



**Afghanistan Telecommunication Regulatory Authority (ATRA)**

**Individual License**

**for**

**The Administration of a Number Portability  
Clearinghouse**

**This**

**License was granted**

**By**

**ATRA**

**To**

**[Company Name]**

**Issue date: [xx of xxxx, 2019]**

PART I - GENERAL CONDITIONS.....	2
1. Definitions and Interpretations .....	2
2. Governing Law .....	4
3. Commencement Date .....	5
4. Ownership of the Licensee Company .....	5
5. Compliance .....	5
6. Duration .....	5
7. Expiration and Renewal .....	6
8. Nature and Scope of the License .....	6
9. Payment of Fees and Contributions .....	7
10. Information, Audit, Inspection and Access.....	8
11. Breach of License .....	9
12. Notices .....	9
13. Change in Control .....	10
14. Approval of Joint Ventures .....	10
15. Assignment of License.....	10
16. Suspension and Revocation of License.....	11
17. Modification and Amendment of License .....	13
18. Power to Appoint Number Portability Clearinghouse Administrator.....	13
19. Severability .....	14
20. Language of the License .....	14
21. Official Correspondence .....	14
PART II - OPERATING CONDITIONS .....	15
22. Installation and Roll-Out Obligations.....	15
23. Provision of Licensed Services.....	15
24. Delivery of Licensed Services .....	17
25. Ancillary Services .....	17
PART III - COMMERCIAL CONDITIONS .....	18
26. Tariffs.....	18
27. The NPCAS Agreement.....	18
PART IV - TECHNICAL CONDITIONS.....	20
28. Technical Requirements.....	20
29. Interconnection and Interworking with Service Providers .....	20
30. Quality of Service .....	20
31. Location of Number Portability System .....	21
PART V - GENERAL CONDITIONS .....	22
32. Arbitration and Dispute Resolution .....	22
33. Prohibition of Certain Licensee Activities.....	22
34. Prohibition of Preference and Discrimination .....	23
35. Members of Licensee’s Group, Associates and Technical Partners .....	24
36. Confidentiality of Information.....	24
37. Exceptions and Limitations on Obligations .....	25
38. Limitation of Liability.....	26
39. Legal and Regulatory Framework of the Number Portability System .....	26
PART VI - SECURITY CONDITIONS.....	27
40. Security Provisions .....	27

## PART I - GENERAL CONDITIONS

### 1. Definitions and Interpretations

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

- “ATRA”** means the Afghanistan Telecommunication Regulatory Authority established under Article 4 of the Telecommunications Services Regulation Act, 2005;
- “Auditor”** means the Licensee’s auditor for the time being appointed for the purpose and in accordance with the provisions of the Corporations and Limited Liability Companies Law (CLLCL);
- “Business Rules”** means the rules set out to manage the processes for porting numbers between service providers licensed by the Afghanistan Telecommunication Regulatory Authority to provide voice service in Afghanistan;
- “CLLCL”** means the Corporations and Limited Liability Companies Law of Afghanistan;
- “Commencement Date”** means the date on which this License enters into force;
- “Customer”** means the persons or entities to whom the Number Portability Clearinghouse Administrator renders its services to including but not limited to mobile service providers and other undertakings licensed by the Afghanistan Telecommunication Regulatory Authority;
- “Disaster Recovery”** means the approach the Number Portability Clearinghouse Administrator will take in the case that its normal Number Portability Administration Service infrastructure is damaged to such an extent that it would not be possible operations to provide a service within a time period that was acceptable to Afghanistan Telecommunication Regulatory Authority;
- “Donor Operator”** means the Service Provider providing mobile services to the Subscriber before porting;
- “Emergency”** means an emergency of any kind, including any circumstances whatever resulting from major accidents, natural disasters and incidents involving toxic or radioactive materials;
- “Emergency Services”** in respect of any locality means the relevant public, police, fire and ambulance services for that locality;
- “Financial Year”** means the Financial Year of ATRA as defined in the Telecom Act;
- “Government”** means the Government of the Islamic Republic of Afghanistan;
- “Licensed Services”** means the specified services offered by the Licensee pursuant to the grant of this License;
- “Licensee”** means the Number Portability Clearinghouse Administrator and where the context so admits, its Technical Partner(s) for the purposes of establishing, implementing and administering the Mobile Number Portability Systems in Afghanistan;
- “Minister”** means the Minister charged with the responsibility for the Communications and Information Technology sector;

