Telecommunications Regulatory Authority of Bahrain

Consultation Paper

A public consultation document issued by the Telecommunications Regulatory Authority of the Kingdom of Bahrain (the “Authority”) on the Authority’s proposed Fixed Telecommunications Infrastructure Network Licence (the “SE Licence”) to be issued to the new legal entity that will be formed (the “Separated Entity” or the “SE”) through the legal separation of Bahrain Telecommunications Company (“Batelco”).

13 December 2018

LAD/1218/344

The address for responses to this document is:

The Acting General Director
Telecommunications Regulatory Authority
PO Box 10353
Manama
Kingdom of Bahrain

Alternatively, e-mail responses may be sent to lad@tra.org.bh.

The deadline for responses is 16.00 on 24 January 2019.

Purpose: to seek stakeholders’ views on the SE Licence.
1 INSTRUCTIONS FOR SUBMITTING A RESPONSE

1.1 The Authority invites comments on this consultation document from all interested parties. Comments should be submitted no later than 16.00 on 24 January 2019.

1.2 Responses should be sent to the Authority preferably by email (either Word or PDF format) or by fax or post to the attention of:

The Acting General Director
lad@tra.org.bh
Telecommunications Regulatory Authority
PO Box 10353
Manama
Kingdom of Bahrain
Fax number: 17532125

1.3 Responses should include:

- the name of the responding entity;
- the name of the principal contact person;
- full contact details (physical address, telephone number, fax number and email address);
- in the case of responses from individual consumers, name and contact details; and
- a brief statement explaining the interest of the responding entity.

1.4 The Authority seeks comments from stakeholders in the telecommunications industry, the business community and the general public on the proposed Telecommunications Licence to be granted to the Separated Entity attached at Annex 1 of this Consultation (Annex 1);

1.5 All comments should be supported as much as possible by detailed explanation, including, where relevant, references to the specific provisions
of the Telecommunications Law\(^1\) (the "Law") or Licences that the respondent is relying upon.

1.6 Further, the Authority invites respondents to provide comments in response to each of the questions listed for reference at Annex 2.

1.7 In the interests of transparency, the Authority intends to make all submissions received available to the public, subject to the confidentiality of the information received. The Authority will evaluate a request for confidentiality in line with the relevant legal provisions\(^2\) and the Authority’s published guidance on the treatment of confidential and non-confidential information\(^3\).

1.8 Respondents are required to mark clearly any information included in their submission that is considered confidential. Where such confidential information is included, respondents are required to provide both a confidential and a non-confidential version of their submission (in soft copies and not scanned copies). If part or all of the submission is marked confidential, reasons should be provided. The Authority may publish or refrain from publishing any document or submission at its sole discretion.

1.9 Respondents are notified that the Authority intends to hold a workshop in the week commencing 6 January 2019. The purpose of the workshop will be to discuss the draft SE Licence and draft Reference Offer which will be the subject of a separate consultation.

2 \textbf{STATUS OF THIS CONSULTATION DOCUMENT}

2.1 This consultation document is issued pursuant to the Position Paper on "How TRA Consults" issued by the Authority on 17 October 2017\(^4\).

2.2 Interested parties should not take any actions in reliance on the information or proposals contained in this document. Any views set out in this document should be considered as indicative and will be subject to further consideration following the receipt of comments from interested parties.

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\(^1\) The Telecommunications Law of the Kingdom of Bahrain, promulgated by Legislative Decree No. 48 of 2002

\(^2\) Including Article 23 of the Law

\(^3\) \url{http://www.tre.org.bh/media/document/Confidentiality_Guidelines_Final.pdf}

\(^4\) \url{http://www.tre.org.bh/media/document/%5E/position%20paper%20on%20how%20TRA%20consults1.pdf}
2.3 This consultation document does not represent a decision of the Authority. The issues discussed in this document remain open to consideration and should not be construed as indicating that the Authority has formed any final opinion or decision.

2.4 Once the Authority has received and considered responses to this consultation document, the Authority will proceed with finalising the relevant documents subject to this consultation. If appropriate, the Authority will prepare and publish a consultation report which summarises and responds to the comments received.

3 BACKGROUND TO THE ISSUANCE OF THE SE LICENCE

3.1 The Government's Fourth National Telecommunications Plan ("NTP4") calls for the development of a single national broadband infrastructure network (the "NBN"), encompassing the infrastructure required to enable fixed telecommunications networks in Bahrain.

3.2 This NBN should be capable of delivering ultrafast broadband products to consumers and businesses across the Kingdom. The NBN will be operated and deployed by the Separated Entity.

3.3 The Separated Entity will be formed by the separation of the incumbent telecommunications operator, Batelco, into two distinct legal entities: the Separated Entity and the rest of Batelco. The Separated Entity will comprise the appropriate components of Batelco's current wholesale and infrastructure business units, with the other entity comprising the remaining parts of Batelco's business, including its retail division (referred to as Batelco Retail).

3.4 Article 3(e) of the Law requires the Authority to "act in a manner that is consistent with the objectives of" NTP4 provided that this does not derogate from the Authority's independence as provided for under the Law.

3.5 Article 40(bis)(a) states that the Authority "... shall make the Fixed Telecommunications Infrastructure Network Licence available. Unless the Authority determines otherwise, non-holders of this licence shall not deploy or maintain a fixed telecommunications infrastructure in the Kingdom, including in relation to the deployment and ownership of ducts and fibre optics."
3.6 The Authority has previously consulted upon the process for the separation of Batelco\(^1\) in its consultations on the Monitoring Guidelines, the Separation Guidelines and the Special Temporary Measure ("the Prior Consultation").

4 PURPOSE OF THIS CONSULTATION PAPER

4.1 This consultation paper is concerned with the SE Licence that the Authority intends to issue in relation to the Separated Entity.

4.2 It is also intended to promote transparency in relation to the implementation of the new industry structure. The Authority invites stakeholders to comment on the suitability of the SE Licence.

