and • cable or pipeline crossing arrangements. 	<input type="checkbox"/>
<p>The relevant experience in installing submarine cables and/or any other relevant industry experience.</p>	<input type="checkbox"/>
<p>The experience of key personnel of the Applicant, and demonstration that they have adequate qualifications and experience.</p>	<input type="checkbox"/>

PART C: SUBMARINE CABLE LICENCE APPLICATION (LICENCE APPLICANTS ONLY)

The Applicant should provide the information requested below in an annex to the Master Application Form and reference the appropriate place in the annex to respond to each question in the tables below.

Commercial

Provide the following information regarding the Applicant's commercial plan:

A description of the Applicant's business goals, objectives and mission.	<input type="checkbox"/>
A description of the Applicant's ownership structure, and what experience the applicant and its owners have in developing and operating similar businesses.	<input type="checkbox"/>
Detailed description of the submarine cable network and associated facilities the Applicant intends to construct and operate.	<input type="checkbox"/>
A description of the Applicant's proposed staffing levels generally.	<input type="checkbox"/>

Technical

Provide the following information regarding the Applicant's technical plan:

A copy of the relevant Protection Zone Installation Permit in respect of the cable system for which a licence is being sought (if the application is not being made in tandem with a permit application).	<input type="checkbox"/>
<p>The relevant experience in constructing and operating Submarine Cable networks and providing the services proposed by the Applicant and/or any other relevant industry experience.</p> <p>With regard to such experience, the Applicant should describe the specific types of networks operated and services provided in and outside of Bermuda by the Applicant.</p>	<input type="checkbox"/>
The experience of key personnel of the Applicant, and demonstration that they have adequate qualifications and experience.	<input type="checkbox"/>
Experience relevant to small island jurisdictions similar to Bermuda	<input type="checkbox"/>

PART E: DECLARATION (ALL APPLICANTS)

I, the undersigned, declare that I am authorized by the Applicant to:

- (a) submit this Master Application Form for and on behalf of the Applicant for the purpose of applying for a Submarine Licence / Protection Zone Installation Permit (Delete as applicable); and
- (b) act on behalf of the Applicant in all matters relating to the application.

I declare that the information contained in this form and the documents, statements and particulars accompanying it are, to the best of my knowledge and belief, correct.

I acknowledge that this application will only take effect upon written confirmation by the Authority that the Authority has received the completed Master Application Form, and the Applicant has met the eligibility requirements.

Submarine Cable Licence / Protection Zone Installation Permit (Delete as applicable)	
Name of Applicant (BLOCK CAPITALS)	
Signature	
Name of authorised signatory	
Address	
Email address	
Position	
Date	

APPENDIX 1: CONSULTANCY DEPOSIT

Licence Type	Consultancy Deposit
Protection Zone Installation Permit	\$50,000
Submarine Cable Licence	\$35,000

ANNEX 2

DATED _____ 2021



PROTECTION ZONE INSTALLATION PERMIT

(Issued under Part 5 of the Submarine
Communications Cable Act 2020)

Granted to

XXXX

Permittee:

Address:

Permit number: PZIP-20210203-01

Issue date:

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The Regulatory Authority of Bermuda (“Authority”), in the exercise of the authority conferred upon it by the Submarine Communications Cable Act 2020 (“SCCA”), hereby grants to [New Entrant], or a person acting on their behalf, a permit to install a submarine cable in a protection zone within Bermuda, subject to the terms of this Permit, the SCCA, the Electronic Communications Act 2011 (“ECA”), the Regulatory Authority Act 2011 (“RAA”), and any Regulations, General Determinations, Adjudicative Decisions, Orders, and Directions made or issued in accordance with these Acts.

1. DEFINITIONS

1.1. In this Permit, unless the context otherwise requires—

“**Affiliate**” means a person who directly or indirectly controls, is controlled by or is under common control of another person;

“**Applicable Legal Framework**” means any provision of law (as defined in section 2 of the Interpretation Act 1951) to which the Permittee is subject, and includes, but is not limited to, any applicable—

- (a) Administrative Determinations made by the Authority;
- (b) obligations imposed by the Authority to provide performance bonds in respect of compliance with any of the Conditions of the Permit, associated licences, authorizations and permits, or other requirements specified by the Authority;

“**Electronic Communications Network**” has the same meaning as in the ECA;

“**Electronic Communications Services**” has the same meaning as in the ECA;

“**Installation**” in relation to a submarine cable, includes—

- (a) the laying of the cable on or beneath the seabed;
- (b) the attachment of the cable to any other cable or thing; and
- (c) any activity that is ancillary or incidental to the installation of the cable (for this purpose, installation includes an activity covered by paragraph (a) or (b));

and the cognate expression “**install**” must be construed accordingly;

“**Permit**” means this permit to install a submarine cable in a protection zone in Bermuda;

“**Permittee**” means a permit holder and, for the avoidance of doubt, does not include any Affiliates of the Permittee;

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

“Protection zone” means an area designated in Schedule 1 of the SCCA, in which submarine cables have protection;

“Submarine cable” means that part of an international communications cable—

- (a) that is laid on or beneath the seabed that lies beneath the territorial waters of Bermuda;
- (b) that is laid for purposes that include connecting a place in Bermuda with a place outside Bermuda (whether or not the cable is laid via another place in Bermuda); and
- (c) that is connected to a place in Bermuda,

and includes any device attached to that part of the international communications cable, if the device is used in or in connection with that cable.

1.2. A reference in this Permit to—

- (a) the location of a submarine cable includes, in relation to a submarine cable that is not yet installed, a reference to the proposed location of the submarine cable;
- (b) a submarine cable includes a reference to a part of a submarine cable.

2. INTERPRETATION

2.1. For the purpose of interpreting this Permit—

- (a) unless the context otherwise requires, words or expressions must have the meaning assigned to them in the Permit, the SCCA, RAA and Interpretation Act 1951;
- (b) where there is any conflict between the provisions of this Permit and the SCCA or RAA, the provisions of the SCCA or RAA, as the case may be, must prevail;
- (c) references to Conditions and any Annex are to Conditions and the relevant Annex of the Permit, as modified from time to time in accordance with the Permit and the SCCA;

- (d) a document referred to in this Permit must be incorporated into and form part of the Permit and a reference to a document is to the document as modified from time to time;
- (e) headings and titles used in this Permit are for reference only and must not affect its interpretation or construction;
- (f) references to any law or statutory instrument include any modification, reenactment or legislative provisions substituted for the same;
- (g) expressions cognate with those used in this Permit must be construed accordingly;
- (h) use of the word “include” or “including” is to be construed as being without limitation; and
- (i) words importing the singular must include the plural and vice versa, and words importing the whole must be treated as including a reference to any part unless explicitly limited.

3. SCOPE OF PERMIT

- 3.1. This Permit authorizes the Permittee, or a Person acting on behalf of the Permittee, to install a submarine cable in a protection zone within Bermuda in accordance with the technical specifications at Annex A.
- 3.2. The relevant submarine cable must be installed within **75 metres** of the route or routes specified in Annex B.

[NB section 42(1)(a)(i) states that the any permit must include a condition that so much of the relevant cable or cables as is installed in a protection zone shall be installed within 75 metres of the route or routes specified by the Authority in the permit.]

This is subject to section 42(1)(a)(ii) which allows the RA to set a different distance from the specified route or routes. Where this provision is invoked, the highlighted distance will be adjusted accordingly.]

- 3.3. This Permit does not grant the Permittee any right or entitlement to—
 - (a) land and operate a submarine cable without having also obtained a licence pursuant to Part 6 of the SCCA;
 - (b) establish, construct or operate an Electronic Communications Network or provide any additional Electronic Communications Services; and/or

(c) use radio spectrum, radio stations or radio apparatus.

3.4. Nothing in this Permit must relieve the Permittee of the obligation to comply with any other requirement at law or practice to obtain any additional consents, permissions, authorizations, licences or permits as may be necessary to provide electronic communications services or exercise the Permittee's rights or discharge its obligations under this Permit, including any applicable requirements under the SCCA.

4. GRANT AND DURATION OF THE PERMIT

4.1. The Permit is valid and effective from the date hereof and must remain in effect until the earlier of—

- (a) 2 years after being granted;
- (b) the date on which the Permittee surrenders the Permit in accordance with section 44 of the SCCAA; or
- (c) the date on which the Permit is revoked or terminated pursuant to section 46 of the SCCA or section 93 of the RAA.

4.2. The Permit may be extended for an additional period pursuant to section 45 of the SCCA.

5. FEES, CONTRIBUTIONS AND PENALTIES

5.1. The Permittee must pay to the Authority such—

- (a) Government authorization fees as may be prescribed under section 52 of the RAA and the Government Fees Act 1965;
- (b) Regulatory Authority fees as may be prescribed under section 44 of the RAA; and
- (c) Initial or increased amounts of any consultancy deposit as may be ordered under section 57 of the SCCA (less any unused funds).

