

**IN THE MATTER OF AN ARBITRATION UNDER
THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES
BETWEEN STATES AND NATIONALS OF OTHER STATES**

BETWEEN:

GLOBAL TELECOM HOLDING S.A.E.

Claimant

AND

GOVERNMENT OF CANADA

Respondent

CONFIDENTIALITY ORDER

ARBITRAL TRIBUNAL:

Prof. Georges Affaki (President of the Tribunal)

Mr. Gary B. Born (Arbitrator)

Professor Vaughan Lowe (Arbitrator)

30 October 2017

1. For the purposes of this Confidentiality Order:
 - a. “Disputing Party” means either Global Telecom Holding S.A.E. or the Government of Canada;
 - b. “Confidential Information” means information designated by a Disputing Party as confidential on the grounds that it is:
 - i. Business Confidential Information of a Disputing Party;
 - ii. Business Confidential Information relating to a third party;
 - iii. information otherwise protected from disclosure under the applicable domestic law of the disputing State party including, but not limited to, and as amended, Canada’s *Access to Information Act*, the *Canada Evidence Act*, and Canada’s *Privacy Act*; or information that is deemed to be financial, commercial, scientific or technical information supplied by third parties that has been treated as Confidential Information by those third parties;
 - c. “Business Confidential Information” includes:
 - i. trade secrets;
 - ii. financial, commercial, scientific or technical information that is treated consistently in a confidential manner by the Disputing Party or third party to which it relates, including pricing and costing information, marketing and strategic planning documents, market share data, or detailed accounting or financial records not otherwise disclosed in the public domain;
 - iii. information which, if disclosed, could result in material financial loss or gain to the Disputing Party or third party to which it relates; or
 - iv. information the disclosure of which could interfere with contractual or other negotiations of the Disputing Party or third party to which it relates;
 - d. “Restricted Access Information” means confidential information within the meaning of paragraph 1(b) that is designated by a Disputing Party as restricted access on the grounds that:
 - i. the disclosure of this information to the other Disputing Party could result in a serious material gain or loss which could potentially prejudice the competitive position of the Disputing Party or third party to whom that information relates; or
 - ii. the information is highly sensitive confidential information that belongs or relates to a Disputing Party or third party.
 - e. “Written Submission” means the memorial, counter-memorial, reply, rejoinder whether on jurisdiction or on merits and damages; it does not include witness statements, expert reports or exhibits.
2. A Disputing Party may designate Confidential or Restricted Access Information contained in any document that the Disputing Party produces to the other Disputing Party, and in any Written Submission, witness statement, expert report, exhibit, order or award. These designations shall be made in accordance with the procedures set out in this Confidentiality Order.
3. Nothing in this Confidentiality Order shall be construed to abrogate or support a claim or entitlement with respect to a refusal to produce or disclose any information on the basis of a legal impediment, privilege, public interest immunity or other ground for exemption or non-disclosure arising at common law or under national or provincial legislation. Likewise, this Confidentiality Order does not address the applicability of any type of

privilege, public interest immunity or other ground for exemption or non-disclosure of documents during the course of this arbitration.

DOCUMENTS EXCHANGED IN DOCUMENT PRODUCTION

4. A document produced by a Disputing Party to the other Disputing Party shall be protected from disclosure as though it contained Confidential Information in its entirety, except that (a) should the document be filed by one of the Disputing Parties as part of a written submission, the Disputing Parties must follow the process for designating Confidential Information as set out in this Confidentiality Order; and (b) any produced documents that are already publicly-available need not be treated as Confidential Information protected from disclosure.
5. If a Disputing Party contends that a document that it produces to the other Disputing Party contains Restricted Access Information, the Disputing Party shall provide its proposed designations of Restricted Access Information by clearly labelling each page of the document as “Restricted Access” at the time that it produces the document. A document produced by a Disputing Party to the other Disputing Party containing such proposed designations shall be deemed to constitute Restricted Access Information in its entirety unless an objection is filed under paragraph 6 or the document is filed by one of the Disputing Parties as part of a written submission, in which case the Disputing Parties shall follow the process for designating Restricted Access Information as set out in this Confidentiality Order.
6. A Disputing Party may object to a proposed designation of Restricted Access Information in a document that it obtains through the other Disputing Party’s Document Production. If such an objection is made, the Disputing Parties shall attempt to agree on the final designations of Restricted Access Information in the document. If the Disputing Parties do not agree on the final designations of Restricted Access Information, a Disputing Party may submit the objection to the Tribunal for resolution. The Tribunal may invite further submissions on proposed designations of Restricted Access Information.