4.3 For completeness, the Authority has included in Annex 2 consultation questions inviting comments on the SE Licence.

5 OVERVIEW OF THE SE LICENCE

5.1 The SE Licence is the Fixed Telecommunications Infrastructure Network Licence that will be issued to the Separated Entity, setting out the terms on which the Separated Entity will operate the NBN.

5.2 The Fixed Telecommunications Infrastructure Network Licence is defined in Article 1 of the Law as follows:

"An Individual Licence made available by the Authority pursuant to Articles 29 and 40(bis)(a) of this Law that enables the licence holder to deploy, operate and maintain a Fixed Telecommunications Infrastructure Network and to supply products and services to other Licensed Operators in the Kingdom over a Fixed Telecommunications Infrastructure Network on a wholesale only and on an equivalence of inputs basis."

5.3 The main purpose of the SE Licence is therefore to authorise the Separated Entity to operate the NBN and to supply wholesale products and services over that network to other Licensed Operators.

5.4 However, the SE Licence is also the legal instrument that requires the SE to comply with specific obligations in relation to the NBN, including:

5.4.1 to comply with the Undertakings;

\(^1\) http://www.tra.org.bh/media/document/Consultation%20paper%20-vFinal%20for%20publication.pdf
5.4.2 to publish a Reference Offer in accordance with the instructions of the Authority;

5.4.3 to offer its wholesale products and services in accordance with the Reference Offer, and as required by the Authority; and

5.4.4 to operate in all respects on a stand-alone, independent basis from all other Licensed Operators.

5.5 The SE Licence contains a number of standard provisions which reflect the current licensing framework for Licensed Operators in the Kingdom. However, the specific nature of the new single Fixed Telecommunications Infrastructure Network means that it is necessary to incorporate additional provisions into the SE Licence to take account of the particular structure of the SE and its rights and obligations.

5.6 In considering the nature and type of provisions that should be included in the SE Licence, the Authority has had regard to the practice in other jurisdictions outside the Kingdom, particularly those jurisdictions that have separated entities, such as the United Kingdom (although the UK does not have a specific telecommunications licensing framework, but rather a general authorisation framework), Singapore and New Zealand.

**Duration and renewal of the Licence**

5.7 The SE Licence proposed an initial duration of fifteen (15) years with automatic renewal for further periods of ten (10) years, provided that the Licensee is not in breach of the terms of the Licence. The proposed duration is in line with the current term provided for in the various licences (including the licences for fixed services) granted to Batelco and other Licensed Operators. The Authority considers that the proposed duration is consistent with the current framework, and the licences granted to Licensed Operators, and provides sufficient certainty for the SE regarding the deployment of the single network. The Authority however, has invited comments on the length of the initial duration and automatic renewal periods in the questions listed in Annex 2.

**Status of the SE**

5.8 Consistent with the principles in NTP4, the SE Licence requires that the SE is established as a separate legal entity with its own board of directors
and management; and that the SE acts on an independent basis, including independently from Batelco's retail business unit(s) ("BRE"). This means that the SE will be required to deal with Licensed Operators, including BRE, on a stand-alone, independent basis and in such a manner so as to ensure no undue preference for the needs / requirements of BRE.

5.9 Given the fundamental importance of each of these requirements the Authority has sought to reflect such in the SE Licence itself.

**SE services and obligations**

5.10 The SE is authorised under the SE Licence to deploy, install, operate, manage and maintain the Fixed Telecommunications Infrastructure Network and to provide the Fixed Telecommunications Infrastructure Network Service.

5.11 The SE's authorisation under the SE Licence extends to dark fibre and copper wire. The Authority considers that the SE will need to have access to existing dark fibre and copper assets in order to be able to deliver the products and services, and meet the deployment targets set out in NTP4.

5.12 However, in the absence of an explicit requirement in the Reference Offer, the SE Licence does not impose a stand-alone requirement on the SE to provide access to dark fibre. Should however, a requirement to provide dark fibre be introduced in the Reference Offer, this would be accommodated by the SE Licence i.e., no change would be required to the SE Licence to enable the SE to provide a dark fibre service.

5.13 The SE is required under the SE Licence to set out the specific types of products and services (and the related price and non-price terms of these products and services) as part of the formal Reference Offer which the SE is required to submit to the Authority for its approval. The Reference Offer must be kept under review and updated at regular intervals. This requirement is intended to ensure fitness for purpose of the product and service set offered by the SE.

5.14 While the specific types of products and services to be provided by the SE will be outlined in detail in the Reference Offer, the SE Licence nevertheless sets out a number of general principles regarding the design and offering of these products and services. In particular, the SE Licence
authorises the SE to provide the products and services only to other Licensed Operators and only on a wholesale basis. In designing the products and services, the SE is required to ensure that these reflect the reasonable requirements of other Licensed Operators.

Eol

5.15 As set out above, NTP4 envisages that the SE will offer the regulated product and services to other Licensed Operators on fair, reasonable and non-discriminatory terms, including in relation to tariffs, and, in due course, on an Eol basis.

5.16 The SE Licence contain a requirement that the SE shall, in due course, provide the wholesale products and services on an Eol basis. Until such time, the SE will provide the wholesale products and services on an equivalence of outputs basis.

Restrictions and safeguards

5.17 The SE Licence contains a number of restrictions and safeguards to ensure that the SE is able to deploy the single network in accordance with any roll-out targets set by the Authority and meet its requirements under the Licence, and ultimately to support the attainment of the principles in NTP4. In particular, the Licence envisages a set of clear accounting, audit and reporting requirements that will serve to enable the Authority to monitor the SE’s compliance with the Licence requirements.