<b>“MNP”</b>	means Mobile Number Portability;
<b>“MNP Framework”</b>	means collectively the Statement of Results following the consultation on Mobile Number Portability for Afghanistan as published by ATRA on [xxxxxxxx], the Final Decision on Mobile Number Portability as published by ATRA on [xxxxxxxx], the Mobile Number Portability Procedures as published by ATRA on [xx of xxxxx, 2018] and any other regulatory measures pertaining to MNP which may be issued by ATRA from time to time;
<b>“MNP System”</b>	means all the necessary equipment/sub-systems engineered to provide the Licensed Services in accordance with operational/technical and quality requirements and other terms and conditions of this License;
<b>“Mobile Service Provider”</b>	means any person who provides mobile services in Afghanistan;
<b>“NP Agreement”</b>	means the agreement entered into between the Licensee and the Service Providers setting out the detailed terms and conditions relating to the provision of the NPC Administration Service;
<b>“NP Database”</b>	means the database maintained by the Licensee, holding the details of all ported numbers, along with the complete history of all transactions relating to the porting of such numbers;
<b>“NP Clearinghouse”</b>	means the centralized clearinghouse established to implement and operate Number Portability in Afghanistan;
<b>“NPC Administration Service”</b>	means the Number Portability Clearinghouse Administration Service to be provided by the Licensee, comprising the Number Portability Clearinghouse and the NP Database;
<b>“Quality of Service”</b>	means the quality of service as evaluated on the basis of observable measure on the grade of service rendered;
<b>“RFP”</b>	means the Request for Proposals issued by the Afghanistan Telecommunication Regulatory Authority on [xx of xxxx, 2019], inviting proposals to provide a Number Portability Clearinghouse Administration Service for Afghanistan;
<b>“Recipient Operator”</b>	means the Service Provider that will provide mobile services to the Subscriber after porting;
<b>“Reference Database”</b>	means the database of information containing a record of (at least) all ported numbers in Afghanistan and the Service Providers’ networks on which they reside at a particular moment in time, which information shall be used by individual Service Providers to route calls to Recipient Operators;
<b>“Regulations”</b>	means any regulation relating to the provision of telecommunications services issued by the Afghanistan Telecommunication Regulatory Authority under the Telecom Act, 2005 or any other competent authority and having legislative effect;
<b>“Service Provider”</b>	means any person granted a license by the Afghanistan Telecommunication Regulatory Authority to provide telecommunications services, specifically voice services, in Afghanistan;
<b>“Subscriber”</b>	means a real or legal person having acquired mobile services through a subscription medium;

- “Technical Partners”** means the technical partners of the Licensee for the establishment, implementation and administration of the Number Portability System in Afghanistan as notified from time to time to ATRA in accordance with this License;
- “Telecom Act”** means the Telecommunications Services Regulation Act, 2005, as amended from time to time.

1.2 For the purpose of interpreting a Condition in this License:

- 1.2.1 except in so far as the context otherwise requires, words or expressions set out hereinafter shall have the meaning assigned to them in:
- (a) the License; and otherwise
  - (b) the Telecom Act; and otherwise
  - (c) the Mobile Number Portability Procedures, 2018.
- 1.2.2 Subject to Condition 1.2.1, where there is a conflict between the provisions of this License and the Telecom Act, the provisions of the Telecom Act shall prevail;
- 1.2.3 References to Conditions, paragraphs, subparagraphs and appendices are to Conditions, paragraphs, subparagraphs of and to the appendices to this License, as modified from time to time in accordance with this License and the Telecom Act;
- 1.2.4 A Document shall be incorporated into and form part of this License if it is referred to in this License and a reference to a document is to a document as modified from time to time;
- 1.2.5 Headings and titles used in this License are for reference only and shall not affect the interpretation or construction of this License;
- 1.2.6 References to any law or statutory instrument shall include any modification, re-enactment or legislative provisions substituted for the same;
- 1.2.7 Use of the word “include” or “including” shall be construed as being without limitation;
- 1.2.8 Expressions cognate with those referred to in this License shall be construed accordingly;
- 1.2.9 Words importing: (i) the singular shall include the plural and vice versa; (ii) the whole shall be treated as including a reference to any part; and (iii) any gender shall include other genders; and
- 1.2.10 Reference to persons shall include firms or companies.

2. **Governing Law**

2.1 This License and the legal relations between the Licensee and ATRA and any claim instituted by the Licensee or ATRA with respect to matters arising under or in connection with or in respect of this License shall be governed by and construed in accordance with the laws of Afghanistan.

**3. Commencement Date**

3.1 The commencement date of this License shall be \_\_\_\_\_, 2019 (the “Commencement Date”).

**4. Ownership of the Licensee Company**

4.1 The Licensee shall be duly incorporated in Afghanistan and shall be subject to the Telecom Act and all other laws of Afghanistan.

4.2 The Licensee shall ensure that no Service Provider shall hold any equity, directly or indirectly, in the Licensee company. The Licensee shall also not likewise hold any equity or shares, in any Service Provider in Afghanistan.

4.3 Any change in the name of the Licensee company shall be in accordance with the provisions of CLLCL or any other relevant law for the time being in force. The Licensee shall notify ATRA of such change within thirty (30) calendar days of the registration of the change of name with the Registrar of Companies.

**5. Compliance**

5.1 The Licensee shall comply with the provisions of the Telecom Act and any other applicable law being in force at the time.

5.2 The Licensee shall comply with the provisions of the Mobile Number Portability Procedures and any other applicable regulations.

5.3 The Licensee shall comply with all the terms and conditions of this License as well as the orders, directions, decisions and regulatory or other measures as may be issued by ATRA from time to time.

5.4 Neither the Licensee nor its officers, directors, employees, agents, or Legal Counsel shall in any response to ATRA or any inquiry or in any application, report or any other written statement submitted to ATRA, make any misrepresentation or willful material omission on any matter within ATRA’s jurisdiction.