WRITTEN SUBMISSIONS

7. In order to designate information in a Written Submission, witness statement, expert report or exhibit as Confidential Information, a Disputing Party must, within thirty (30) days of the filing of the document provide the other Disputing Party with a copy of the document containing the Disputing Party’s proposed designations of Confidential Information. The Disputing Party must clearly label the cover page of the document “Confidential Information, Unauthorized Disclosure Prohibited”, or some variation thereof. The top of each particular page of the document that the Disputing Party contends contains Confidential Information must be labeled “Confidential”, or some variation thereof. The alleged Confidential Information must then be enclosed in a single set of brackets (“[]”), unless the document in its entirety is confidential, in which instance it is sufficient to label the document “Confidential”. Equivalent measures should be used with respect to Confidential Information contained in material produced in electronic and similar media.
8. In order to designate Confidential Information in a Written Submission, witness statement, expert report or exhibit as Restricted Access Information, a Disputing Party must, at the time of the filing of the document, provide the other Disputing Party with a copy of the document containing the Disputing Party’s proposed designations of Restricted Access

Information. The Disputing Party must clearly label the cover page of the document “Restricted Access Information, Dissemination Prohibited”, or some variation thereof. The top of each particular page of the document that the Disputing Party contends contains Restricted Access Information must be labeled “Restricted Access”, or some variation thereof. The alleged Restricted Access Information must then be enclosed in a double set of brackets (“[[]]”), unless the document in its entirety is restricted access, in which instance it is sufficient to label the document as “Restricted Access”. Equivalent measures should be used with respect to Restricted Access Information contained in material produced in electronic and similar media.

ORDERS AND AWARDS

9. In order to designate information as Confidential or Restricted Access Information in an order or award, a Disputing Party must, within thirty (30) days from its receipt of the order or award, provide the other Disputing Party with a copy of the order or award containing the Disputing Party’s proposed designations of Confidential or Restricted Access Information. The Disputing Party shall indicate its proposed designations of Confidential Information in the same manner as indicated in paragraph 7, and its proposed designations of Restricted Access Information in the same manner as indicated in paragraph 8.

TREATMENT OF RESTRICTED ACCESS AND CONFIDENTIAL INFORMATION

10. Within thirty (30) days after the Disputing Parties have exchanged their proposed designations of Confidential or Restricted Access Information in a Written Submission witness statement, expert report or exhibit, order or award, a Disputing Party shall advise the other Disputing Party of any objections to the other Disputing Party’s proposed designations of Confidential and Restricted Access Information and of any additional Confidential or Restricted Access Information that has not been appropriately identified and redacted by the submitting Disputing Party. The Disputing Parties shall attempt to resolve any such objection or additional designations amicably between them.
11. Within sixty (60) days after the Disputing Parties have exchanged their proposed designations of Confidential or Restricted Access Information, the Disputing Parties shall submit for resolution by the Tribunal any outstanding disagreement as to the designation of information as Confidential or Restricted Access Information. Following this submission, the Tribunal shall determine the procedure to be followed to address the issue. The information in question shall not be disclosed to any person not authorized to receive Confidential or Restricted Access Information under the terms of this Confidentiality Order until the dispute is resolved by the Tribunal.
12. Ten (10) days after all objections, if any, to proposed designations of Confidential or Restricted Access Information have been resolved by agreement of the Disputing Parties or by the Tribunal, or by the failure of a Disputing Party to make or object to any designation, the Disputing Parties shall consolidate their final designations and jointly file with the Tribunal the following versions of the Written Submission, witness statement, expert report, exhibit order or award:
 - a. a final, restricted access version;
 - b. a final, confidential version with all Restricted Access Information redacted; and