5.18 In order to avoid delay or frustration of the deployment of the NBN, the SE is prevented from introducing material changes to the products, services and network (including with respect to the proposed decommissioning of a minimum level of network assets) without first obtaining the express written consent of the Authority to such changes. While the Authority does not wish to unduly influence or interfere in commercial decisions that the SE may reach regarding composition of the network and the wholesale products and services to be offered over that network, the Authority considers the proposed restrictions are necessary. The Authority however welcomes comments from interested parties on the proposed timeframes within which the SE should notify the Authority for approval of any proposals to decommission, retire or cease part of the network and/or associated telecommunications facilities, as well as the percentage
figures regarding the extent of the network and/or associated telecommunications facilities that would be decommissioned etc.

5.19 In considering the type of restrictions and safeguards to impose on the SE, the Authority has been mindful of the need to strike a balance between ensuring sufficient oversight and transparency of the SE’s compliance with its Licence obligations, and at the same time seeking to avoid undue regulatory burden on the SE.
ANNEX 1
SE LICENCE

FIXED TELECOMMUNICATIONS INFRASTRUCTURE NETWORK LICENCE GRANTED TO
THE [SEPARATED ENTITY] BY THE TELECOMMUNICATIONS REGULATORY
AUTHORITY

1 GRANT OF LICENCE

1.1 The Telecommunications Regulatory Authority (the "Regulator" or the "Authority")
hereby grants the [Separated Entity] (the "Licensee") this licence, under Articles 29
and 40(bis)(a) of the Telecommunications Law promulgated by Legislative Decree No.
48 of 2002 (the "Telecommunications Law"), by virtue of which the Licensee is
authorized to deploy, install, operate, manage and maintain the Fixed
Telecommunications Infrastructure Network and to provide the Telecommunication
services described herein in the Licensed Area (the "Licence").

1.2 This Licence has been granted in furtherance of the Regulator’s implementation of the
policies set out under the Fourth National Telecommunications Plan in relation to the
establishment by the Bahrain Telecommunications Company BSC (c) ("Batelco") of a
legally separate entity to deploy, install, operate, manage and maintain a single
telecommunications infrastructure network and supply associated wholesale products
and services in the Kingdom and the implementation of the approach set out in the
Kingdom.

1.3 This Licence shall be subject to the provisions herein stated, the Telecommunications
Law and any regulations, orders, determinations or decisions issued thereunder.

2 DEFINITIONS

2.1 For the purposes of this Licence:

2.1.1 A meaning or definition provided for any word, phrase or expression under
the Telecommunications Law shall also be applicable to such word, phrase
or expression in this Licence, unless the context requires otherwise.

2.1.2 Terms used and not otherwise defined shall have the meaning ascribed to
them in the Telecommunications Law.
2.1.3 The following terms and expressions shall have the following meanings unless the context requires otherwise:

"Affiliate" means, as used with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, that Person. For the removal of doubt for the purposes of this Licence the term Affiliate (in relation to the Licensee) shall include BRE and/or any other business entity that is part of the Batelco group of companies and/or any other Person determined by the Authority to be an Affiliate of the Licensee;

"BRE" means Batelco’s businesses and/or business unit(s) and/or Affiliates, regardless of their form or structure, that are concerned with the delivery and/or provision of retail Telecommunications services to Users and/or Subscribers in the Kingdom;

"Control" means, as applied to any Person, the possession, directly or indirectly, of the power to influence the direction of the management of that Person, whether through ownership, voting or other means and “Controlling” and “Controlled” shall be construed accordingly. For the purposes of this Licence, Control shall include holding 5% or more of the shares or voting rights in a Person;

"Effective Date" means the date referred to in section 20.1;

"Emergency Order" means an order issued by the Authority on an urgent basis requiring the Licensee to take or refrain from taking specified action within a stipulated time limit;

"Eol" means equivalence of inputs standard such that to the extent the Licensee is required to offer and provide BRE and the OLOs with Fixed Telecommunications Infrastructure Network Services and products, the Licensee must provide BRE and the OLOs with the same service, on the same time-scales and on the same terms and conditions (including price, non-price terms and service levels), using the same systems and processes (including operational support processes) and with the same degree of reliability and performance, and providing the same commercial information about the service and the systems and processes;
"EoO" means equivalence of outputs standard such that while the Fixed Telecommunications Infrastructure Network Services and products, which the Licensee is required to offer and provide to Licensed Operator including BRE would be comparable (including with respect to functionality and price) to those the Licensee offers and provides to BRE, the underlying processes do not have to be exactly the same;

"Fixed Telecommunications Infrastructure Network" means the Fixed Telecommunications Infrastructure Network and Telecommunications Facilities that enables the supply of wholesale products and services to all other Licensed Operators in the Kingdom in accordance with the terms of this Licence and/or any applicable decision, determination, order (including Emergency Orders), regulation or other regulatory instrument promulgated or approved by the Authority from time to time;

"Fixed Telecommunications Infrastructure Network Service" means a Telecommunications service supplied over the Fixed Telecommunications Infrastructure Network to other Licensed Operators on a wholesale only basis. For the avoidance of doubt, the Fixed Telecommunications Infrastructure Network Service shall include such ancillary services as are necessary and/or desirable to provide the Licensed Services including for example (and without limitation), power, co-location, co-mingling, site access, internal tie circuits, external tie circuits;

"Force Majeure" means any cause affecting the performance by the Licensee of any obligation hereunder arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental or States' acts or regulations, fire, flood, inclement weather, terrorism or any disaster or an industrial dispute (other than relating to the Licensee's own workforce) affecting the provision of Licensed Services. Any act, event, omission, happening or non-happening only will be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its officers, contractors, sub-contractors, agents, servants or employees;

"Implementation of Lawful Access" means the Licensee at its own cost providing all technical resources, including Telecommunications Equipment, systems, programs
and communication links, which allow the purpose of the Lawful Access Regulation (or any subsequent regulation or regulatory decision issued by the Authority or any other entity of the Kingdom tasked with the implementation of national security concerns) to be achieved;