**6. Duration**

6.1 This License shall come into force on the Commencement Date and shall continue in force until the tenth (10th) anniversary of the Commencement Date.

## **7. Expiration and Renewal**

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

## **8. Nature and Scope of the License**

- 8.1 ATRA issues this License to the Licensee pursuant to Article 14 of the Telecom Act to establish, maintain, operate, manage and administer the NPC Administration Service within and through the territory of Afghanistan.
- 8.2 The Licensee shall administer and manage the NP Clearinghouse, the MNP Systems and the NP Database for implementation of NPC Administration Service in Afghanistan in an efficient and effective manner consistent with internationally accepted best practices and any rules, decisions or determinations made by ATRA from time to time.
- 8.3 The NPC Administration Service established by the Licensee shall be used by all Service Providers (both existing and new) for the purpose of supporting the porting of mobile numbers between Mobile Service Providers. As part of this activity, the Licensee's system shall contain the updated porting information which will be used by the Service Providers for the purpose of routing calls to the ported end-users.
- 8.4 The Licensee and its Technical Partners must comply with all applicable data protection laws and other legal requirements in Afghanistan.
- 8.5 The Licensee shall be solely responsible for the implementation, availability and readiness of the central porting platform for the operation of the NPC Administration Service and shall resolve the issues of interconnections/ interfaces in respect of present and future networks and the Number Portability System in accordance with the contractual arrangements entered into between the Licensee and the Service Providers and approved by ATRA.
- 8.6 The NPC Administration Service provided pursuant to this License shall, upon commencement, provide Mobile Number Portability only, and shall be

expanded to include the provision of Fixed Number Portability Services at such time as determined by ATRA subject to the terms and conditions agreed between ATRA and the Licensee.

- 8.7 The Licensee shall not provide any regulated service in Afghanistan save for the NPC Administration Service as mentioned above without the express written approval of ATRA and which in any event shall require a separate License.
- 8.8 Nothing in this License shall relieve the Licensee of any legal requirement to obtain any additional consents, permissions, authorizations or licenses that are necessary for the establishment, maintenance, operation, management and administration of Number Portability in Afghanistan.
- 8.9 The Licensee shall ensure that the administration and management of the business associated with providing the Licensed Services shall, as far as possible, be conducted from premises in Afghanistan and shall for the duration of this License maintain a legal presence in Afghanistan.

## **9. Payment of Fees and Contributions**

- 9.1 ATRA shall not charge a fee for the issuance of this License to the Licensee.
- 9.2 The Licensee shall pay to ATRA the following fees and contributions notified by ATRA from time to time in accordance with the Telecom Act:
  - 9.2.1 any ATRA Fees;
  - 9.2.2 the Telecommunications License Fees notified by ATRA on behalf of the Minister; and
- 9.3 For each Financial Year of this License, any annual fees payable by the Licensee under the Telecom Act shall be based on the following accounts:
  - 9.3.1 the last available audited accounts; or
  - 9.3.2 where the last audited accounts are not available or those accounts do not include any Relevant Turnover, accounts certified by an accountant in possession of a practicing certificate issued by CPA Afghanistan.
- 9.4 The annual fees calculated in accordance with Condition 9.3 shall be paid in advance on the first day of the Financial Year, with any adjustment due as a result of the audited accounts for that Financial Year becoming available being paid to ATRA (or deducted from any other payment due to ATRA) on the first day of the next Financial Year.
- 9.5 Without prejudice to Condition 10.1, in the event of a default by the Licensee in the payment of any fees when due under this License:
  - 9.5.1 the Licensee shall pay to ATRA interest as specified in the Telecom Act; and



9.5.2 ATRA may revoke this License under the provisions of the Telecom Act.

**10. Information, Audit, Inspection and Access**

- 10.1 Without prejudice to any other provision of this License, the Licensee shall furnish or procure to be furnished to ATRA, in such manner and at such times as ATRA may request, information, documents, accounts, estimates, returns and without prejudice to the generality of the foregoing, such other information as ATRA may reasonably require for the purposes of (i) exercising the functions assigned to it by or under the Telecom Act; (ii) verifying that the Licensee is complying with the License Conditions; and (iii) keeping statistical records.
- 10.2 The Licensee shall permit ATRA to inspect and if required to make copies of records, documents and accounts relating to the Licensee's business for the purpose of enabling ATRA to perform its functions under the Telecom Act, the Mobile Number Portability Procedures and the Conditions of this License.
- 10.3 The Licensee shall also submit information to ATRA pursuant to the Telecom Act, the Mobile Number Portability Procedures and any order or direction issued by ATRA from time to time.
- 10.4 Without prejudice to the generality of Condition 10.1, the Licensee shall, furnish to ATRA within three (3) months of its financial year end a "Financial Statement". There will be appended to the Statement, a report from the Licensee's Auditor stating whether in his opinion the methods of allocation of costs, assets and liabilities are reasonable and whether the Statement has been properly prepared applying those methods and is adequate for the purposes specified in Condition 10.5;
- 10.5 In this Condition, "Financial Statement" means an accounting statement, the purposes of which are to set out and fairly present the costs (including capital costs), revenue and financial position of the Licensee's services including a reasonable assessment of the assets employed in and liabilities attributable to those services. The level of desegregation as between services specified in, and in relation to the financial information contained in the Statement shall be of such level as ATRA may require from time to time.
- 10.6 The Licensee shall permit ATRA or its authorized representative to access, inspect and conduct performance tests on the components of the NPC Administration Service and shall provide the necessary facilities for testing, continuous monitoring of the system, as required by ATRA or its authorized representative(s). ATRA shall give reasonable prior notice to the Licensee except in circumstances where giving such a notice will defeat the purpose of the inspection.
- 10.7 ATRA may conduct an inquiry either *suo-moto* or on receipt of a complaint to determine whether there has been any breach of the Conditions of the License