- c. a non-confidential version, with all Confidential and Restricted Access Information redacted.
13. Until the elapse of the thirty-day period for a Disputing Party to provide the other Disputing Party with its proposed designations of Confidential or Restricted Access Information therein, the entirety of a Written Submission, witness statement, expert report, exhibit order or award shall be deemed to be designated as confidential and restricted access. Thereafter, until the final designations of Confidential and Restricted Access Information have been agreed by the Disputing Parties, confirmed by the failure of a Disputing Party to make or object to any designation, or determined by the Tribunal, each Disputing Party's proposed designations of Confidential and Restricted Access Information shall be presumed valid. For greater certainty, the Disputing Parties and the Tribunal shall not disclose the Written Submission, witness statement, expert report, exhibit order or award to any person not authorized to receive Confidential or Restricted Access Information under the terms of this Confidentiality Order until any Confidential or Restricted Access Information has been designated in accordance with the terms of this Confidentiality Order.
14. Materials already exchanged by the Disputing Parties before the execution of this Confidentiality Order can be designated as confidential by notifying the other Disputing Party of such designation within ten (10) business days of the execution of this Confidentiality Order. A redacted version of the materials shall also be provided to the other Disputing Party at that time.
15. The time periods set out in this Confidentiality Order may be amended by agreement of the Disputing Parties, or by order of the Tribunal after hearing the Disputing Parties and taking into account all relevant circumstances.
16. Except with the prior written consent of the Disputing Party that claimed confidentiality with respect to the information, Confidential Information may be used only in these proceedings and may be disclosed only for such purposes to and among:
 - a. Members of the Tribunal (and their assistants, if any) to whom disclosure is reasonably considered by one or more Members of the Tribunal to be necessary;
 - b. ICSID's Secretariat and persons employed by ICSID's Secretariat, including counsel, secretaries, paralegals, transcribers, translators, and any clerical or administrative personnel;
 - c. counsel to a Disputing Party (and their support staff) whose involvement in the preparation or conduct of these proceedings is reasonably considered by a Disputing Party to be necessary in connection with preparation of the Disputing Party's case;
 - d. officials or employees of the Disputing Parties to whom disclosure is reasonably considered by the Disputing Party to be necessary in connection with preparation of the Disputing Party's case;
 - e. independent experts or consultants retained or consulted by the Disputing Parties in connection with these proceedings;

- f. witnesses, who in good faith are reasonably expected by a Disputing Party to offer evidence in these proceedings but only to the extent material to their expected testimony; or
 - g. court reporters and other hearing support staff.
- 17. Except with the prior written consent of the Disputing Party that claimed confidentiality with respect to the information, Restricted Access Information may be used only in these proceedings and may be disclosed only to and among the following people, where their access to the information is necessary for the preparation of the conduct of the case:
 - a. Members of the Tribunal and their assistants, if any, to whom disclosure is reasonably considered by the relevant Member of the Tribunal to be necessary;
 - b. ICSID's Secretariat and persons employed by ICSID's Secretariat, including counsel, secretaries, paralegals, transcribers, translators, and any clerical or administrative personnel;
 - c. counsel to a Disputing Party (and their support staff), except that a Disputing Party may apply to the Tribunal for leave to prevent disclosure of specifically-identified part(s) of a document to counsel to the other Disputing Party who are also officials or employees of that Party (or related entities) where compelling reasons for non-disclosure exist;
 - d. independent experts or consultants retained or consulted by the Disputing Parties in connection with these proceedings but only to the extent material to their expected testimony; or
 - e. court reporters and other hearing support staff.
- 18. No Disputing Party shall file any confidential material covered by the terms of this Confidentiality Order in any Court without first bringing this Confidentiality Order to the attention of the Court and seeking directions concerning the filing of such material in a manner that protects its confidentiality. A Disputing Party shall notify the other Disputing Party prior to requesting such direction from the Court.
- 19. Inadvertent or improper disclosure of Confidential Information, as set forth in the present Order, does not constitute a waiver of the designation of the information as confidential.
- 20. All persons receiving Confidential Information or Restricted Access Information shall be bound by this Confidentiality Order. Each Disputing Party shall have the obligation of notifying all persons receiving Confidential Information or Restricted Access Information of the obligations under this Confidentiality Order and to ensure that persons receiving Confidential Information pursuant to paragraphs 16(d) or (e) execute a Confidentiality Undertaking in the form attached as Appendix A and persons receiving Restricted Access Information pursuant to paragraph 17(c) execute a Restricted Access Confidentiality Undertaking in the form attached as Appendix B before gaining access to any such information. Each Disputing Party shall maintain copies of such Confidentiality Undertakings and shall make such copies available to the other Disputing Party upon order of the Tribunal or upon the termination of this arbitration.

21. If the Tribunal's orders or awards disclose Confidential or Restricted Access Information, the Tribunal shall issue the following versions of the orders or awards, as applicable:
 - a. a restricted access version of the order or award;
 - b. a confidential version of the order or award with all Restricted Access Information redacted; and
 - c. a non-confidential version of the order or award, with all Confidential and Restricted Access Information redacted.
22. A Disputing Party and ICSID shall be free to disclose to the public the redacted, public versions of Written Submissions of the Disputing Parties, the Request for Arbitration, and orders and awards.
23. Documents other than those listed in paragraph 22 may only be disclosed upon agreement of the Disputing Parties.
24. Notwithstanding paragraphs 22 and 23, or any other provision in this Confidentiality Order, the Disputing Parties may make such disclosure of documents or information as is required by law.
25. The obligations created by this Order shall survive the termination of these proceedings.
26. This Confidentiality Order shall be effective and binding upon a Disputing Party upon the signature of the Confidentiality Order by the Tribunal.
27. A Disputing Party may apply to the Tribunal for an amendment to, or a derogation from, this order if compelling circumstances so require.