"Infrastructure" means the basic physical and organizational systems and Telecommunications Facilities (e.g. buildings, ducts, fibre, network equipment, power supplies, people and processes) needed for the operation of the Fixed Telecommunications Infrastructure Network;

"Lawful Access Regulation" means Resolution No. (8) of the year 2009 Promulgating a Regulation requiring Licensees to implement Lawful Access, as may be amended from time to time;

"Licensed Area" means the territory of the Kingdom;

"Licensed Services" means the Telecommunications services described in section 5;

"OLO" means a Licensed Operator that is not part of the Batelco group of companies;

"Reference Offer" means the reference offer incorporating the products and services (including the price and non-price terms) to be offered by the Licensee to other Licensed Operators, as approved by the Authority;

"Reference Offer Order" means an order issued by the Authority approving the Reference Offer;

"Relevant Public Authority" means the authority within the Kingdom tasked with the responsibility for assessing Website content;

"Resale Services" means Telecommunications services purchased from the Licensee by any Licensed Operator (including BRE) and made available to any User, together with such additional services as the Licensee may provide;
"Risk" means a probability or threat of damage, loss, or any other negative occurrence that is caused by external or internal vulnerabilities, and that may be avoided through pre-emptive action;

"Separation Guidelines" means the separation guidelines relating to the separation of Batelco issued by the Authority (Ref: LAD/0818/198) dated 6 August 2018;

"Telecommunications Facility" has the meaning ascribed under the Telecommunications Law and includes dark fibre and copper wire;

"Terminal Equipment" means any appliance, apparatus or accessory connected to a Public Telecommunications Network to enable reception and transmission of Telecommunications services;

"Undertakings" means the document setting out the measures Batelco and the Licensee have agreed to undertake in relation to the separation of Batelco into the Licensee and BRE dated [ ]; and

"Website" means any collection of material placed in a computer server-based file archive so that it is accessible, over the internet, using hypertext transfer protocol (or any successor protocol or analogous system) or any network port, application or protocol used to transmit data over an internet connection.

3 STATUS OF THE LICENSEE

3.1 The Licensee is and shall remain throughout the Term of this Licence a separate legal entity with its own board of directors and management.

3.2 The Licensee shall act on an independent basis from all other Licensed Operators, including BRE.

4 LICENSEE OBLIGATIONS

4.1 The Licensee shall comply with:

4.1.1 those parts of the Undertakings which apply in any respect to the Licensee;

4.1.2 any applicable Reference Offer approved by the Authority;

4.1.3 the terms of the Telecommunications Law and any regulations promulgated thereto; and
4.1.4 the terms of all decisions, determination, orders (including Emergency Orders) and/or any other regulatory instrument issued by the Authority.

4.2 Failure to comply with any of the obligations set out in section 4.1 shall constitute a serious breach of this Licence and the Telecommunications Law.

4.3 The Licensee shall maintain detailed records (in such format and updated at such frequency as the Authority requires) of all Infrastructure and Telecommunications Equipment that is used in connection with the Fixed Telecommunications Infrastructure Network, including the location and utilisation of any such Infrastructure or Telecommunications Equipment.

4.4 If requested by the Authority, the Licensee shall remove and/or relocate at its own expense (whether on a temporary or permanent basis) Telecommunications Equipment where this is deemed necessary by the Authority. In determining whether or not to request removal and/or relocation of the Licensee's Telecommunications Equipment the Authority may take into account public interest grounds and/or for reasons of national security.

4.5 The Licensee shall give notice in writing to the Regulator and shall notify all parties affected of any material changes it intends to implement in the specification or performance of the Fixed Telecommunications Infrastructure Network which would require material changes to any equipment or systems connected to the Fixed Telecommunications Infrastructure Network or which would have the effect of making such connections inoperable. The period of notice given shall be appropriate to the likely impact on the parties affected and on connected equipment or systems.

4.6 Where the Regulator considers that a change in the Fixed Telecommunications Infrastructure Network referred to in section 4.5 would cause any other Licensed Operator to be compelled to make major changes to its own systems in order to access and/or connect and/or utilise the Fixed Telecommunications Infrastructure Network, the Licensee shall be required to obtain the prior written approval of the Regulator before implementing such a change.

4.7 The Licensee shall provide to the Authority on a regular basis (which shall be at least every six (6) months) coverage maps regarding the current and future planned deployment and installation of the Fixed Telecommunications Infrastructure Network and associated Telecommunications Facilities.
4.8 The Licensee shall not assign, transfer, sublet or otherwise dispose of its rights, duties, liabilities, obligations and privileges under this Licence to any Person or Persons except with the prior written approval of the Authority. Any such approval shall be given subject to terms and conditions, which the Authority at its discretion may impose. The Regulator may revoke its approval pursuant to this section at any time by providing reasonable advance notice to the Licensee in writing.

4.9 At the request of the Authority and/or every 24 months (whichever is the shorter) the Licensee shall submit a draft Reference Offer for the Authority's approval within a period of time determined by the Authority. If approved, the Authority shall issue a Reference Offer Order specifying the terms of the Reference Offer (such terms to be determined by the Authority if not agreed).

4.10 Within two weeks of the issuance of the Reference Offer Order, the Licensee shall publish the Reference Offer on its website and upon request make copies available free of charge to any Licensed Operator within a reasonable time-frame. Any proposed change to the terms of the Reference Offer will require the approval of the Authority.

5 LICENSED NETWORK AND SERVICES

5.1 The Licensee is authorised to deploy, install, operate, manage and maintain the Fixed Telecommunications Infrastructure Network and to provide Fixed Telecommunications Infrastructure Network Services.

5.2 The Licensee shall ensure that the Licensed Services reflect the reasonable requirements of Licensed Operators.

5.3 The Licensee shall provide the Licensed Services only on a wholesale basis and in accordance with the terms of the relevant Reference Offer.