and for such inquiry the Licensee shall extend all reasonable facilities required for the determination of the breach (if any) without any hindrance.

**11. Breach of License**

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

**12. Notices**

12.1 Notices to the Licensee under the Conditions of this License shall be in writing and sent by post or hand to the addresses provided for in Condition 12.4, or any other relevant address known to ATRA, or sent via e-mail if ATRA and the Licensee agree beforehand that they will use such method for transmission of specific notices. Notices shall be deemed to have been received

- (a) when delivered against a signed receipt, if sent by hand;
- (b) three (3) working days after mailing, if sent by mail;
- (c) when transmitted against a printed delivery confirmation, if sent by e-mail.

12.2 Unless otherwise provided in this License, any service of process, petitions, claims and other communications requested or permitted pursuant to this License shall also be made in writing and shall be considered validly made when delivered by hand or by courier or electronic means to the Licensee at the Licensee's address provided to ATRA for contact.

12.3 Notices to ATRA under the Conditions of this License shall be in writing and sent to the Chairman of ATRA by post or hand to the business address of ATRA.

12.4 The addresses and numbers for the transmission of notices are:

- (a) Notices to the Licensee:

[Company Name]  
[Company information  
.....]  
.....Afghanistan,  
Telephone: .....  
E-mail Address: .....

- (b) Notices to ATRA:

Afghanistan Telecommunication Regulatory Authority  
(ATRA)  
Office, 10<sup>th</sup> Floor, MoCIT building,  
Ghazi Mohammad Jan Khan Watt,  
Kabul-Afghanistan  
Telephone: + 93(0)202101179  
E-mail Address: [secretary@atra.gov.af](mailto:secretary@atra.gov.af)

**13. Change in Control**

13.1 The Licensee shall obtain ATRA's approval to any change in control of the Licensee prior to the change in control occurring.

**14. Approval of Joint Ventures**

14.1 The Licensee shall give particulars of any of the agreements or arrangements to which this Condition applies for approval of ATRA before the coming into effect of such agreements or arrangements.

14.2 These agreements are Agreements or arrangements between the Licensee and any person:

- (a) for the establishment or control of any corporate body for the purpose of:
  - i. **providing telecommunications services in Afghanistan which requires a License; or**
  - ii. **the production of telecommunications equipment for supply in Afghanistan where that production would not otherwise exist in relation to the supply of telecommunications equipment of any description in Afghanistan;**
- (b) for the establishment of a partnership for any of the purposes and in any of the circumstances specified in paragraph (a) above;
- (c) in the nature of a joint venture for the purpose of providing telecommunications services that require a License.

**15. Assignment of License**

15.1 The Licensee shall not sub-license, transfer, assign or grant any right interest or entitlement in this License to another party without the prior written approval of ATRA.

15.2 A person to whom a License is to be transferred or assigned shall apply to ATRA for a License to carry on the relevant telecommunications undertakings

on the prescribed application form and shall satisfy the conditions set down by ATRA before any such transfer or assignment of a License may be considered. Such conditions shall include, but are not limited to, conditions necessary and appropriate to ensure the continued provision of NPC Administration Service, without interruption, to all relevant Service Providers. Without limitation of the foregoing, any person to whom this License is to be transferred shall be required to enter into appropriate contractual arrangements approved by ATRA with all Service Providers required to offer Number Portability.

- 15.3 Where the Licensee seeks to transfer or assign its License to another person, it shall comply with all terms and conditions of its License as at the date of transfer or assignment and shall have paid all outstanding fees to ATRA.
- 15.4 Any entity that becomes a duly authorized successor or assign to the Licensee through affiliation, assignment, transfer of control, merger, liquidation, reorganization or otherwise, shall, as a condition to such succession or assignment, be required to execute such documents as ATRA deems appropriate confirming that such successor or assignee fully assumes the rights and obligations set forth in the License.
- 15.5 ATRA may approve or refuse an application for transfer or assignment of License and shall in the event of a refusal, provide reasons for such refusal.
- 15.6 Condition 15.1 shall not apply to a mortgage, charge or other transaction entered into for the purpose of securing borrowing by the Licensee, such borrowing being for the purposes of establishing, operating or maintaining the Licensee's licensed system or providing the Licensed Services.