5.2. The Permittee must pay to the Authority any penalties and interest that may be imposed on the Permittee by the Authority for failure to make any payment due under this Permit and for any other contraventions of this Permit or the Applicable Regulatory Framework.

6. COMPLIANCE

6.1. The Permittee must comply with—

- (a) the terms of this Permit, including any Annex;
 - (b) the terms of any associated licences, authorizations and permits issued by the Authority to the Permittee;
 - (c) the Applicable Regulatory Framework; and
 - (d) the treaties of the International Telecommunications Union currently in force and any other international agreements, including any modifications, relating to Electronic Communications to which Bermuda is a part.
- 6.2. Where there is an irreconcilable conflict among any of the instruments identified above, the following order of precedence must apply—
- (a) Acts of the Legislature (subject to the order of priority noted in condition 2.1(b));
 - (b) Regulations and Orders made by the Minister;
 - (c) International agreements that apply to Bermuda;
 - (d) General or other Administrative Determinations made by the Authority, and
 - (e) This Permit.

7. INSTALLATION OF SUBMARINE CABLE

- 7.1. The Permittee must ensure that all reasonable steps are taken to ensure that the installation of a submarine cable causes as little detriment and inconvenience, and as little damage, as is practicable.
- 7.2. When installing the relevant cable, the Permittee must ensure that all reasonable steps are taken—
- (a) to act in accordance with good engineering practice;
 - (b) to protect the safety of persons and property; and
 - (c) to protect the environment.
- 7.3. The Permittee must ensure that the installation is done in accordance with any standard that—
- (a) relates to installation;

- (b) is recognized by the Authority as a standard for use in the telecommunications industry; and
 - (c) is likely to reduce a risk to the safety of the public if the carrier complies with the standard.
- 7.4. The Permittee must ensure that the installation is done in a manner that is consistent with Bermuda's obligations under an international agreement that is relevant to the installation.

8. RIGHTS OF ACCESS

- 8.1. Subject to the provisions of this section, nothing in this licence must be interpreted as granting or permitting the Permittee rights of access over, through or across private property.
- 8.2. In the exercise of any permission, consent and/or approval granted under this Permit, the Permittee must cause as little inconvenience or damage as is reasonably practicable and the Permittee must be liable to pay compensation to any person who suffers damage to his property in consequence of the exercise of such permission, consent and/or approval.
- 8.3. For the avoidance of doubt, this condition must also apply to public lands, public buildings and other public property.

9. INFORMATION, AUDITS AND INSPECTION

- 9.1. In addition to the information required by section 53 of the RAA, the Permittee must promptly provide the Authority with any documents, accounts, reports, returns, estimates or other information required by the Authority to carry out its responsibilities under the RAA, SCCA and ECA.
- 9.2. The Permittee must permit the Authority or persons designated by the Authority to examine, investigate or audit, or procure assistance as the Authority may require to conduct an examination, investigation or audit of, any aspect of the Permittee's business.
- 9.3. Subject to the provisions of section 92 of the RAA, the Permittee must permit the Authority or persons designated by the Authority to enter the Permittee's premises, and must facilitate access by them to premises used by the Permittee, to conduct an inspection, examination, investigation or audit of the Permittee.
- 9.4. The Permittee must place a complete copy of this Permit on the Permittee's website or, if no website exists, in a conspicuous place in the Permittee's principal place of business that

it is readily available for inspection free of charge by members of the general public during normal office hours.

10. MODIFICATION OF THE PERMIT

10.1. The Permit may be modified—

- (a) with the mutual consent of the Permittee and the Authority;
- (b) by the Authority pursuant to the provisions of section 51 of the RAA and section 42(2) of the SCCA;
- (c) by the Authority following an enforcement proceeding, pursuant to the provisions of section 93 of the RAA.

10.2. The Permit may also be modified by the Authority to give effect to any requirements arising from regulations made by the Minister responsible for telecommunications pursuant to section 51 of the SCCA, and which are made subsequent to the date on which the Permit is granted.

11. ENFORCEMENT AND REVOCATION

11.1. The Authority may initiate enforcement proceedings pursuant to section 93 of the RAA if there is reason to believe that the Permittee has contravened the terms of this Permit or the Applicable Regulatory Framework, and the Permittee must participate in good faith in enforcement proceedings.

11.2. Upon finding that the Permittee has contravened this Permit or the Applicable Regulatory Framework, the Authority may, among other things, issue a warning, direct the Permittee to remedy the contravention or make restitution, impose financial penalties up to ten per cent of the Permittee's total annual turnover, or modify or suspend this Permit or any other authorization issued to the Permittee by the Authority.

11.3. The Authority may suspend or revoke this Permit in accordance with the provisions of section 46 of the SCCA.

12. SURRENDER OF PERMIT

12.1. The Permittee may, at any time, surrender the permit by written notice given to the Authority, in accordance with section 44 of the SCCA.

13. ASSIGNMENT

- 13.1. The Permittee must not sub-license, assign or grant any right, interest or entitlement in the Permit nor transfer the Permit to any other person, including an Affiliate of the Permittee, without the prior written authorization of the Authority.

14. CHANGE OF CONTROL

- 14.1. The Permittee must not complete any proposed change in Control of the Permittee without first obtaining the prior written authorization of the Authority.
- 14.2. For the purposes of condition 14.1, “Control” means—
- (a) the power, whether held directly or indirectly, to exercise decisive influence over the Permittee, including by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; and
 - (b) must, in any event, be deemed to exist in any case involving the ownership of 25 percent or more of the shares, stock or other securities or voting rights, including through an agreement or arrangement of any type.

15. CHANGE OF LAW

- 15.1. Despite any provision to the contrary, where either of the RAA, the ECA or the SCCA is amended, or repealed and replaced, the amendments or the new enactment as the case may be, must apply to this Permit and this Permit must, immediately upon the coming into force of any amendments or new enactment, be read as if the Permit were issued under and in accordance with the provisions of the amended Act or new enactment.

16. INDEMNIFICATION

- 16.1. The Permittee must indemnify the Authority against all actions, claims and demands which may be brought or made by any person in respect of any injury or death of any person or damage to any property arising from any act of the Permittee permitted or authorized by the Permit.
- 16.2. The Authority must provide the Permittee with notice of any such actions, claims and demands, but the Authority’s failure to do so must not relieve the Permittee of any obligations imposed on the Permittee by this Condition.

17. FORCE MAJEURE; OTHER EVENTS

- 17.1. If the Permittee is prevented from complying with the Permit by acts of God, war, warlike operations, terrorist act, epidemic, pandemic, quarantine, civil commotion, major strikes or any other significant or protracted industrial action, fire, tempest or any other causes beyond the Permittee's control—
- (a) the Permittee must notify the Authority, as promptly as reasonably practicable, of the obligations of the Permit with which the Permittee cannot comply, the expected duration of the event of force majeure, and the measures the Permittee is taking to overcome the consequences of the event of force majeure; and
 - (b) the Authority may suspend those obligations of the Permit as the Authority concludes the Permittee cannot comply with for as long as the event of force majeure continues.
- 17.2. In addition to events of force majeure, the Permittee must notify the Authority of any fact or event likely to affect materially the Permittee's ability to comply with any Condition of this Permit, or an insolvency-related fact or event in respect of the Permittee or any Affiliate, or any preparatory steps being taken that might lead to an insolvency-related event, immediately upon becoming aware of the fact or event.

18. NOTICES

- 18.1. Whenever this Permit requires or allows notice, the notice must be written and state with reasonable certainty the information being communicated.
- 18.2. Additionally, the notice must be electronically signed by a person authorised to issue notice on behalf of the Authority or the Permittee issuing notice (as the case may be) and dispatched by email from the designated email address of the Authority or Permittee (as the case may be) issuing notice, to the designated email address of the other Party.
- 18.3. Every Notice will be deemed to have been served when the email through which it is dispatched leaves the computer system of the person issuing Notice.
- 18.4. The designated email addresses of the Parties are:
- (a) Authority: [insert as appropriate]; and
 - (b) Permittee: [insert as appropriate].

ANNEX A

TECHNICAL SPECIFICATIONS

[Technical specifications to be supplied by applicant]

ANNEX B

LOCATION INFORMATION

[Location information to be supplied by applicant.]

