



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

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**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

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## GENERAL NOTICE

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### NOTICE 894 OF 2002



**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA  
(ICASA)**

**NOTICE OF INTENTION TO ISSUE A PUBLIC SWITCHED  
TELECOMMUNICATIONS SERVICE (PSTS) LICENCE TO THE SECOND  
NATIONAL OPERATOR TO BE LICENSED IN TERMS OF SECTION 32A OF  
THE TELECOMMUNICATIONS ACT NO 103 OF 1996 (THE ACT) AS  
AMENDED READ WITH THE GENERAL NOTICE ISSUED IN TERMS OF  
SECTION 35A OF THE ACT BY THE MINISTER UNDER GAZETTE NUMBER  
23427.**

The Independent Communications Authority of South Africa (the Authority) hereby gives notice that in terms of section 32A of the Act the Authority intends to issue a PSTS licence to the Second National Operator in terms of section 32B of the Act read with the General Notice issued by the Minister in terms of section 35A of the Act and published under gazette number 23427.

Interested persons are hereby invited to submit written representations in relation to this licence which is attached herein as Schedule A, to the Authority by no later than **31 July 2002** by post, hand delivery, facsimile transmission or by an electronic version in Microsoft Word 6.0 or lower for the attention of Mr Siyabonga Madyibi, Icasa Private Bag X10002, Sandton, 2146; Block C, Pin Mill Farm, 164 Katherine Street, Sandton; Facsimile (011) 448 2171; e-mail [Madyibis@icasa.org.za](mailto:Madyibis@icasa.org.za)

Interested persons making representations must clearly indicate in their representations if they wish to make oral representations including the duration thereof which shall not

exceed one hour (1) hour. Should a request for such oral hearings be received then public hearings shall be held on a date to be determined by the Authority at Block C, Pin Mill Farm, 164 Katherine Street, Sandton, Gauteng.

**MANDLA LANGA**  
**CHAIRPERSON**  
**ICASA**

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## 1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In this Licence, unless otherwise stated, words and terms used shall have the same meaning as defined in the Telecommunications Act, 1996 (Act No. 103 of 1996) as amended.
- 1.2 Words importing the singular shall include the plural and vice versa; words denoting persons shall include corporate and unincorporated bodies or associations of persons and *vice versa*.
- 1.3 The headings in this Licence shall not affect any interpretation.
- 1.4 Any reference, express or implied, to an enactment includes references to
- (a) that enactment as amended, extended or applied by or under any other enactment before, on or after the date of this Licence;
  - (b) any re-enacts (with or without modification); and
  - (c) any subordinate legislation made (before, on or after the date of this Licence) under any enactment, including, without limitation, one within paragraphs (a) or (b) or both.
- 1.5 The schedules to this Licence shall form part of the Licence.
- 1.6 In this Licence the following terms shall have the meanings given herein:

"Act" means the Telecommunications Act, 1996 (Act No. 103 of 1996) as amended.

"Applicable Interest Rate" means the prime interest rate as published from time to time of the South African Reserve Bank established by section 9 of the Currency and Banking Act, No 31 of 1920, and operating in terms the South African Reserve Bank No.90 of 1989.

"Approved Equipment" means telecommunication equipment which has been approved by the Authority under Chapter VI of the Act.

**"Basic Telephone Service"** means a telecommunication service comprising technical features which are the minimum necessary to allow the establishment of a telephony channel for the purpose of providing a telecommunication service in order to convey voice grade signals between two Items of Customer Premises Equipment connected to the Public Switched Telecommunication Network.

**"Billing Processes"** means the billing and metering systems taken together, where "billing system" means the totality of the equipment, data, procedures and activities which the Licensee uses to determine the charges to be made for service usage; and where "metering system" means the equipment, data procedures and activities which the Licensee uses to determine the extent of any telecommunication services which it has provided.

**"Bringing into service"** means, in respect of any Customer Premises Equipment or other telecommunication equipment, the process of connecting it to the Public Switched Telecommunication Network, including, without limitation, such testing or inspection of that Customer Premises Equipment or other telecommunication equipment as the Licensee may require.

**"Business Day"** means any day other than a Saturday, a Sunday or a public holiday in the Republic.

**"Census Data"** means the data compiled by the Central Statistical Service as part of the official population census and published from time to time.

**"Central Statistical Service"** means the Central Statistical Service of the Republic.

**"Chart of Accounts"** means the historic accounting system recording the financial results of the Licensee comprising a balance sheet and a profit and loss account, the form and content of which shall be agreed between the Authority and the licensee in writing from time to time and which is subject to any regulation made by the Authority in accordance with section 46 of the Act.

**"Companies Act"** means the Companies Act 1973 (Act No. 61 of 1973).

**"Community Service Telephone"** means Terminal Equipment:

- (a) which is registered as such by the licensee in its own records; and
- (b) which is made available to the general public for the provision of the service and, to this end is accessible at community service telephone tariff rates as approved by the Authority from time to time; and
- (c) which is located in the areas specified in the attachment 1; and

- (d) single units of which may be grouped in a single location, in which event each individual telephone will be considered a single telephone for the purpose of the licensee's community service obligations as set out in attachment 1 to this licence.