## **16. Suspension and Revocation of License**

- 16.1 Notwithstanding any contrary provision contained in this License and subject to Article 18 of the Telecom Act, ATRA may at any time revoke this License pursuant to the Telecom Act where the Licensee is in breach of any of the Conditions of this License and the breach has not been rectified in accordance with provisions of the Telecom Act and Conditions of this License.
- 16.2 ATRA reserves the right to take over the entire services, equipment and networks of the Licensee, revoke, terminate or suspend this License in the interest of public or national security or in the event of national emergency/war or low intensity conflict or similar occurrences.
- 16.3 ATRA shall automatically terminate and revoke this License upon the occurrence of any change in the agreement between the Licensee and the Service Providers which results in the termination of the arrangement between the parties for the implementation and administration of the NPC Administration Service in Afghanistan. The Licensee shall immediately notify ATRA within twenty-four (24) hours of any dispute or other occurrence which may result in such termination.

16.4 Notwithstanding any contrary provision contained in this License, ATRA may at any time revoke this License by giving the Licensee three (3) months' notice in writing in any of the following circumstances where:

- (a) the Licensee agrees in writing with ATRA that this License be revoked;
- (b) the Licensee ceases to carry on its business for which this License is granted for a continuous period of thirty (30) calendar days after commencement of business;
- (c) any amount payable under Condition 9.2 (Payment of Fees and Contributions) is unpaid after it becomes due and remains unpaid for a period of thirty (30) calendar days after ATRA has notified the Licensee in writing that the payment is due;
- (d) the Licensee has made false statements, representations or warranties in applying for the License;
- (e) the Licensee has contravened the provisions of any written law relevant to the telecommunications sector;
- (f) the Licensee fails to commence or carry on its business for which this License is granted within thirty (30) calendar days of the Commencement Date of this License;
- (g) within twelve (12) months from the Commencement Date of this License, the Licensee has not commenced full operation to the satisfaction of ATRA provided that ATRA would have given prior written notice to the Licensee specifying the details of the Licensee's default and requiring that remedial steps be taken within thirty (30) calendar days of the notice, or such further period as ATRA may specify;
- (h) the Licensee fails to ensure that its equipment is type approved by ATRA or a body approved by or accredited to ATRA;
- (i) it is deemed necessary in order to protect the public interests of Afghanistan and its people or for national security reasons.
- (j) the Licensee:
  - i. **is unable to pay its debts;**
  - ii. **enters into receivership or liquidation; and**
  - iii. **takes any action for voluntary winding-up, or dissolution or such action is taken by any other person against it and no reasonable step has been taken to discharge same; or it enters into any scheme of arrangement (other than in any such case for the purpose of reconstruction or amalgamation) upon**

**terms and within such period as may previously have been approved in writing by ATRA or if a receiver or trustee is appointed or if any Order is made for its compulsory winding-up or dissolution.**

(k) the Licensee does not fulfil the implementation plan as set out in the NPCAS Agreement.

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

16.6 Upon termination or revocation of this License by ATRA, ATRA shall be entitled, in accordance with the NPCAS Agreement, to recover all information related to MNP in Afghanistan held by the Licensee as well as other information required for the provision of MNP in Afghanistan as contemplated by the NPCAS Agreement.

## **17. Modification and Amendment of License**

17.1 Subject to section 27 of the Telecom Act and Conditions 17.2 and 17.3 of this License, ATRA may modify, amend or vary the Conditions contained in this License from time to time where objectively justifiable where ATRA determines that such modification, amendment or variation is necessary to achieve the objectives of the Telecom Act or any relevant law, or is in the public interest, taking into consideration the reasonable interest and contractual rights of the Licensee.

17.2 Before modifying, amending or varying the Conditions of this License, ATRA shall give the Licensee written notice of its intention to do so together with a draft copy of the intended modification, amendment or variation and the Licensee may make representations to ATRA by submitting them to ATRA within the time period specified by ATRA but not less than thirty (30) calendar days from the date of the written notice.

17.3 After expiry of the notice specified in Condition 17.2 above, ATRA shall decide on the next course of action, taking into consideration any representation made by the Licensee and, inter alia, the principles of fair competition and equality of treatment.

17.4 Subject to Article 16 of the Telecom Act, ATRA may modify, amend or vary the Conditions of this License or incorporate new Conditions where it is considered necessary in the interest of national security and public interest.

## **18. Power to Appoint Number Portability Clearinghouse Administrator**

18.1 Subject to section 18 of the Telecom Act, ATRA may select and appoint another administrator to manage the Number Portability Clearing House and the Number Portability Systems for implementation of Number Portability

services in Afghanistan, except that in doing so ATRA shall have due regard to the provisions set out in the NPCAS Agreement.

**19. Severability**

19.1 If any provision or other term, condition or obligation of this License is considered invalid, illegal or unenforceable by a court of competent jurisdiction, such judicial decision shall be strictly interpreted and shall not affect or impair the validity, legality or enforceability of any other provision, term, condition or obligation of this License.

**20. Language of the License**

20.1 This license has been written in the English Language and can be translated into Dari, Pashto or other languages. When there is a contradiction of texts, the English text shall prevail.

**21. Official Correspondence**

21.1 All relevant communications and notifications as relate to this license shall be in writing, in national languages of Afghanistan (Dari and Pashto), signed by chief executives of both parties and sent out to the addresses of both parties as determined.

Granted and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2019.