ANNEX 3

DATED

2021



SUBMARINE CABLE LICENCE

(Issued under Part 6 of the Submarine
Communications Cable Act 2020)

Granted to

XXXX

Licensee:

Address:

Licence number: SCL20210203-01

Issue date:

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The Regulatory Authority of Bermuda (“RA”), in the exercise of the authority conferred upon it by the Submarine Communications Cable Act 2020 (“SCCA”), hereby grants to [New Entrant] a licence to land and operate a submarine cable within Bermuda, subject to the terms of this Licence, the SCCA, the Electronic Communications Act 2011 (“ECA”), the Regulatory Authority Act 2011 (“RAA”), and any Regulations, General Determinations, Adjudicative Decisions, Orders, and Directions made or issued in accordance with these Acts.

1. DEFINITIONS

1.1. In this Licence, unless the context otherwise requires—

“**Affiliate**” means a person who directly or indirectly controls, is controlled by or is under common control of another person;

“**Applicable Regulatory Framework**” means any provision of law (as defined in section 2 of the Interpretation Act 1951) to which the Licensee is subject, and includes, but is not limited to, any applicable—

- (a) Administrative Determinations made by the Authority;
- (b) obligations imposed by the Authority to provide performance bonds in respect of compliance with any of the Conditions of the Permit, associated licences, authorizations and permits, or other requirements specified by the Authority;

“**Electronic Communications Network**” has the same meaning as in the ECA;

“**Electronic Communications Services**” has the same meaning as in the ECA;

“**Installation**” in relation to a submarine cable, includes—

- (c) the laying of the cable on or beneath the seabed;
- (d) the attachment of the cable to any other cable or thing; and
- (e) any activity that is ancillary or incidental to the installation of the cable (for this purpose, installation includes an activity covered by paragraph (a) or (b));

and the cognate expression “**install**” shall be construed accordingly;

“**Licence**” means this licence to land and operate a submarine cable;

“**Licensee**” means a licence holder, [insert name] and, for the avoidance of doubt, does not include any Affiliates of the Licensee;

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

“Protection zone” means an area designated in Schedule 1 of the SCCA, in which submarine cables have protection;

“Submarine cable” means that part of an international communications cable—

- (d) that is laid on or beneath the seabed that lies beneath the territorial waters of Bermuda;
- (e) that is laid for purposes that include connecting a place in Bermuda with a place outside Bermuda (whether or not the cable is laid via another place in Bermuda); and
- (f) that is connected to a place in Bermuda,

and includes any device attached to that part of the international communications cable, if the device is used in or in connection with that cable.

1.2. A reference in this Licence to—

- (a) the location of a submarine cable includes, in relation to a submarine cable that is not yet installed, a reference to the proposed location of the submarine cable;
- (b) a submarine cable includes a reference to a part of a submarine cable.

2. INTERPRETATION

2.1. For the purpose of interpreting this Licence—

- (a) unless the context otherwise requires, words or expressions must have the meaning assigned to them in the Licence, the SCCA, RAA and Interpretation Act 1951;
- (b) where there is any conflict between the provisions of this Licence and the SCCA or RAA, the provisions of the SCCA or RAA, as the case may be, must prevail;
- (c) references to Conditions and any Annex are to Conditions and the relevant Annex of the Licence, as modified from time to time in accordance with the Licence and the SCCA;

- (d) a document referred to in this Licence must be incorporated into and form part of the Licence and a reference to a document is to the document as modified from time to time;
- (e) headings and titles used in this Licence are for reference only and must not affect its interpretation or construction;
- (f) references to any law or statutory instrument include any modification, reenactment or legislative provisions substituted for the same;
- (g) expressions cognate with those used in this Licence must be construed accordingly;
- (h) use of the word “include” or “including” is to be construed as being without limitation; and
- (i) words importing the singular must include the plural and vice versa, and words importing the whole must be treated as including a reference to any part unless explicitly limited.

3. SCOPE OF LICENCE

- 3.1. This Licence authorizes the Licensee to land and operate within Bermuda the submarine cable detailed in the Protection Zone Installation Permit xxxxxxxx of [date].
- 3.2. This Licence does not grant the Licensee any right or entitlement to—
 - (a) install a submarine cable without having also obtained a permit pursuant to Part 5 of the SCCA;
 - (b) establish, construct or operate an Electronic Communications Network or provide any additional Electronic Communications Services; and/or
 - (c) use radio spectrum, radio stations or radio apparatus.
- 3.3. Nothing in this Licence must relieve the Licensee of the obligation to comply with any other requirement at law or practice to obtain any additional consents, permissions, authorizations, licences or permits as may be necessary to provide Electronic Communications Services or exercise the Licensee’s rights or discharge its obligations under this Licence, including any applicable requirements under the SCCA.
- 3.4. This Licence is non-exclusive and is not intended to convey proprietary rights.

4. GRANT AND DURATION OF THE LICENCE

- 4.1. The Licence is valid and effective from the date hereof and must remain in effect until the earlier of—
- (a) 25 years after being granted;
 - (b) the date on which the Licensee surrenders the Licence in accordance with Condition 14.2; or
 - (c) the date on which the Licence is revoked or terminated pursuant to section 66 of the SCCA or section 93 of the RAA.
- 4.2. The Licence may be renewed for an additional term or terms pursuant to section 60 of the SCCA.
- 4.3. [This Licence replaces the previous licence issued on _____, and in no way releases the Licensee from any liabilities, responsibilities or obligations arising out of any agreements and/or contracts entered into under the previous licences.]

NB. Condition 4.3 is only required where this Licence replaces a previous licence.

5. FEES, CONTRIBUTIONS AND PENALTIES

- 5.1. The Licensee must pay to the Authority such—
- (a) Government authorization fees as may be prescribed under section 52 of the RAA and the Government Fees Act 1965;
 - (b) Regulatory Authority fees as may be prescribed under section 11 of the ECA and section 44 of the RAA; and
 - (c) Initial or increased amounts of any consultancy deposit as may be ordered under section 57 of the SCCA (less any unused funds).
- 5.2. The Licensee must pay to the Authority any penalties and interest that may be imposed on the Licensee by the Authority for failure to make any payment due under this Licence and for any other contraventions of this Licence or the Applicable Regulatory Framework.

6. COMPLIANCE

- 6.1. The Licensee must comply with—

- (a) the terms of this Licence, including any Annex;
 - (b) the terms of any associated licences, authorizations and permits issued by the Authority to the Licensee;
 - (c) the Applicable Regulatory Framework; and
 - (d) the treaties of the International Telecommunications Union currently in force and any other international agreements, including any modifications, relating to Electronic Communications to which Bermuda is a part.
- 6.2. Where there is an irreconcilable conflict among any of the instruments identified above, the following order of precedence must apply—
- (a) Acts of the Legislature (subject to the order of priority noted in condition 2.1(b));
 - (b) Regulations and Orders made by the Minister;
 - (c) International agreements that apply to Bermuda;
 - (d) General or other Administrative Determinations made by the Authority, and
 - (e) This Licence.

7. OPERATION OF SUBMARINE CABLE

- 7.1. The Licensee must land and operate the applicable submarine cable in a manner that—
- (a) remains within the Protected Zone;
 - (b) does not interfere with the installation, landing or operation of any other submarine cable;
 - (c) causes as little detriment and inconvenience, and as little damage, as is practicable; and
 - (d) does not interfere with the operation of Electronic Communications Networks and the provision of Electronic Communications Services by other persons that hold a Licence.
- 7.2. When operating the relevant cable, the Licensee must ensure that all reasonable steps are taken—
- (a) to act in accordance with good engineering practice;

- (b) to protect the safety of persons and property; and
 - (c) to protect the environment.
- 7.3. The Licensee must ensure that the operation of the relevant submarine cable is done in accordance with any standard that—
 - (a) relates to operation;
 - (b) is recognized by the Authority as a standard for use in the telecommunications industry; and
 - (c) is likely to reduce a risk to the safety of the public if the carrier complies with the standard.
- 7.4. The Licensee must ensure that the operation of the relevant submarine cable is done in a manner that is consistent with Bermuda's obligations under an international agreement that is relevant to the installation.
- 7.5. The Licensee must procure such insurance or post such performance bonds as the Authority may reasonably require to ensure that any works undertaken by the Licensee are completed and that any property abandoned by the Licensee or that has fallen into disrepair is removed from public property.
- 7.6. Upon the revocation or termination of the Licence and where possible, the Licensee must make reasonable efforts to sell the Licensee's business and assets, and facilitate the transfer of the Licensee's Bermudian staff employed in Bermuda, to another authorization holder in Bermuda.

8. RIGHTS OF ACCESS

- 8.1. Subject to the provisions of this section, nothing in this Licence must be interpreted as granting or permitting the Licensee rights of access over, through or across private property.
- 8.2. In the exercise of any permission, consent and/or approval granted under this Licence, the Licensee must cause as little inconvenience or damage as is reasonably practicable and the Licensee must be liable to pay compensation to any person who suffers damage to his property in consequence of the exercise of such permission, consent and/or approval.
- 8.3. For the avoidance of doubt, this condition must also apply to public lands, public buildings and other public property.