5.4 Initially the Licensee shall provide the Licensed Service on an EoO basis but where required by the Regulator the Licensee shall provide the Licensed Services on an EoI basis.

5.5 In the context of EoI, "the same" means exactly the same subject only to:

(i) trivial differences (as determined by the Regulator); and/or

(ii) such other difference as may be agreed by the Regulator in writing from time to time.
5.6 The Licensee shall ensure that it is, and maintains, at all times during the Term of the Licence sufficient resources to meet its obligations under this Licence.

5.7 The Licensee is authorised to connect the Fixed Telecommunications Infrastructure Network to:

(a) any Telecommunications Network operated under a Telecommunications Licence; and

(b) any Telecommunications Equipment approved for connection in accordance with Article 38 of the Telecommunications Law and any regulations issued pursuant to the Telecommunications Law.

5.8 The Licensee shall within sixty (60) days from any request by the Regulator present to the Regulator for its approval, a roadmap for migration of any relevant Licensed Services that are being provided by the Licensee over the Licensee's existing copper and/or copper based assets away from provision over such copper and/or copper based assets to the provision of such services over the fibre based Fixed Telecommunications Infrastructure Network.

6 RESTRICTIONS ON THE LICENSEE

6.1 The Licensee must operate in all respects on a stand-alone basis, and independent from all Licensed Operators including BRE. This includes ensuring that its relationships, dealings and transactions with Affiliates are conducted and carried out in a way and manner as if those other parties were not Affiliates.

6.2 The Licensee shall provide at least [twelve (12) months'] advance written notice to the Authority for its approval of any proposal to dispose of, decommission, retire or otherwise cease to operate more than [five percent (5%)] of the Fixed Telecommunications Infrastructure Network and/or associated Telecommunications Facilities. At the same time as providing its proposal to the Authority, the Licensee shall provide a business continuity plan to the Authority in such format and with such detail as the Authority may require.

6.3 The Licensee shall not proceed with any proposal under section 6.2 without the prior written approval of the Authority. The Authority may grant approval to the Licensee's proposals under this section 6.3 of the Licence subject to conditions, including without limitation, a direction to the Licensee to enable one or more other Licensed Operators to take over and operate the assets in question and/or performance of contracts with Licensed Operators for the provision of the Licensed Services.
7 DEPLOYMENT TARGETS

7.1 The Licensee shall deploy the Fixed Telecommunications Infrastructure Network in accordance with any deployment targets determined by the Authority from time to time.

8 QUALITY OF SERVICE REQUIREMENTS

8.1 The Licensee shall meet the quality of service requirements in the Reference Offer and/or such other quality of service requirements as may be determined from time to time by the Regulator.

8.2 The Licensee shall ensure that it maintains true, accurate and not misleading information records in a form to be approved by the Regulator within six (6) months of the Effective Date for the purpose of satisfying the Regulator that the Licensee is meeting the quality of service requirements as specified in section 8.1 and the Licensee shall provide [quarterly] updates to the Regulator concerning such requirements.

9 INTERRUPTIONS TO THE LICENSED SERVICES

9.1 The Licensee shall not intentionally interrupt the operation of the Fixed Telecommunications Infrastructure Network (or any part thereof) in the normal course of business, nor may it in the normal course of business suspend the provision of the Licensed Services without having first obtained the prior written approval of the Regulator and provided reasonable advance notice to Persons to be affected by such interruption or suspension.

10 PROVISION OF ACCESS

10.1 Subject to section 10.3 and without prejudice to section 4.9, the Licensee shall provide Access to the Licensed Services on the reasonable request of any Licensed Operator in accordance with the terms of this Licence, the Telecommunications Law, the terms of any Reference Offer and/or the terms of any determination or order issued by the Regulator. Access shall be provided in a manner that is non-discriminatory (including in particular, in accordance with the provisions in section 10.4 of this Licence).

10.2 The Licensee shall provide Access within a maximum period from the date of request as shall from time to time be determined by the Regulator or set forth in regulations.

10.3 The Licensee shall not be required to provide Access where in the Regulator's view it is not reasonable to require the Licensee to provide Access, including, but not limited
to, where it would expose any Person engaged in provision of the Access to undue risk to health or safety.

10.4 The Licensee shall make available to other Licensed Operators on a timely basis technical information and other commercially relevant information that is necessary for the Licensed Operator to gain Access to the Fixed Telecommunications Infrastructure Network.

11 **PROVISION OF SERVICES FOR RESALE**

11.1 Subject to any regulations on Access and/or interconnection, the terms of any Reference Offer and to the provisions of this section 11, the Licensee shall, within six (6) weeks of a request by another Licensed Operator, enter into a written agreement with the Licensed Operator to provide such Licensed Services as are reasonably requested to enable that Licensed Operator to provide Resale Services. Where the Licensee and such Licensed Operator cannot agree the terms of such agreement within such period of time, either party may refer the matter to the Regulator in writing for determination of such terms within thirty (30) days from referral.

11.2 The Licensee shall not be required to enter into an agreement under section 11.1 where to do so would, in its reasonable opinion and with the agreement of the Regulator:

   (a) cause or would be likely to cause danger, damage or injury to any Person or to any property; or

   (b) interfere with the operation of its Fixed Telecommunications Infrastructure Network or the provision of Telecommunications services over such network.

11.3 The Licensee shall ensure that the agreement referred to in section 11.1 above is offered on terms and in accordance with tariffs approved or determined by the Regulator and shall provide the Regulator with a copy of each such agreement within three (3) days of its signing.

12 **CONNECTION POINTS**

12.1 The Licensee shall establish a connection point at any User's premises that shall constitute the boundary of its network. The Licensee shall not prevent any User from connecting any cabling owned by that User at that User's premises to the Fixed Telecommunications Infrastructure Network provided it is in compliance with applicable regulations.
13 ACCESS TO LAND

13.1 The Licensee shall be entitled to use public and private properties in accordance with the provisions of Chapter XIII of the Telecommunications Law.