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[Name]

[Chairman, Afghanistan Telecommunication Regulatory Authority]

## **PART II - OPERATING CONDITIONS**

### **22. Installation and Roll-Out Obligations**

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

### **23. Provision of Licensed Services**

- 23.1 The Licensee shall, during the term of this License, provide the NPC Administration Services in accordance with the NPCAS Agreement and any regulatory measures issued by ATRA, and shall do so in an effective and efficient manner, including but not limited to the following:
- (a) the relaying of porting-related messages between Donor and Recipient Operators and the maintaining of state information for each individual and bulk porting transaction;
  - (b) management of the porting process to meet the target times;
  - (c) the reception and checking of a validation interactive voice response message/short message service (SMS) from the Subscriber confirming the request to port;
  - (d) Interworking with the Customer Information (SIM Registration) Database to verify Customer Registration status to validate Customer porting transactions;
  - (e) the performance of porting transaction validation checks as specified in the Business Rules and functional requirements as stipulated by ATRA;
  - (f) advising the Subscriber of the status of their porting request by email or SMS;
  - (g) the broadcasting to all Service Providers of information and changes in the Service Provider providing services to the ported numbers;
  - (h) updating of the SIM Registration Database to reflect the



migration of successfully ported numbers from Donor Operators to Recipient Mobile Service Providers;

- (i) the collection of logs on all porting activities;
  - (j) the collection of statistics on porting;
  - (k) maintenance of the servicing operator status for every mobile number in Afghanistan in real-time to reflect changes effected through the completion of porting transactions;
  - (l) the storage of information on the history of each porting;
  - (m) managing daily or weekly porting quotas between the Mobile Service Providers in the interests of ensuring consistent porting performance and timescales between all Mobile Service Providers at all times;
  - (n) the maintenance of the NP Database of all ported numbers and the provision of downloads of this information to any Service Provider, especially new entrant Service Provider.
- 23.2 Subject to prior written approval by ATRA, the Licensee may provide interconnect and NP Clearinghouse services to Service Providers to enable them connect to the NPC Administration Service. Such services must be provided on non-discriminatory terms and conditions.
- 23.3 The Licensee shall assist ATRA and Service Providers to understand the significance of the key Number Portability issues, analyze alternative approaches, and assist them in reaching a consensus that will be in the best interest of all stakeholders and ensure functionality of the NPC Administration Service in Afghanistan.
- 23.4 The Licensee shall cooperate with the Service Providers and ATRA during the implementation of the NPC Administration Service in Afghanistan and shall respond reasonably, promptly and positively to implement any proposed reasonable change in structure, functionality, process/system requirements which may be necessary to ensure the establishment and on- going delivery of the NPC Administration Service in Afghanistan as directed by ATRA.
- 23.5 The Licensee shall be responsible for the functionality of the NPC Administration Service for the entire license period and shall manage the NPC Administration Service in accordance with the Conditions of this License, the NPCAS Agreement, the Telecom Act, the Mobile Number Portability Procedures and any relevant regulatory measures made by ATRA from time to time.
- 23.6 The NPC Administration Service shall be sufficiently flexible to enable it to support other number portability related queries for existing and future Service Providers with regards to both call set-up and data service delivery purposes. The NPC Administration Service should be flexible, scalable and configurable

to support future requirements and future enhancements to Number Portability in Afghanistan.

**24. Delivery of Licensed Services**

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

**25. Ancillary Services**

- 25.1 The Licensee shall work in conjunction with the Service Providers to ensure that the NPC Administration Service inter-operates with the Service Providers in the most cost effective and efficient manner. The Licensee shall work with the Service Providers to manage the security and availability of these interconnections.
- 25.2 The Licensee shall provide access to the NP Database, value added services and interconnect services to Service Providers, the Government and such other persons only subject to the approval or direction of ATRA. Ancillary interconnect and Clearinghouse services offered to smaller Service Providers to enable them to connect to the Number Portability System and benefit from hosted routing services shall be made available and provided by the Licensee.
- 25.3 The terms and conditions for any ancillary interconnect and Clearinghouse services and other ancillary services provided by the Licensee must be approved by ATRA pursuant to Condition 26 (Tariffs).

## **PART III - COMMERCIAL CONDITIONS**

### **26. Tariffs**

- 26.1 The Licensee shall provide the NPC Administration Service at the charges and upon the terms and conditions set out in the NPCAS Agreement approved by ATRA and shall not depart therefrom without prior written approval by ATRA of the proposed changes.
- 26.2 Without prejudice to the provisions of Condition 26.1 above, the Licensee shall lodge with ATRA for approval a schedule of tariffs and any variation thereto for the provision of ancillary and valued added services (other than charges for the NPC Administration Service itself, in respect of which Condition 26.1 shall apply) rendered to Service Providers to enable them to interconnect with the MNP System. The schedule of tariffs shall in respect of each kind of service that the Licensee proposes to offer provide details of:
- (a) the description of the service;
  - (b) details of the nature and amounts of charges payable for the service;
  - (c) the method adopted for determining the charges; and
  - (d) the method adopted for collection of the charges.
- 26.3 The schedule must be precise and detailed enough to be used to determine the nature and amounts of charges payable for the supply of each particular service. The tariffs must be in a form approved by ATRA who, subject to Condition 26.4, will provide written reasons in the event of non-approval.
- 26.4 ATRA shall communicate to the Licensee its decision on the notice of tariffs or any application for changes thereto within thirty (30) days from the date of receipt of the notice by ATRA.
- 26.5 The Licensee shall not commence with levying the charges in the proposed schedule of tariffs lodged with ATRA until approval for the tariffs is given by ATRA. Failure by ATRA to communicate its decision to the Licensee within the timeline herein specified shall be deemed to constitute an approval of the tariff or changes thereto and the Licensee shall, in that event, be at liberty upon the expiry of the said timeline to implement the tariff structure or the revisions thereto.