9. PRIVACY OF COMMUNICATIONS

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

10. CONFIDENTIALITY OF PERSONAL DATA

- 10.1. The Licensee must abide by the requirements of sections 29 and 31 of the ECA, the Personal Information Protection Act 2016 (to the extent that any relevant provision is in force), any other applicable enactment and any General Determinations made by the Authority in relation to the confidentiality of customer information or the security of customer data.
- 10.2. The Licensee must implement reasonable internal measures, including by limiting access to physical records, systems and processes where appropriate, to safeguard and maintain the confidentiality of any such data that is commercially or competitively sensitive.

11. INFORMATION, AUDITS AND INSPECTION

- 11.1. In addition to the information required by section 53 of the RAA, the Licensee must promptly provide the Authority with any documents, accounts, reports, returns, estimates or other information required by the Authority to carry out its responsibilities under the RAA, SCCA and ECA.
- 11.2. The Licensee must permit the Authority or persons designated by the Authority to examine, investigate or audit, or procure such assistance as the Authority may require to conduct an examination, investigation or audit of, any aspect of the Licensee's business.
- 11.3. Subject to the provisions of section 92 of the RAA, the Licensee must permit the Authority or persons designated by the Authority to enter the Licensee's premises, and must facilitate access by them to premises used by the Licensee, to conduct an inspection, examination, investigation or audit of the Licensee.
- 11.4. The Licensee must place a complete copy of this Licence on the Licensee's website or, if no website exists, in a conspicuous place in the Licensee's principal place of business that it is readily available for inspection free of charge by members of the general public during normal office hours.

12. MODIFICATION OF THE LICENCE

12.1. The Licence may be modified—

- (a) with the mutual consent of the Licensee and the Authority;
- (b) by the Authority pursuant to the provisions of section 51 of the RAA and section 64(2) of the SCCA; and
- (c) by the Authority following an enforcement proceeding, pursuant to the provisions of section 93 of the RAA.

13. ENFORCEMENT AND REVOCATION

- 13.1. The Authority may initiate enforcement proceedings pursuant to section 93 of the RAA if there is reason to believe that the Licensee has contravened the terms of this Licence or the Applicable Regulatory Framework, and the Licensee must participate in good faith in the enforcement proceedings.
- 13.2. Upon finding that the Licensee has contravened this Licence or the Applicable Regulatory Framework, the Authority may, among other things, issue a warning, direct the Licensee to remedy the contravention or make restitution, impose financial penalties up to ten per cent of the Licensee's total annual turnover, or modify or suspend this Licence or any other authorization issued to the Licensee by the Authority.
- 13.3. The Authority may revoke or terminate this Licence in accordance with the provisions of section 66 of the SCCA.

14. DISCONTINUATION OF SERVICE; SURRENDER OF LICENCE

- 14.1. The Licensee may surrender the Licence, with the agreement of the Authority, after having applied for revocation pursuant to section 66(b) of the SCCA.
- 14.2. The Licensee must submit a request to surrender the Licence no less than 180 days, or such lesser period as the Authority may allow, in advance of the date on which the Licensee proposes to surrender the Licence.

15. ASSIGNMENT

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

16. CHANGE OF CONTROL

- 16.1. The Licensee must not complete any proposed change in Control of the Licensee without first obtaining the prior written authorization of the Authority in accordance with the procedures laid down in the RAA.
- 16.2. For the purposes of condition 16.1, “Control” means—
- (a) the power, whether held directly or indirectly, to exercise decisive influence over the Licensee, including by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; and
 - (b) must, in any event, be deemed to exist in any case involving the ownership of 25 percent or more of the shares, stock or other securities or voting rights, including through an agreement or arrangement of any type.

17. CHANGE OF LAW

- 17.1. Despite any provision to the contrary, where either of the RAA, the ECA or the SCCA is amended, or repealed and replaced, the amendments or the new enactment as the case may be, must apply to this Licence and this Licence must, immediately upon the coming into force of any amendments or new enactment, be read as if the Licence was issued under and in accordance with the provisions of the amended Act or new enactment.

18. INDEMNIFICATION

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

19. FORCE MAJEURE; OTHER EVENTS

- 19.1. If the Licensee is prevented from complying with the Licence by acts of God, war, warlike operations, terrorist act, epidemic, pandemic, quarantine, civil commotion, major strikes or

any other significant or protracted industrial action, fire, tempest or any other causes beyond the Licensee's control—

- (a) the Licensee must notify the Authority, as promptly as reasonably practicable, of the obligations of the Licence with which the Licensee cannot comply, the expected duration of the event of force majeure, and the measures the Licensee is taking to overcome the consequences of the event of force majeure; and
- (b) the Authority may suspend those obligations of the License as the Authority concludes the Licensee cannot comply with for as long as the event of force majeure continues.

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

20. NOTICES

- 20.1. Whenever this Permit requires or allows notice, the notice must be written and state with reasonable certainty the information being communicated.
- 20.2. Additionally, the notice must be electronically signed by a person authorised to issue notice on behalf of the Authority or the Permittee issuing notice (as the case may be) and dispatched by email from the designated email address of the Authority or Permittee (as the case may be) issuing notice, to the designated email address of the other Party.
- 20.3. Every Notice will be deemed to have been served when the email through which it is dispatched leaves the computer system of the person issuing Notice.
- 20.4. The designated email addresses of the Parties are:
- (a) Authority: [insert as appropriate]; and
 - (b) Permittee: [insert as appropriate].

ANNEX 1



**Master Application Form:
Submarine Cable Licence and/or Protection
Zone Installation Permit**

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GENERAL INSTRUCTIONS

1. This Master Application Form should be used by Applicants that wish to apply for one or both of the following:
 - i. Submarine Cable Licence (“Licence”); or
 - ii. Protection Zone Installation Permit (“Permit”).
2. The Master Application Form must be signed and dated by or on behalf of the Applicant, stating, where signed on behalf of the Applicant, the capacity of the signatory.
3. **All Applicants** must complete **Parts A and B and E** of this Master Application Form. Applicants for **Licences** must complete **Part C** and Applicants for **Permits** must complete **Part D**.

Consultancy Deposit

4. A Consultancy Deposit in the amounts set out in Annex 1 must be provided with this Master Application Form.

Provision of information to the Authority

5. At all times during the application process, Applicants are obligated to:
 - (a) provide the Authority with complete and accurate information and update as necessary; and
 - (b) provide timely responses to any requests for information issued by the Authority.

Changes to information provided

6. Applicants are obligated to notify the Authority immediately of any change in the information provided and/or any representations made in the Master Application Form following the submission of the Master Application Form, up to and including the award of the requested licence and/or permit.

Submission of the Master Application Form to the Authority

7. The Master Application Form should be submitted to the address below:
[ADDRESS]
8. **[X]** copies of the Master Application Form should also be submitted to the Authority at:
[email]
9. All communications with the Authority regarding the Master Application Form should be conducted in writing and sent by letter or email to the addresses above.

10. There is no obligation on the part of the Authority to confirm receipt of any communication from the Applicant.

Definitions

11. In the Master Application Form, unless the context otherwise requires:

“Affiliate” means a person who directly or indirectly controls, is controlled by or is under common control of another person;

“Applicant” means the legal entity applying for a Licence or Permit;

“ECA” means the Electronic Communications Act 2011;

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

“RAA” means the Regulatory Authority Act 2011; and

“SCCA” means the Submarine Communications Cable Act 2020.

-- Please separate the front sheet, these instructions and Annex 1 from the Master Application Form prior to submitting --

MASTER APPLICATION FORM

PART A: APPLICANT'S DETAILS (ALL APPLICANTS)

General Information

Provide the following details regarding the Applicant:

Name of the Applicant in full.	
Registered address of Applicant.	
Registered number on the Bermuda Register of Companies.	
Name, address, primary contact telephone number (including, where possible, any mobile number) and electronic mail address of the person to whom correspondence or enquiries concerning the application should be directed.	

Management Information

Provide the following information for all directors and senior executives of the Applicant:

Legal name of person	Role (applicant, etc.)	Principal business office address

Ownership

Identify all significant legal interests in the Applicant (shareholders or partners owning 5% or more):

Person	Legal Interests

Affiliates

Provide legal names for all the Applicant's Affiliates (including Affiliates of the Applicant and the Applicant's owners), if any:

Entity	Affiliates
Owner 1:	
Owner 2:	
Owner 3:	
Owner 4:	
Owner 5:	

PART B: ELIGIBILITY CHECKLIST (ALL APPLICANTS)

Prior to submitting an application for a Licence or a Permit, the Applicant must complete the following checklist to confirm the Applicant's eligibility.