14 INTEROPERABILITY AND TECHNICAL STANDARDS

14.1 The Licensee shall comply with relevant regulations and technical specifications issued by the Regulator in order to ensure interoperability of the Licensed Services and the Fixed Telecommunications Infrastructure Network with Telecommunications services and Telecommunications Networks provided by other Licensed Operators to the extent technically feasible.

15 PRIVACY AND CONFIDENTIALITY

15.1 The Licensee shall comply with all obligations upon it (including those referred to at section 4.1) to ensure the privacy and confidentiality of information and business secrets obtained in the course of its business from any Person to whom it provides the Licensed Services by establishing and implementing reasonable procedures for maintaining privacy and confidentiality of such information subject to any requirement under law.

15.2 The Licensee shall maintain sufficient information on its privacy and confidentiality procedures to satisfy the Regulator, at its reasonable request, that the requirements of section 15.1 are being met. Unless otherwise agreed with the Authority, the Licensee shall be required to keep a record of all individuals and/or Persons with access to confidential information and a summary of the nature of the information provided. The Licensee shall provide a copy of this record to the Regulator on request.

15.3 The Licensee shall not use or allow to be used any apparatus comprised in the Fixed Telecommunications Infrastructure Network which is capable of recording, monitoring, or intruding into communications unless it complies with applicable laws or regulations.

16 ANTI-COMPETITIVE PRACTICES

16.1 Without derogating from Article 65 of the Telecommunications Law, the Licensee shall not, alone or together with others, engage in or continue or knowingly acquiesce in any anti-competitive practices and, in particular, the Licensee shall:

(a) not engage in anti-competitive cross-subsidization;

(b) not abuse its dominant position;
(c) not without the express written approval of the Regulator enter into exclusive arrangements with third parties for the location of its facilities that are required to provide the Licensed Services;

(d) not without the express written approval of the Regulator enter into any agreements, arrangements or undertakings with any Person, including any supplier of services that compete with the Licensed Services, which have as their objective or cause the fixing of prices or other restraint on competition;

(e) not enter into any merger or joint venture even where such merger or joint venture would not meet the thresholds stipulated in the Authority’s mergers and acquisitions regulation, without the prior written approval of the Authority;

(f) not use information obtained from competitors if the objective or effect of such use is anti-competitive;

(g) not give undue preference to, or receive an unfair advantage from a business carried on by the Licensee or by an Affiliate of the Licensee and/or the wider Licensee’s group, including without limitation BRE;

and

(h) not (whether in respect of the tariffs or other terms applied or otherwise) show undue discrimination against particular Persons or Persons of any class or description as respects to the provision of the current and future Licensed Services.

17 ACCOUNTING REQUIREMENTS

17.1 Within [one year] of the Effective Date and on an ongoing annual basis, the Licensee shall in a manner to be approved in writing in advance by the Regulator, keep, draw up, submit to independent audit by an external auditor approved by the Regulator and present in written form, separate accounts for Licensed Services activities, to the extent that would be required if the Licensed Services activities in question were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to such Licensed Services activities, and the accounts shall include an itemised breakdown of fixed assets.
17.2 The Regulator may require the Licensee to submit other accounting information it may require in order to effectively supervise and enforce the terms of this Licence and the provisions of the Telecommunications Law and regulations issued thereunder.

17.3 The Authority may appoint an independent auditor to manage and administer an independent audit of the Licensee. In the event of such appointment the Licensee shall give all necessary assistance to the appointed auditor to carry out the objective of its appointment and meet the costs of the independent audit.

18 REQUIREMENT TO PROVIDE INFORMATION AND INSPECTION

18.1 Without derogating from Articles 53 and 77 of the Telecommunications Law, the Licensee is required to maintain such information as will enable the Regulator to carry out its functions under the Telecommunications Law in such manner as the Regulator may from time to time request. The Regulator shall have the right to request the Licensee to submit periodic reports, statistics and other data as well as request additional information in order to effectively supervise and enforce the terms of this Licence, the provisions of the Telecommunications Law and the regulations issued thereunder.

18.2 All information requested by the Regulator must be provided by the Licensee within the time limits requested by the Authority and shall be complete, accurate and free from material error.

19 LICENCE FEES

19.1 The initial licence fee for the period of the Licence from the Effective Date until the end of the calendar year in which the Licence is awarded shall be BD [●].

19.2 The annual licence fee for each subsequent calendar year shall be as per the then applicable Schedule of Fees Regulation.

19.3 The applicable licence fee shall be paid to the Regulator in Bahraini Dinars within the period that may be determined by the Regulator from time to time.

20 DURATION AND RENEWAL

20.1 The Effective Date for this Licence is [31 March 2019] and is valid for a term of [fifteen (15)] years.

20.2 The Regulator shall renew the Licence upon request by the Licensee for additional terms of [ten (10)] years upon expiration of the current Licence term, provided that the
Licensee is not, and has not been, in material breach of the Licence (in which case, the Regulator may veto renewal in accordance with Article 30 of the Telecommunications Law).

21 MODIFICATION, REVOCATION AND TERMINATION

21.1 The Licence may be modified in any of the following ways at any time:

(a) by written agreement between the Regulator and the Licensee;

(b) by the Regulator if the Regulator determines that such modification is necessary to make the conditions of the Licence consistent with terms being imposed generally in respect of other Licences, for the purpose of ensuring fair and effective competition between licensees or to the extent necessitated by technological development, provided that the Regulator shall have:

   (i) given the Licensee six (6) months written notice of the proposed modification; and

   (ii) consulted with the Licensee;

(c) via an order of modification by the Regulator in accordance with the provisions in the Telecommunications Law.

21.2 The Licence may be revoked in any of the following ways at any time:

   (a) written agreement between the Regulator and the Licensee;

   (b) an order of revocation by the Regulator in accordance with the provisions of the Law;

   (c) if the Licensee is dissolved, or enters into liquidation, bankruptcy or equivalent proceedings or makes a general assignment for the benefit of creditors.