### **27. The NPCAS Agreement**

- 27.1 The Licensee shall no later than thirty (30) calendar days from the Commencement Date of this License execute an agreement with all Service Providers requiring access to the NPC Administration Service, which agreement shall indicate and stipulate the responsibilities and roles of each of

the Parties in respect of the NPC Administration Service in Afghanistan (the “NPCAS Agreement”).

- 27.2 The NPCAS Agreement shall be in a form acceptable to and approved by ATRA. ATRA may by Decision issued under the Telecom Act require amendments to the terms of the NPCAS Agreement where necessary in line with the requirements for the Number Portability

## **PART IV - TECHNICAL CONDITIONS**

### **28. Technical Requirements**

- 28.1 The technical components for the NPC Administration Service shall be set up and configured to meet the Number Portability requirements of Afghanistan, as defined in the RFP, the Business Rules, and the NPCAS Agreement, and customized to meet the specified process needs and other connectivity requirements of the Service Providers.
- 28.2 Without prejudice to the provisions of Condition 28.1 above, the Licensee shall adhere to any further technical conditions and regulatory requirements for the NPC Administration Service as directed by ATRA in accordance with the Telecom Act, both during the periods before and after the launch of the Number Portability services in Afghanistan.
- 28.3 The Licensee shall not after the Commencement Date of this License provide additional facilities for any value addition or systems upgrade that the technology permits at a later date without the prior approval of ATRA.

### **29. Interconnection and Interworking with Service Providers**

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

### **30. Quality of Service**

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

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

**31. Location of Number Portability System**

31.1 The NPC Administration Service shall be provided to Service Providers in Afghanistan in accordance with the NPCAS Agreement.

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

## **PART V - GENERAL CONDITIONS**

### **32. Arbitration and Dispute Resolution**

- 32.1 The Licensee shall include in the standard terms and conditions on which it provides the NPC Administration Service in Afghanistan provisions giving parties who have entered into contracts with it for the provision of the NPC Administration Service the opportunity to refer to ATRA any and all disputes arising in relation to the services provided under those standard terms and conditions. The dispute resolution procedures and the method of appointment of the neutral evaluators shall be in accordance with any Alternative Dispute Resolution (ADR) Guidelines issued by ATRA.
- 32.2 ATRA shall resolve any dispute between the Licensee and Service Providers relating to the provision of the Licensed Services in accordance with any ADR Guidelines issued by ATRA.

### **33. Prohibition of Certain Licensee Activities**

- 33.1 The Licensee shall not on the strength of this License engage in the provision of any other service regulated under the Telecom Act other than the Licensed Service as defined in this License.
- 33.2 Nothing contained in this License shall preclude the Licensee from engaging in advertising and promotional activities relating to the NPC Administration Service.
- 33.3 Nothing contained in this License shall preclude the Licensee from taking necessary measures to prevent illegal, objectionable, obscene, unauthorized content, messages or communications or any other content, messages or communications infringing copyright or intellectual property rights in any form from being carried via its infrastructure, consistent with the established laws of Afghanistan or any regulatory measure issued by ATRA. If the Licensee becomes aware of breaches of this Condition or specific instances of such infringement are reported to the Licensee by relevant enforcement agencies, the Licensee may block or filter such content, messages or communications and cooperate with and notify the appropriate authorities and parties, including but not limited to, ATRA, law enforcement agencies and other Service Providers in accordance with the laws of the Islamic Republic of Afghanistan. Any damage arising out of default on the part of the Licensee in this regard shall be borne by the Licensee.
- 33.4 The Licensee shall comply with all data protection and lawful interception of communications laws and regulations in force in Afghanistan from time to time. Any damage arising out of default on the part of Licensee in this regard shall be borne by the Licensee.
- 33.5 Nothing contained in this License shall preclude the Licensee from cooperating with and, at the lawful direction of the Governor-General, the

Minister, the Attorney General, ATRA or any lawfully authorized official of a public body, shall provide assistance to the relevant Government ministries and national or local government agencies responsible for national security and emergency services. Any damage arising out of default on the part of Licensee in this regard shall be borne by the Licensee.

- 33.6 Where any confidential information is divulged to the Licensee for proper implementation of the Service Agreement, it shall be binding on the Licensee and its employees and agents to maintain its secrecy and confidentiality.
- 33.7 Save as expressly provided for in this License, all data and information relating to Number Portability or the NPC Administration Service belongs to Afghanistan and shall not be shared or made available to any party located outside Afghanistan without ATRA's prior and express written approval.