All Applicants	Confirm (Tick)
The Consultancy Deposit has been provided to the Authority.	<input type="checkbox"/>
The Applicant is a company or a limited liability company that it is registered with the Bermuda Register of Companies.	<input type="checkbox"/>
The Applicant (or owner or beneficial owner or an associated individual acting as a director or in a senior management role) has not been found by decision of the Authority to be in material non-compliance with any applicable laws, regulations or administrative decision of the Authority, including non-payment of Authority or Government fees.	<input type="checkbox"/>
(b) The Applicant (or owner or beneficial owner or an associated individual acting as a director or in a senior management role) has not been the subject of insolvency proceedings in Bermuda or other jurisdiction within the past five years.	<input type="checkbox"/>
(c) The Applicant (or owner or beneficial owner or an associated individual acting as a director or in a senior management role) has not been found guilty of an offence under the SCCA, ECA or RAA or an indictable offence within the past 15 years.	<input type="checkbox"/>

PART C: PROTECTION ZONE PERMIT APPLICATION (PERMIT APPLICANTS ONLY)

Applicant may provide additional information in an annex to the Master Application Form below.

Commercial

A description of the Applicant's business goals, objectives and mission.	<input type="checkbox"/>
A description of the Applicant's ownership structure, and what experience the Applicant and its owners have in installing and operating submarine cables.	<input type="checkbox"/>
The proposed route or routes, in the territorial waters of Bermuda, of the submarine cable or cables specified in the application.	<input type="checkbox"/>
Additional information on economic aspects of the proposed installation including: <ul style="list-style-type: none">the party or parties responsible for the installation of the proposed cable, andthe party or parties responsible for the maintenance and repair of the proposed installation.	<input type="checkbox"/>

Financial

Provide the following information regarding the Applicant's financial plan:

A summary description of the Applicant's financial plan for two years following the award of the Permit.	<input type="checkbox"/>
Any significant changes in the Applicant's financial status that have occurred over the past six months.	<input type="checkbox"/>
Any material changes in the Applicant's financial status that are reasonably likely to occur over the next 12 months.	<input type="checkbox"/>
Any other financial information that is relevant to consideration of the Applicant's proposed business.	<input type="checkbox"/>

Technical

Provide the following information on the technical capabilities of the Applicant:

The anticipated start and completion dates for installation of the system.	<input type="checkbox"/>
The technical description of the system which is proposed to be installed by the Applicant, together with all relevant information, such as relating to: <ul style="list-style-type: none">The 'Wet Link';	<input type="checkbox"/>

<ul style="list-style-type: none"> • Cable Landing Point; • Backhaul; • Terminal Station; • Technical Points of Interconnection; and • Such other information as the Applicant considers appropriate. 	
<p>The location information of the system which is proposed to be installed by the Applicant, such as relating to:</p> <ul style="list-style-type: none"> • Cable Landing Stations; • Landing Points; • Shore end protection; • Cable Protection Zone; • Route Position List & high-level Diagrammes; • Known Cable Crossings; and • Such other information as the Applicant considers appropriate. 	<input type="checkbox"/>
<p>Additional technical aspects of the system:</p> <ul style="list-style-type: none"> • design capacity of proposed installation; • proposed cable depth and burial of installation, including the proposed width of any trench surrounding the installation(s); • any additional measures designed to minimise future damage to the cable; • compliance with international best practice recommendations—through reference to relevant International Cable Protection Committee (ICPC) recommendations; and • cable or pipeline crossing arrangements. 	<input type="checkbox"/>
<p>The relevant experience in installing submarine cables and/or any other relevant industry experience.</p>	<input type="checkbox"/>
<p>The experience of key personnel of the Applicant, and demonstration that they have adequate qualifications and experience.</p>	<input type="checkbox"/>

PART C: SUBMARINE CABLE LICENCE APPLICATION (LICENCE APPLICANTS ONLY)

The Applicant should provide the information requested below in an annex to the Master Application Form and reference the appropriate place in the annex to respond to each question in the tables below.

Commercial

Provide the following information regarding the Applicant's commercial plan:

A description of the Applicant's business goals, objectives and mission.	<input type="checkbox"/>
A description of the Applicant's ownership structure, and what experience the applicant and its owners have in developing and operating similar businesses.	<input type="checkbox"/>
Detailed description of the submarine cable network and associated facilities the Applicant intends to construct and operate.	<input type="checkbox"/>
A description of the Applicant's proposed staffing levels generally.	<input type="checkbox"/>

Technical

Provide the following information regarding the Applicant's technical plan:

A copy of the relevant Protection Zone Installation Permit in respect of the cable system for which a licence is being sought (if the application is not being made in tandem with a permit application).	<input type="checkbox"/>
The relevant experience in constructing and operating Submarine Cable networks and providing the services proposed by the Applicant and/or any other relevant industry experience. With regard to such experience, the Applicant should describe the specific types of networks operated and services provided in and outside of Bermuda by the Applicant.	<input type="checkbox"/>
The experience of key personnel of the Applicant, and demonstration that they have adequate qualifications and experience.	<input type="checkbox"/>
Experience relevant to small island jurisdictions similar to Bermuda	<input type="checkbox"/>

PART E: DECLARATION (ALL APPLICANTS)

I, the undersigned, declare that I am authorized by the Applicant to:

- (a) submit this Master Application Form for and on behalf of the Applicant for the purpose of applying for a Submarine Licence / Protection Zone Installation Permit (Delete as applicable); and
- (b) act on behalf of the Applicant in all matters relating to the application.

I declare that the information contained in this form and the documents, statements and particulars accompanying it are, to the best of my knowledge and belief, correct.

I acknowledge that this application will only take effect upon written confirmation by the Authority that the Authority has received the completed Master Application Form, and the Applicant has met the eligibility requirements.

Submarine Cable Licence / Protection Zone Installation Permit (Delete as applicable)	
Name of Applicant (BLOCK CAPITALS)	
Signature	
Name of authorised signatory	
Address	
Email address	
Position	
Date	

APPENDIX 1: CONSULTANCY DEPOSIT

Licence Type	Consultancy Deposit
Protection Zone Installation Permit	\$50,000
Submarine Cable Licence	\$35,000

ANNEX 2

DATED _____ 2021



PROTECTION ZONE INSTALLATION PERMIT

(Issued under Part 5 of the Submarine
Communications Cable Act 2020)

Granted to

XXXX

Permittee:

Address:

Permit number: PZIP-20210203-01

Issue date:

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The Regulatory Authority of Bermuda (“Authority”), in the exercise of the authority conferred upon it by the Submarine Communications Cable Act 2020 (“SCCA”), hereby grants to [New Entrant], or a person acting on their behalf, a permit to install a submarine cable in a protection zone within Bermuda, subject to the terms of this Permit, the SCCA, the Electronic Communications Act 2011 (“ECA”), the Regulatory Authority Act 2011 (“RAA”), and any Regulations, General Determinations, Adjudicative Decisions, Orders, and Directions made or issued in accordance with these Acts.

1. DEFINITIONS

1.1. In this Permit, unless the context otherwise requires—

“**Affiliate**” means a person who directly or indirectly controls, is controlled by or is under common control of another person;

“**Applicable Legal Framework**” means any provision of law (as defined in section 2 of the Interpretation Act 1951) to which the Permittee is subject, and includes, but is not limited to, any applicable—

- (a) Administrative Determinations made by the Authority;
- (b) obligations imposed by the Authority to provide performance bonds in respect of compliance with any of the Conditions of the Permit, associated licences, authorizations and permits, or other requirements specified by the Authority;

“**Electronic Communications Network**” has the same meaning as in the ECA;

“**Electronic Communications Services**” has the same meaning as in the ECA;

“**Installation**” in relation to a submarine cable, includes—

- (a) the laying of the cable on or beneath the seabed;
- (b) the attachment of the cable to any other cable or thing; and
- (c) any activity that is ancillary or incidental to the installation of the cable (for this purpose, installation includes an activity covered by paragraph (a) or (b));

and the cognate expression “**install**” must be construed accordingly;

“**Permit**” means this permit to install a submarine cable in a protection zone in Bermuda;

“**Permittee**” means a permit holder and, for the avoidance of doubt, does not include any Affiliates of the Permittee;

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

“Protection zone” means an area designated in Schedule 1 of the SCCA, in which submarine cables have protection;

“Submarine cable” means that part of an international communications cable—

- (a) that is laid on or beneath the seabed that lies beneath the territorial waters of Bermuda;
- (b) that is laid for purposes that include connecting a place in Bermuda with a place outside Bermuda (whether or not the cable is laid via another place in Bermuda); and
- (c) that is connected to a place in Bermuda,

and includes any device attached to that part of the international communications cable, if the device is used in or in connection with that cable.