21.3 The Licence shall automatically terminate upon the expiry of its term if it is not renewed in accordance with section 20.2 above.

22 FORCE MAJEURE

22.1 If the Licensee is prevented from performing any of its obligations under this Licence because of Force Majeure the Licensee shall notify the Regulator of the obligations it is prevented from performing and the reason why as soon as practicable after it becomes aware of such force majeure.
22.2 The Regulator may suspend those obligations referred to in section 22.1 and the Licensee will not be liable to perform those obligations, for so long as the Force Majeure continues, only if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under this Licence or other reasonable precautions and the inability cannot reasonably be circumvented by the Licensee at its expense through the use of alternate sources, work-around plans or other means.

23 **LAWFUL ACCESS**

23.1 The Licensee shall comply with all orders and/or directions (including Emergency Orders) issued by the Authority and/or any Relevant Public Authority in relation to the ability of Subscribers, Users or any Person to access Website content.

23.2 The Licensee shall meet the costs determined by the Authority in relation to its obligations regarding national security and internet safety including all costs relating to:

   (a) the installation, management and operation of all technical solutions required to ensure that access to Website content is as mandated by the Authority from time to time;

   (b) the installation, management and operation of all systems regarding the Implementation of Lawful Access:

   (c) any other system or matter required to ensure that the Fixed Telecommunications Infrastructure Network is compliant with the Licensee’s obligations as notified to the Licensee by the Authority from time to time.

24 **CRITICAL INFRASTRUCTURE**

24.1 The Licensee shall take all appropriate measures to manage Risks to the security (which shall include, without limitation, national security, asset security, information security, cyber security, organisational security and physical security as described in the Separation Guidelines) and availability of its Infrastructure and take all appropriate steps to protect, so far as possible, the security and availability of its Infrastructure.

24.2 The Licensee will inform the Authority within twenty-four (24) hours of any security breach or potential security breach that affects its Infrastructure.
25 DISPUTE RESOLUTION

25.1 All disputes between the Licensee and the Regulator arising out of this Licence shall be resolved in accordance with the provisions of Chapter XVI of the Telecommunications Law.

25.2 The courts of the Kingdom shall have jurisdiction over disputes between the Licensee and other Licensed Operators in connection with Telecommunications activities which they are licensed to conduct; provided, however, that the parties to such dispute may agree that the dispute be referred to arbitration, in which case, unless such parties agree otherwise and provided that such agreement is not contrary to the Bahrain Arbitration Law (No. 9/2015), the provisions of Articles 67 to 71 of the Telecommunications Law shall apply mutatis mutandis.

26 COMPLIANCE

26.1 If the Licensee fails to comply with its obligations under this Licence and the Regulator deems it necessary and appropriate in accordance with the provisions of Article 3(c), 35 and/or 65 of the Telecommunications Law (as appropriate).

27 NOTICES

27.1 All notices from the Licensee to the Regulator and vice versa shall be in writing with acknowledgement of delivery to the following addresses:

If sent to the Regulator: [insert address]

If sent to the Licensee: [insert address].

Either party may change its above address by notifying the other party in writing at least fifteen (15) days before such change takes effect.

28 TRANSITIONAL PROVISIONS

28.1 The Licensee shall from the Effective Date provide the Licensed Services in accordance with the Reference Offer Order issued by the Regulator prior to the Effective Date bearing reference number [LAD-].

*END*
ANNEX 2

SE LICENCE QUESTIONS

29 **ARTICLE 1: GRANT OF LICENCE**

- **Question**: Do you agree with the provisions of Article 1 of the SE Licence?

  *If not, please give reasons and state which terms you think should be added or omitted.*

30 **ARTICLE 2: DEFINITIONS**

- **Question**: Do you consider the definitions of Article 2 sufficient?

  *If not, please give reasons and state which terms you think should be added or omitted.*

31 **ARTICLE 3: STATUS OF THE LICENSEE**

- **Question**: Do you agree with the provisions relating to the status of the Licensee?

  *If not, please give reasons and state which terms you think should be added or omitted.*

32 **ARTICLE 4: LICENSEE OBLIGATIONS**

- **Question**: Do you agree with the provisions of Article 4 of the SE Licence? In particular:

  (a) that the Licensee will comply with: the Undertakings; the transfer of assets agreement between (i) Batelco and the Licensee and (ii) the OLOs and the Licensee; any applicable Reference Offer; the terms of the Telecommunications Law/regulations; and all decisions/determinations/orders/any other regulatory instruments issued by the Authority;

  (b) that failure to comply with any of the obligations set out in Article 4 will amount to a serious breach of the SE Licence and the Law;

  (c) that the Licensee will maintain detailed records of all Infrastructure and Telecommunications Equipment that is used in connection with the Fixed Telecommunications Infrastructure Network;

  (d) the provisions relating to requests to remove or relocate Telecommunications Equipment;
(e) that the Licensee complies with the notice and approval provisions of Article 4.5 and 4.6 in the event that it wishes to make any of the changes set out in these Articles;

(f) that the Licensee provides coverage maps;

(g) that the Licensee will not assign, transfer, sublet or otherwise dispose of its rights, duties, liabilities, obligations and privileges under the SE Licence without the prior approval of the Regulator (which is to be given at the Regulator's discretion);

(h) the provisions relating to the issuance and approval of a Reference Offer.

If not, please state why and state which terms you think should added or omitted.

33 **ARTICLE 5: LICENSED NETWORK AND SERVICES**

- **Question:** Do you agree with the provisions of Article 5 of the SE Licence?

If not, please state why.

34 **ARTICLE 6: RESTRICTIONS ON THE LICENSEE**

- **Question:** Do you agree with the provisions of Article 6 of the SE Licence and, in particular, the restrictions that it places on the Licensee?