**34. Prohibition of Preference and Discrimination**

- 34.1 The Licensee shall not (whether in respect of the charges or other terms and conditions applied or otherwise) show preference to, or discriminate against, any person of any class or description with respect to the provision of the Licensed Services.
- 34.2 The Licensee shall be deemed by ATRA to have shown such preference or to have exercised such discrimination if, inter alia, ATRA adjudicates that the Licensee favors to a material extent a Service Provider to which it provides its Licensed Services so as to:
- (a) directly or indirectly impose unfair purchase or selling prices or other unfair trading conditions;
  - (b) limit markets or technical development or the provision of services to the prejudice of one Service Provider over another;
  - (c) apply dissimilar conditions to equivalent transactions with one Service Provider over another, thereby placing the other Service Provider at a competitive disadvantage;
  - (d) make the conclusion of contracts subject to acceptance by one Service Provider over another of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
  - (e) without objective justification, limiting or impeding access to the MNP System in circumstances where access is essential for the provision of an telecommunications service by a Service Provider.
- 34.3 Any question relating to whether any act done or course of conduct pursued by the Licensee amounts to such preference or discrimination shall be determined by ATRA, but nothing done in any manner by the Licensee shall be regarded as preference or discrimination if and to the extent that the Licensee is



required to do that thing in that manner by or under any Condition of this License.

### **35. Members of Licensee's Group, Associates and Technical Partners**

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

- (a) any Associate of the Licensee, Technical Partner or member of the Licensee's Group does anything which the Licensee is prohibited from doing under the Conditions of this License or fails to do anything which the Licensee is in the circumstances required to do; or
- (b) any Associate, Technical Partner or Member of the Licensee's Group has done something which would, if it had been done by the Licensee, require the Licensee to take or refrain from taking a particular action under this License and neither the Licensee nor the Associate, Technical Partner or Member has met that further requirement; and
- (c) ATRA is of the reasonable opinion:
  - i. **that in consequence, the Licensee is seeking to or is in a material and substantial way avoiding obligations which would apply under these Conditions if the thing had been done or not done by the Licensee; and**
  - ii. **that having regard to the powers granted to it by Article 18 of the Telecom Act, it ought to make a direction under this Condition,**

then ATRA may direct the Licensee to take such steps as ATRA deems appropriate for the purpose of remedying the matter, including but not limited to restraining the Associate, Technical Partner(s) or Member of the Licensee's Group from continuing with the act or refraining from carrying on by or with that member or Associate such commercial activities connected with the Licensee's businesses as ATRA may determine.

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

### **36. Confidentiality of Information**

36.1 The Licensee shall only employ encryption equipment connected to the MNP System for specific requirements that have been evaluated and pre-approved

by ATRA. Such encryption equipment and the corresponding operational procedures shall comply with international and industry standards.

36.2 Subject to the Conditions of this License, the Telecom Act or any other law of Afghanistan, the Licensee shall take all necessary steps to safeguard the privacy and confidentiality of any business or other information about a third party to whom it provides the Licensed Services or a Subscriber of a third party from whom it has acquired such information by virtue of the Licensed Services provided and the Licensee shall use its best endeavors to ensure that:

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

36.3 The provisions of Condition 36.2 above shall not apply where:

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

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

## **37. Exceptions and Limitations on Obligations**

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

- (a) The Licensee is not obliged to do anything that ATRA shall determine not to be practicable after due representation has been made thereon to ATRA by the Licensee.
- (b) The Licensee shall not be held to have failed to comply with an obligation imposed upon it by or under this License if and to the extent that the Licensee is prevented from complying with that obligation by law, any physical, topographical or other natural obstacle, the actions of the Government or

Governmental Agency or as a result of fire, explosion, accident, emergency, riot, war, civil commotion or insurrection or any other cause outside the Licensee's control.

- (c) In the event that any of the circumstances specified above causes damage to the Licensee's infrastructure, the Licensee shall be obligated to repair or rebuild the infrastructure pursuant to a timetable and work plan to be established by the Licensee and approved by ATRA, and subject to adequate changes in the provisions of this License at the instance and discretion of ATRA.

### **38. Limitation of Liability**

- 38.1 Subject to Condition 38.2 and notwithstanding any contrary provision of this License, ATRA shall not be liable in contract, tort or otherwise to the Licensee or any third party whomsoever for any indirect, contingent or consequential loss or damage or for loss of profit, business, revenue, goodwill, opportunities or anticipated savings, cost of capital, cost of substitute service, facilities or products, or down-time costs, consequent upon the issuance, actualization or any Condition of this License or any act taken by ATRA in connection with or pursuant to this License or any other matter related howsoever thereto.
- 38.2 Except as otherwise set forth herein, neither Party shall be deemed negligent, at fault or liable in any respect to the other for any delay, interruption or failure in performance hereunder resulting from "*Force majeure*" wild fire, flood, water, the elements, explosions, acts of God, war, accidents, labor disputes, strikes, unavailability of transportation or other cause beyond the reasonable control of the Party delayed or prevented from performing.

### **39. Legal and Regulatory Framework of the Number Portability System**

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

## PART VI - SECURITY CONDITIONS

### 40. Security Provisions

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