1.2. A reference in this Permit to—

- (a) the location of a submarine cable includes, in relation to a submarine cable that is not yet installed, a reference to the proposed location of the submarine cable;
- (b) a submarine cable includes a reference to a part of a submarine cable.

2. INTERPRETATION

2.1. For the purpose of interpreting this Permit—

- (a) unless the context otherwise requires, words or expressions must have the meaning assigned to them in the Permit, the SCCA, RAA and Interpretation Act 1951;
- (b) where there is any conflict between the provisions of this Permit and the SCCA or RAA, the provisions of the SCCA or RAA, as the case may be, must prevail;
- (c) references to Conditions and any Annex are to Conditions and the relevant Annex of the Permit, as modified from time to time in accordance with the Permit and the SCCA;

- (d) a document referred to in this Permit must be incorporated into and form part of the Permit and a reference to a document is to the document as modified from time to time;
- (e) headings and titles used in this Permit are for reference only and must not affect its interpretation or construction;
- (f) references to any law or statutory instrument include any modification, reenactment or legislative provisions substituted for the same;
- (g) expressions cognate with those used in this Permit must be construed accordingly;
- (h) use of the word “include” or “including” is to be construed as being without limitation; and
- (i) words importing the singular must include the plural and vice versa, and words importing the whole must be treated as including a reference to any part unless explicitly limited.

3. SCOPE OF PERMIT

- 3.1. This Permit authorizes the Permittee, or a Person acting on behalf of the Permittee, to install a submarine cable in a protection zone within Bermuda in accordance with the technical specifications at Annex A.
- 3.2. The relevant submarine cable must be installed within **75 metres** of the route or routes specified in Annex B.

[NB section 42(1)(a)(i) states that the any permit must include a condition that so much of the relevant cable or cables as is installed in a protection zone shall be installed within 75 metres of the route or routes specified by the Authority in the permit.]

This is subject to section 42(1)(a)(ii) which allows the RA to set a different distance from the specified route or routes. Where this provision is invoked, the highlighted distance will be adjusted accordingly.]

- 3.3. This Permit does not grant the Permittee any right or entitlement to—
 - (a) land and operate a submarine cable without having also obtained a licence pursuant to Part 6 of the SCCA;
 - (b) establish, construct or operate an Electronic Communications Network or provide any additional Electronic Communications Services; and/or

(c) use radio spectrum, radio stations or radio apparatus.

3.4. Nothing in this Permit must relieve the Permittee of the obligation to comply with any other requirement at law or practice to obtain any additional consents, permissions, authorizations, licences or permits as may be necessary to provide electronic communications services or exercise the Permittee's rights or discharge its obligations under this Permit, including any applicable requirements under the SCCA.

4. GRANT AND DURATION OF THE PERMIT

4.1. The Permit is valid and effective from the date hereof and must remain in effect until the earlier of—

- (a) 2 years after being granted;
- (b) the date on which the Permittee surrenders the Permit in accordance with section 44 of the SCCAA; or
- (c) the date on which the Permit is revoked or terminated pursuant to section 46 of the SCCA or section 93 of the RAA.

4.2. The Permit may be extended for an additional period pursuant to section 45 of the SCCA.

5. FEES, CONTRIBUTIONS AND PENALTIES

5.1. The Permittee must pay to the Authority such—

- (a) Government authorization fees as may be prescribed under section 52 of the RAA and the Government Fees Act 1965;
- (b) Regulatory Authority fees as may be prescribed under section 44 of the RAA; and
- (c) Initial or increased amounts of any consultancy deposit as may be ordered under section 57 of the SCCA (less any unused funds).

5.2. The Permittee must pay to the Authority any penalties and interest that may be imposed on the Permittee by the Authority for failure to make any payment due under this Permit and for any other contraventions of this Permit or the Applicable Regulatory Framework.

6. COMPLIANCE

6.1. The Permittee must comply with—

- (a) the terms of this Permit, including any Annex;
 - (b) the terms of any associated licences, authorizations and permits issued by the Authority to the Permittee;
 - (c) the Applicable Regulatory Framework; and
 - (d) the treaties of the International Telecommunications Union currently in force and any other international agreements, including any modifications, relating to Electronic Communications to which Bermuda is a part.
- 6.2. Where there is an irreconcilable conflict among any of the instruments identified above, the following order of precedence must apply—
- (a) Acts of the Legislature (subject to the order of priority noted in condition 2.1(b));
 - (b) Regulations and Orders made by the Minister;
 - (c) International agreements that apply to Bermuda;
 - (d) General or other Administrative Determinations made by the Authority, and
 - (e) This Permit.

7. INSTALLATION OF SUBMARINE CABLE

- 7.1. The Permittee must ensure that all reasonable steps are taken to ensure that the installation of a submarine cable causes as little detriment and inconvenience, and as little damage, as is practicable.
- 7.2. When installing the relevant cable, the Permittee must ensure that all reasonable steps are taken—
- (a) to act in accordance with good engineering practice;
 - (b) to protect the safety of persons and property; and
 - (c) to protect the environment.
- 7.3. The Permittee must ensure that the installation is done in accordance with any standard that—
- (a) relates to installation;

- (b) is recognized by the Authority as a standard for use in the telecommunications industry; and
 - (c) is likely to reduce a risk to the safety of the public if the carrier complies with the standard.
- 7.4. The Permittee must ensure that the installation is done in a manner that is consistent with Bermuda's obligations under an international agreement that is relevant to the installation.

8. RIGHTS OF ACCESS

- 8.1. Subject to the provisions of this section, nothing in this licence must be interpreted as granting or permitting the Permittee rights of access over, through or across private property.
- 8.2. In the exercise of any permission, consent and/or approval granted under this Permit, the Permittee must cause as little inconvenience or damage as is reasonably practicable and the Permittee must be liable to pay compensation to any person who suffers damage to his property in consequence of the exercise of such permission, consent and/or approval.
- 8.3. For the avoidance of doubt, this condition must also apply to public lands, public buildings and other public property.

9. INFORMATION, AUDITS AND INSPECTION

- 9.1. In addition to the information required by section 53 of the RAA, the Permittee must promptly provide the Authority with any documents, accounts, reports, returns, estimates or other information required by the Authority to carry out its responsibilities under the RAA, SCCA and ECA.
- 9.2. The Permittee must permit the Authority or persons designated by the Authority to examine, investigate or audit, or procure assistance as the Authority may require to conduct an examination, investigation or audit of, any aspect of the Permittee's business.
- 9.3. Subject to the provisions of section 92 of the RAA, the Permittee must permit the Authority or persons designated by the Authority to enter the Permittee's premises, and must facilitate access by them to premises used by the Permittee, to conduct an inspection, examination, investigation or audit of the Permittee.
- 9.4. The Permittee must place a complete copy of this Permit on the Permittee's website or, if no website exists, in a conspicuous place in the Permittee's principal place of business that

it is readily available for inspection free of charge by members of the general public during normal office hours.

10. MODIFICATION OF THE PERMIT

10.1. The Permit may be modified—

- (a) with the mutual consent of the Permittee and the Authority;
- (b) by the Authority pursuant to the provisions of section 51 of the RAA and section 42(2) of the SCCA;
- (c) by the Authority following an enforcement proceeding, pursuant to the provisions of section 93 of the RAA.

10.2. The Permit may also be modified by the Authority to give effect to any requirements arising from regulations made by the Minister responsible for telecommunications pursuant to section 51 of the SCCA, and which are made subsequent to the date on which the Permit is granted.

11. ENFORCEMENT AND REVOCATION

11.1. The Authority may initiate enforcement proceedings pursuant to section 93 of the RAA if there is reason to believe that the Permittee has contravened the terms of this Permit or the Applicable Regulatory Framework, and the Permittee must participate in good faith in enforcement proceedings.

11.2. Upon finding that the Permittee has contravened this Permit or the Applicable Regulatory Framework, the Authority may, among other things, issue a warning, direct the Permittee to remedy the contravention or make restitution, impose financial penalties up to ten per cent of the Permittee's total annual turnover, or modify or suspend this Permit or any other authorization issued to the Permittee by the Authority.

11.3. The Authority may suspend or revoke this Permit in accordance with the provisions of section 46 of the SCCA.

12. SURRENDER OF PERMIT

12.1. The Permittee may, at any time, surrender the permit by written notice given to the Authority, in accordance with section 44 of the SCCA.

13. ASSIGNMENT

- 13.1. The Permittee must not sub-license, assign or grant any right, interest or entitlement in the Permit nor transfer the Permit to any other person, including an Affiliate of the Permittee, without the prior written authorization of the Authority.