If not, please state why (giving reasons) and state which terms you think should be added or omitted.

35 **ARTICLE 7: DEPLOYMENT TARGETS**

- **Question:** Do you agree with the provisions of Article 7 of the SE Licence?

If not, please state why.

36 **ARTICLE 8: QUALITY OF SERVICE REQUIREMENTS**

- **Question:** Do you agree with the provisions of Article 8 of the SE Licence? In particular:

  (a) The Licensee’s obligation to meet the quality of service requirements determined by the Regulator; and

  (b) The Licensee’s obligations in respect of maintaining information records and the frequency of the updates required, in particular the proposal to require quarterly updates.
If not, please give reasons and state which terms you think should be added or omitted.

37 **ARTICLE 9: INTERRUPTIONS TO THE LICENSED SERVICES**
- **Question:** Do you agree with the provisions of Article 9 of the SE Licence?

  *If not, please state why.*

38 **ARTICLE 10: PROVISION OF ACCESS**
- **Question:** Do you agree with the provisions of Article 10 of the SE Licence? In particular:

  (a) That the Licensee's is required to provide access to the Licensed Services at the reasonable request of any other Licensed Operator in the manner set out in Article 10.1 and within the period determined by the Regulator;

  (b) The requirement to provide information as set out in Article 10.4.

  *If not, please give reasons and state which terms you think should be added or omitted.*

39 **ARTICLE 11: PROVISION OF SERVICES FOR RESALE**
- **Question:** Do you agree with the provisions of Article 11 of the SE Licence? In particular:

  (a) That the Licensee shall enter into a written agreement with a Licenced Operator if the circumstances set out in Article 11.1 of the SE Licence arise (unless the provisions of Article 11.2 apply); and

  (b) That the Licensee ensures that this written agreement is offered on terms and in accordance with tariffs approved by the Regulator and that the Regulator is provided with a copy of it.

  *If not, please give reasons and state which terms you think should be added or omitted.*

40 **ARTICLE 12: CONNECTION POINTS**
- **Question:** Do you agree with the provisions of Article 12 of the SE Licence? In particular:

  (a) That the Licensee shall establish a connection point at any User's premises; and
(b) That the Licensee shall not prevent any User from connecting its cabling at its premises to the Fixed Telecommunications Infrastructure Network (as long as it is compliant with applicable regulations).

If not, please give reasons and state which terms you think should be added or omitted.

41 **ARTICLE 13: ACCESS TO LAND**

- **Question:** Do you agree with the provisions of Article 13 of the SE Licence?

  If not, please state why.

42 **ARTICLE 14: INTEROPERABILITY AND TECHNICAL STANDARDS**

- **Question:** Do you agree with the provisions of Article 14 of the SE Licence?

  If not, please state why.

43 **ARTICLE 15: PRIVACY AND CONFIDENTIALITY**

- **Question:** Do you agree with the provisions of Article 15 of the SE Licence?

  If not, please state why.

44 **ARTICLE 16: ANTI-COMPETITIVE PRACTICES**

- **Question:** Do you agree with the provisions of Article 16 of the SE Licence?

  If not, please state why.

45 **ARTICLE 17: ACCOUNTING REQUIREMENTS**

- **Question:** Do you agree with the provisions of Article 17 of the SE Licence? In particular:

  (a) That the Licensee keep, draw up, and submit to an independent audit separate accounts for Licensed Services activities in line with the standard set out in Article 17.1.

  If not, please give reasons and state which terms you think should be added or omitted.

46 **ARTICLE 18: REQUIREMENT TO PROVIDE INFORMATION AND INSPECTION**

- **Question:** Do you agree with the provisions of Article 18 of the SE Licence?

  If not, please state why.
ARTICLE 19: LICENCE FEES

- **Question:** Do you agree with the licence fee provisions of Article 19 of the SE Licence?

  *If not, please state why.*

ARTICLE 20: DURATION AND RENEWAL

- **Question:** Do you agree with the duration and renewal provisions of Article 20 of the SE Licence, and in particular the proposed length of the initial duration, and for the proposed automatic renewal periods?

  *If not, please state why.*

ARTICLE 21: MODIFICATION, REVOCATION AND TERMINATION

- **Question:** Do you agree with the provisions of Article 21 of the SE Licence? In particular:

  (a) The provisions relating to modification or revocation; and

  (b) The automatic expiry provision.

  *If not, please give reasons and state which terms you think should be added or omitted.*

ARTICLE 22: FORCE MAJEURE

- **Question:** Do you agree with the force majeure provisions of Article 22 of the SE Licence?

  *If not, please state why.*

ARTICLE 23: LAWFUL ACCESS

- **Question:** Do you agree with the provisions of Article 23 of the SE Licence? In particular:

  (a) The cost provisions set out in Article 23.2.

  *If not, please give reasons and state which terms you think should be added or omitted.*

ARTICLE 24: CRITICAL INFRASTRUCTURE

- **Question:** Do you agree with the provisions of Article 24 of the SE Licence and, in particular, the twenty-four (24) hour notice requirement in the event of a breach of security?
If not, please state why.

53 ARTICLE 25: DISPUTE RESOLUTION

- **Question:** Do you agree that any disputes shall be resolved in accordance with Chapter XVI of the Telecommunications Law and that the courts of the Kingdom of Bahrain shall have jurisdiction over such disputes (unless arbitral proceedings are commenced, in which case separate provisions will apply as detailed in this Article)?

  If not, please state why.

54 ARTICLE 26: COMPLIANCE

- **Question:** Do you agree with the provisions of Article 26 of the SE Licence?

  If not, please state why.

55 ARTICLE 27: NOTICES

- **Question:** Do you agree with the notice provisions of Article 27 of the SE Licence?

  If not, please state why.

56 ARTICLE 28: TRANSITIONAL PROVISIONS

- **Question:** Do you agree with the provision of Article 28 of the SE Licence?

  If not, please state why.