[signed]

On behalf of the Tribunal
Prof. Georges Affaki (President)

30 October 2017
Date

Signed by both Disputing Parties in acknowledgement of the obligation to abide by this Confidentiality Order:

On behalf of the Government of Canada

Date

Ms. Sylvie Tabet
Mr. Jean-Francois Hébert
Ms. Heather Squires
Ms. Valantina Amalraj
Trade Law Bureau (JLTB)

Foreign Affairs, Trade and Development Canada
125 Sussex Drive
Ottawa, Ontario K1A 0G2
Canada

On behalf of Global Telecom Holding, S.A.E.

Date

Ms. Penny Madden
Mr. Rahim Mooloo
Gibson Dunn and Crutcher LLP
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London EC4Y 0HB
DX217 London/Chancery Lane
United Kingdom

APPENDIX A

CONFIDENTIALITY UNDERTAKING

TO: The Government of Canada (and its legal counsel) and Global Telecom Holding S.A.E. (and its legal counsel).

FROM: _____

1. IN CONSIDERATION of being provided with materials in connection with the arbitration between Global Telecom Holding S.A.E. and the Government of Canada, over which claims for confidentiality have been advanced (“Confidential Information”), I hereby agree to maintain the confidentiality of such material. It shall not be copied or disclosed to any other person who has not signed a Confidentiality Undertaking nor shall the material so obtained be used by me for any purposes other than in connection with this proceeding.
2. I acknowledge that I am aware of the Confidentiality Order that has been agreed to by the Disputing Parties, a copy of which is attached to this Undertaking, and agree to be bound by it.
3. I will promptly return any Confidential Information received by me to the Disputing Party that provided me with such materials or the information recorded in those materials, at the conclusion of my involvement in these proceedings.
4. I acknowledge and agree that either of the Disputing Parties to this arbitration is entitled to relief to restrain breaches of this Confidentiality Order, to enforce the terms and provisions hereof in addition to any other remedy to which any Disputing Party to this arbitration may be entitled at law or in equity.
5. I agree to submit to the jurisdiction of the courts:
 - a. Of the Province of Ontario, for residents of Canada; or
 - b. Of London, for residents of the Arab Republic of Egypt and the United Kingdom; or
 - c. For residents of another jurisdiction, at their choice:
 - In the Province of Ontario
 - In London, United Kingdom

SIGNED, SEALED AND DELIVERED before a witness this ____ day of _____, 20____.

(Print Name)

(Print Witness Name)

(Signature)

(Witness Signature)

APPENDIX B

RESTRICTED ACCESS INFORMATION CONFIDENTIALITY UNDERTAKING

TO: The Government of Canada (and its legal counsel) and Global Telecom Holding S.A.E. (and its legal counsel).

FROM: _____

1. IN CONSIDERATION of being provided with materials in connection with the arbitration between Global Telecom Holding S.A.E. and the Government of Canada, over which claims for confidentiality have been advanced (“Confidential Information”) and for which access has been restricted (“Restricted Access Information”), I hereby agree to maintain the confidentiality of such material. It shall not be copied or disclosed to any other person who has not signed a Restricted Access Information Confidentiality Undertaking nor shall the material so obtained be used by me for any purposes other than in connection with this proceeding.
2. I acknowledge that I am aware of the Confidentiality Order that has been agreed to by the Disputing Parties, a copy of which is attached to this Undertaking, and agree to be bound by it.
3. I will promptly return any Restricted Access and Confidential Information received by me to the Disputing Party that provided me with such materials or the information recorded in those materials, at the conclusion of my involvement in these proceedings.
4. I acknowledge and agree that either of the Disputing Parties to this arbitration is entitled to relief to restrain breaches of this Confidentiality Order, to enforce the terms and provisions hereof in addition to any other remedy to which any Disputing Party to this arbitration may be entitled at law or in equity.
5. I agree to submit to the jurisdiction of the courts:
 - a. Of the Province of Ontario, for residents of Canada; or
 - b. Of London, for residents of the Arab Republic of Egypt and the United Kingdom; or
 - c. For residents of another jurisdiction, at their choice:
 - In the Province of Ontario
 - In London, United Kingdom

SIGNED, SEALED AND DELIVERED before a witness this ____ day of _____, 20____.

(Print Name)

(Print Witness Name)

(Signature)

(Witness Signature)