14. CHANGE OF CONTROL

- 14.1. The Permittee must not complete any proposed change in Control of the Permittee without first obtaining the prior written authorization of the Authority.
- 14.2. For the purposes of condition 14.1, “Control” means—
- (a) the power, whether held directly or indirectly, to exercise decisive influence over the Permittee, including by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; and
 - (b) must, in any event, be deemed to exist in any case involving the ownership of 25 percent or more of the shares, stock or other securities or voting rights, including through an agreement or arrangement of any type.

15. CHANGE OF LAW

- 15.1. Despite any provision to the contrary, where either of the RAA, the ECA or the SCCA is amended, or repealed and replaced, the amendments or the new enactment as the case may be, must apply to this Permit and this Permit must, immediately upon the coming into force of any amendments or new enactment, be read as if the Permit were issued under and in accordance with the provisions of the amended Act or new enactment.

16. INDEMNIFICATION

- 16.1. The Permittee must indemnify the Authority against all actions, claims and demands which may be brought or made by any person in respect of any injury or death of any person or damage to any property arising from any act of the Permittee permitted or authorized by the Permit.
- 16.2. The Authority must provide the Permittee with notice of any such actions, claims and demands, but the Authority’s failure to do so must not relieve the Permittee of any obligations imposed on the Permittee by this Condition.

17. FORCE MAJEURE; OTHER EVENTS

- 17.1. If the Permittee is prevented from complying with the Permit by acts of God, war, warlike operations, terrorist act, epidemic, pandemic, quarantine, civil commotion, major strikes or any other significant or protracted industrial action, fire, tempest or any other causes beyond the Permittee's control—
- (a) the Permittee must notify the Authority, as promptly as reasonably practicable, of the obligations of the Permit with which the Permittee cannot comply, the expected duration of the event of force majeure, and the measures the Permittee is taking to overcome the consequences of the event of force majeure; and
 - (b) the Authority may suspend those obligations of the Permit as the Authority concludes the Permittee cannot comply with for as long as the event of force majeure continues.
- 17.2. In addition to events of force majeure, the Permittee must notify the Authority of any fact or event likely to affect materially the Permittee's ability to comply with any Condition of this Permit, or an insolvency-related fact or event in respect of the Permittee or any Affiliate, or any preparatory steps being taken that might lead to an insolvency-related event, immediately upon becoming aware of the fact or event.

18. NOTICES

- 18.1. Whenever this Permit requires or allows notice, the notice must be written and state with reasonable certainty the information being communicated.
- 18.2. Additionally, the notice must be electronically signed by a person authorised to issue notice on behalf of the Authority or the Permittee issuing notice (as the case may be) and dispatched by email from the designated email address of the Authority or Permittee (as the case may be) issuing notice, to the designated email address of the other Party.
- 18.3. Every Notice will be deemed to have been served when the email through which it is dispatched leaves the computer system of the person issuing Notice.
- 18.4. The designated email addresses of the Parties are:
- (a) Authority: [insert as appropriate]; and
 - (b) Permittee: [insert as appropriate].

ANNEX A

TECHNICAL SPECIFICATIONS

[Technical specifications to be supplied by applicant]

ANNEX B

LOCATION INFORMATION

[Location information to be supplied by applicant.]

ANNEX 3

DATED

2021



SUBMARINE CABLE LICENCE

(Issued under Part 6 of the Submarine
Communications Cable Act 2020)

Granted to

XXXX

Licensee:

Address:

Licence number: SCL20210203-01

Issue date:

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The Regulatory Authority of Bermuda (“RA”), in the exercise of the authority conferred upon it by the Submarine Communications Cable Act 2020 (“SCCA”), hereby grants to [New Entrant] a licence to land and operate a submarine cable within Bermuda, subject to the terms of this Licence, the SCCA, the Electronic Communications Act 2011 (“ECA”), the Regulatory Authority Act 2011 (“RAA”), and any Regulations, General Determinations, Adjudicative Decisions, Orders, and Directions made or issued in accordance with these Acts.

1. DEFINITIONS

1.1. In this Licence, unless the context otherwise requires—

“**Affiliate**” means a person who directly or indirectly controls, is controlled by or is under common control of another person;

“**Applicable Regulatory Framework**” means any provision of law (as defined in section 2 of the Interpretation Act 1951) to which the Licensee is subject, and includes, but is not limited to, any applicable—

- (a) Administrative Determinations made by the Authority;
- (b) obligations imposed by the Authority to provide performance bonds in respect of compliance with any of the Conditions of the Permit, associated licences, authorizations and permits, or other requirements specified by the Authority;

“**Electronic Communications Network**” has the same meaning as in the ECA;

“**Electronic Communications Services**” has the same meaning as in the ECA;

“**Installation**” in relation to a submarine cable, includes—

- (c) the laying of the cable on or beneath the seabed;
- (d) the attachment of the cable to any other cable or thing; and
- (e) any activity that is ancillary or incidental to the installation of the cable (for this purpose, installation includes an activity covered by paragraph (a) or (b));

and the cognate expression “**install**” shall be construed accordingly;

“**Licence**” means this licence to land and operate a submarine cable;

“**Licensee**” means a licence holder, [insert name] and, for the avoidance of doubt, does not include any Affiliates of the Licensee;

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

“Protection zone” means an area designated in Schedule 1 of the SCCA, in which submarine cables have protection;

“Submarine cable” means that part of an international communications cable—

- (d) that is laid on or beneath the seabed that lies beneath the territorial waters of Bermuda;
- (e) that is laid for purposes that include connecting a place in Bermuda with a place outside Bermuda (whether or not the cable is laid via another place in Bermuda); and
- (f) that is connected to a place in Bermuda,

and includes any device attached to that part of the international communications cable, if the device is used in or in connection with that cable.

1.2. A reference in this Licence to—

- (a) the location of a submarine cable includes, in relation to a submarine cable that is not yet installed, a reference to the proposed location of the submarine cable;
- (b) a submarine cable includes a reference to a part of a submarine cable.

2. INTERPRETATION

2.1. For the purpose of interpreting this Licence—

- (a) unless the context otherwise requires, words or expressions must have the meaning assigned to them in the Licence, the SCCA, RAA and Interpretation Act 1951;
- (b) where there is any conflict between the provisions of this Licence and the SCCA or RAA, the provisions of the SCCA or RAA, as the case may be, must prevail;
- (c) references to Conditions and any Annex are to Conditions and the relevant Annex of the Licence, as modified from time to time in accordance with the Licence and the SCCA;

- (d) a document referred to in this Licence must be incorporated into and form part of the Licence and a reference to a document is to the document as modified from time to time;
- (e) headings and titles used in this Licence are for reference only and must not affect its interpretation or construction;
- (f) references to any law or statutory instrument include any modification, reenactment or legislative provisions substituted for the same;
- (g) expressions cognate with those used in this Licence must be construed accordingly;
- (h) use of the word “include” or “including” is to be construed as being without limitation; and
- (i) words importing the singular must include the plural and vice versa, and words importing the whole must be treated as including a reference to any part unless explicitly limited.

3. SCOPE OF LICENCE

- 3.1. This Licence authorizes the Licensee to land and operate within Bermuda the submarine cable detailed in the Protection Zone Installation Permit xxxxxxxx of [date].
- 3.2. This Licence does not grant the Licensee any right or entitlement to—
 - (a) install a submarine cable without having also obtained a permit pursuant to Part 5 of the SCCA;
 - (b) establish, construct or operate an Electronic Communications Network or provide any additional Electronic Communications Services; and/or
 - (c) use radio spectrum, radio stations or radio apparatus.
- 3.3. Nothing in this Licence must relieve the Licensee of the obligation to comply with any other requirement at law or practice to obtain any additional consents, permissions, authorizations, licences or permits as may be necessary to provide Electronic Communications Services or exercise the Licensee’s rights or discharge its obligations under this Licence, including any applicable requirements under the SCCA.
- 3.4. This Licence is non-exclusive and is not intended to convey proprietary rights.

4. GRANT AND DURATION OF THE LICENCE

- 4.1. The Licence is valid and effective from the date hereof and must remain in effect until the earlier of—
- (a) 25 years after being granted;
 - (b) the date on which the Licensee surrenders the Licence in accordance with Condition 14.2; or
 - (c) the date on which the Licence is revoked or terminated pursuant to section 66 of the SCCA or section 93 of the RAA.
- 4.2. The Licence may be renewed for an additional term or terms pursuant to section 60 of the SCCA.
- 4.3. [This Licence replaces the previous licence issued on _____, and in no way releases the Licensee from any liabilities, responsibilities or obligations arising out of any agreements and/or contracts entered into under the previous licences.]

NB. Condition 4.3 is only required where this Licence replaces a previous licence.

5. FEES, CONTRIBUTIONS AND PENALTIES

- 5.1. The Licensee must pay to the Authority such—
- (a) Government authorization fees as may be prescribed under section 52 of the RAA and the Government Fees Act 1965;
 - (b) Regulatory Authority fees as may be prescribed under section 11 of the ECA and section 44 of the RAA; and
 - (c) Initial or increased amounts of any consultancy deposit as may be ordered under section 57 of the SCCA (less any unused funds).
- 5.2. The Licensee must pay to the Authority any penalties and interest that may be imposed on the Licensee by the Authority for failure to make any payment due under this Licence and for any other contraventions of this Licence or the Applicable Regulatory Framework.

6. COMPLIANCE

- 6.1. The Licensee must comply with—

- (a) the terms of this Licence, including any Annex;
 - (b) the terms of any associated licences, authorizations and permits issued by the Authority to the Licensee;
 - (c) the Applicable Regulatory Framework; and
 - (d) the treaties of the International Telecommunications Union currently in force and any other international agreements, including any modifications, relating to Electronic Communications to which Bermuda is a part.
- 6.2. Where there is an irreconcilable conflict among any of the instruments identified above, the following order of precedence must apply—
- (a) Acts of the Legislature (subject to the order of priority noted in condition 2.1(b));
 - (b) Regulations and Orders made by the Minister;
 - (c) International agreements that apply to Bermuda;
 - (d) General or other Administrative Determinations made by the Authority, and
 - (e) This Licence.

7. OPERATION OF SUBMARINE CABLE

- 7.1. The Licensee must land and operate the applicable submarine cable in a manner that—
- (a) remains within the Protected Zone;
 - (b) does not interfere with the installation, landing or operation of any other submarine cable;
 - (c) causes as little detriment and inconvenience, and as little damage, as is practicable; and
 - (d) does not interfere with the operation of Electronic Communications Networks and the provision of Electronic Communications Services by other persons that hold a Licence.
- 7.2. When operating the relevant cable, the Licensee must ensure that all reasonable steps are taken—
- (a) to act in accordance with good engineering practice;

- (b) to protect the safety of persons and property; and
 - (c) to protect the environment.
- 7.3. The Licensee must ensure that the operation of the relevant submarine cable is done in accordance with any standard that—
 - (a) relates to operation;
 - (b) is recognized by the Authority as a standard for use in the telecommunications industry; and
 - (c) is likely to reduce a risk to the safety of the public if the carrier complies with the standard.
- 7.4. The Licensee must ensure that the operation of the relevant submarine cable is done in a manner that is consistent with Bermuda's obligations under an international agreement that is relevant to the installation.
- 7.5. The Licensee must procure such insurance or post such performance bonds as the Authority may reasonably require to ensure that any works undertaken by the Licensee are completed and that any property abandoned by the Licensee or that has fallen into disrepair is removed from public property.
- 7.6. Upon the revocation or termination of the Licence and where possible, the Licensee must make reasonable efforts to sell the Licensee's business and assets, and facilitate the transfer of the Licensee's Bermudian staff employed in Bermuda, to another authorization holder in Bermuda.

8. RIGHTS OF ACCESS

- 8.1. Subject to the provisions of this section, nothing in this Licence must be interpreted as granting or permitting the Licensee rights of access over, through or across private property.
- 8.2. In the exercise of any permission, consent and/or approval granted under this Licence, the Licensee must cause as little inconvenience or damage as is reasonably practicable and the Licensee must be liable to pay compensation to any person who suffers damage to his property in consequence of the exercise of such permission, consent and/or approval.
- 8.3. For the avoidance of doubt, this condition must also apply to public lands, public buildings and other public property.

9. PRIVACY OF COMMUNICATIONS

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

10. CONFIDENTIALITY OF PERSONAL DATA

- 10.1. The Licensee must abide by the requirements of sections 29 and 31 of the ECA, the Personal Information Protection Act 2016 (to the extent that any relevant provision is in force), any other applicable enactment and any General Determinations made by the Authority in relation to the confidentiality of customer information or the security of customer data.
- 10.2. The Licensee must implement reasonable internal measures, including by limiting access to physical records, systems and processes where appropriate, to safeguard and maintain the confidentiality of any such data that is commercially or competitively sensitive.

11. INFORMATION, AUDITS AND INSPECTION

- 11.1. In addition to the information required by section 53 of the RAA, the Licensee must promptly provide the Authority with any documents, accounts, reports, returns, estimates or other information required by the Authority to carry out its responsibilities under the RAA, SCCA and ECA.
- 11.2. The Licensee must permit the Authority or persons designated by the Authority to examine, investigate or audit, or procure such assistance as the Authority may require to conduct an examination, investigation or audit of, any aspect of the Licensee's business.
- 11.3. Subject to the provisions of section 92 of the RAA, the Licensee must permit the Authority or persons designated by the Authority to enter the Licensee's premises, and must facilitate access by them to premises used by the Licensee, to conduct an inspection, examination, investigation or audit of the Licensee.
- 11.4. The Licensee must place a complete copy of this Licence on the Licensee's website or, if no website exists, in a conspicuous place in the Licensee's principal place of business that it is readily available for inspection free of charge by members of the general public during normal office hours.

12. MODIFICATION OF THE LICENCE

12.1. The Licence may be modified—

- (a) with the mutual consent of the Licensee and the Authority;
- (b) by the Authority pursuant to the provisions of section 51 of the RAA and section 64(2) of the SCCA; and
- (c) by the Authority following an enforcement proceeding, pursuant to the provisions of section 93 of the RAA.

13. ENFORCEMENT AND REVOCATION

- 13.1. The Authority may initiate enforcement proceedings pursuant to section 93 of the RAA if there is reason to believe that the Licensee has contravened the terms of this Licence or the Applicable Regulatory Framework, and the Licensee must participate in good faith in the enforcement proceedings.
- 13.2. Upon finding that the Licensee has contravened this Licence or the Applicable Regulatory Framework, the Authority may, among other things, issue a warning, direct the Licensee to remedy the contravention or make restitution, impose financial penalties up to ten per cent of the Licensee's total annual turnover, or modify or suspend this Licence or any other authorization issued to the Licensee by the Authority.
- 13.3. The Authority may revoke or terminate this Licence in accordance with the provisions of section 66 of the SCCA.

14. DISCONTINUATION OF SERVICE; SURRENDER OF LICENCE

- 14.1. The Licensee may surrender the Licence, with the agreement of the Authority, after having applied for revocation pursuant to section 66(b) of the SCCA.
- 14.2. The Licensee must submit a request to surrender the Licence no less than 180 days, or such lesser period as the Authority may allow, in advance of the date on which the Licensee proposes to surrender the Licence.

15. ASSIGNMENT

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

16. CHANGE OF CONTROL

- 16.1. The Licensee must not complete any proposed change in Control of the Licensee without first obtaining the prior written authorization of the Authority in accordance with the procedures laid down in the RAA.
- 16.2. For the purposes of condition 16.1, “Control” means—
- (a) the power, whether held directly or indirectly, to exercise decisive influence over the Licensee, including by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; and
 - (b) must, in any event, be deemed to exist in any case involving the ownership of 25 percent or more of the shares, stock or other securities or voting rights, including through an agreement or arrangement of any type.

17. CHANGE OF LAW

- 17.1. Despite any provision to the contrary, where either of the RAA, the ECA or the SCCA is amended, or repealed and replaced, the amendments or the new enactment as the case may be, must apply to this Licence and this Licence must, immediately upon the coming into force of any amendments or new enactment, be read as if the Licence was issued under and in accordance with the provisions of the amended Act or new enactment.

18. INDEMNIFICATION

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

19. FORCE MAJEURE; OTHER EVENTS

- 19.1. If the Licensee is prevented from complying with the Licence by acts of God, war, warlike operations, terrorist act, epidemic, pandemic, quarantine, civil commotion, major strikes or

any other significant or protracted industrial action, fire, tempest or any other causes beyond the Licensee's control—

- (a) the Licensee must notify the Authority, as promptly as reasonably practicable, of the obligations of the Licence with which the Licensee cannot comply, the expected duration of the event of force majeure, and the measures the Licensee is taking to overcome the consequences of the event of force majeure; and
- (b) the Authority may suspend those obligations of the License as the Authority concludes the Licensee cannot comply with for as long as the event of force majeure continues.

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

20. NOTICES

- 20.1. Whenever this Permit requires or allows notice, the notice must be written and state with reasonable certainty the information being communicated.
- 20.2. Additionally, the notice must be electronically signed by a person authorised to issue notice on behalf of the Authority or the Permittee issuing notice (as the case may be) and dispatched by email from the designated email address of the Authority or Permittee (as the case may be) issuing notice, to the designated email address of the other Party.
- 20.3. Every Notice will be deemed to have been served when the email through which it is dispatched leaves the computer system of the person issuing Notice.
- 20.4. The designated email addresses of the Parties are:
- (a) Authority: [insert as appropriate]; and
 - (b) Permittee: [insert as appropriate].