**"Commercial Date"** means the date, to be determined in writing by the Authority, when the licensee may, having complied with its obligations commence using licensed lines for commercial purposes

**"Consumer Price Index "** means the index of consumer prices applicable to all economic sectors compiled and published from time to time by the Central Statistical Service or any index which replaces such index and becomes an official direct substitute for it from time to time.

**"Cost Allocation Manual"** means the document which sets out the principles for the allocation of revenue, costs, assets and liabilities to a telecommunication service, the form and content of which shall be agreed between the Authority and the Licensee in writing from time to time and which is subject to any regulation made by the Authority pursuant to section 46 of the Act.

**"Customer"** means any person who has indicated a willingness to receive Public Switched Telecommunication Services from the Licensee on the Licensee's terms and conditions, or has in writing entered into a contract with the Licensee for the provision of such service.

**"Customer Pipeline"** means a register of applications maintained from time to time by the Licensee identifying persons who have requested and are awaiting the telecommunication services referred to in condition 3.1 and whose requests for such services are to be processed in accordance with the relevant Service Targets set forth herein but shall exclude people on the waiting list.

**"Customer Premises Equipment"** means an item of Approved Equipment which does not form part of the Public Switched Telecommunication Network but is connected, or intended to be connected, to Terminal Connection Equipment, whether fixed or portable, and by means of which signals are initially transmitted or ultimately received.

**"Directory Information Services"** means the services described in condition 7.

**"Effective Date"** means the date on which this Licence was issued by the Authority.

**"Emergency"** means an emergency of any kind, including, without limitation, any circumstance whatsoever resulting from major accidents and natural disasters.

**"Emergency Organisations"** means, in respect of any locality, the relevant police, fire, ambulance and coast guard services for that locality and any other similar Organisation providing assistance to the public in Emergencies.

**"Exchange Line"** means a Local Line provided to connect a Terminal Connection Point to the Local Exchange.

**"Existing Waiting List"** means a register of applications maintained from time to time by the Licensee identifying persons who have requested services referred to in this License but for whom the Licensee is unable to provide such telecommunication services because of the unavailability of an Exchange Line whereby such person can be connected to the Local Exchange.

**"Financial year"** means the period of twelve (12) months in respect of which the Licensee is required to make up its accounts under the Companies Act.

**"Intellectual Property Right"** has the meaning assigned to such term in condition 14.4(a).

**"Interconnection Service"** means a telecommunication service which an Operator has requested from the Licensee and which the Licensee is obliged to enter into an agreement to provide in accordance with section 43 of the Act and the guidelines contemplated thereunder.

**"International Call"** means a call (including, without limitation, any signal conveyed by means of a telecommunication system) which originates in a telecommunication system in the Republic and terminates in a telecommunication system in a country other than the Republic or vice versa or a call (including, without limitation, any signal conveyed by means of a telecommunication system) which originates and terminates in a telecommunication system in a country other than the Republic but is conveyed via a telecommunication system in the Republic.

**"Internet"** means an integrated computer network through which users are connected to each other by means of the TCP/IP family of protocols.

**"ITU"** means the International Telecommunications Union.

**"Library"** means a fixed or permanent public facility that, in the Authority's opinion, is established for the primary purpose of lending or making books available to the community.

**"Licence"** means this licence issued by the Authority to the Licensee under section 36 of the Act.

**"Licensee"** means \_\_\_\_\_, a duly incorporated company which has been issued with the second PSTS licence as required by the Act.

**"Local Access Network"** means the telecommunication systems which are installed or otherwise provided, maintained and operated by the Licensee for the purpose of providing the Local Access Telecommunication Service in one or more Local Exchange Areas.

**"Local Authority"** means any institution or body defined as a "local Government Body" in section 1 of the Local Government Transition Act, 1993 (Act No. 209 of 1993).

**"Local Line"** means a telecommunication facility in the Local Access Network comprised within a Local Exchange Area which is installed for the purposes of connecting a Terminal Connection Point to:

- (a) another Terminal Connection Point in the same Local Exchange Area;
- (b) the Local Exchange in that Local Exchange Area; or
- (c) other elements of the Public Switched Telecommunication Network which are not comprised in the Local Access Network.

**"Maritime Service"** means an International Telecommunication Service consisting of two-way telecommunication (including, without limitation, manually and automatically switched voice and data services) between the International Network and seagoing vessels or other floating structures, which is compliant with the relevant Radio Regulations of the ITU.

**"National Long-distance Network"** means the telecommunication systems which are installed or otherwise provided, maintained and operated by the Licensee for the purpose of providing the National Long-distance Telecommunication Service.

**"National Revenue Fund"** means the Fund established under section 213 of the Constitution.

**"Network Connection Equipment"** means, in relation to any telecommunication system, an item of telecommunication apparatus comprised in that telecommunication system which is not Terminal Connection Equipment and which is used, or is meant to be used, to provide an interconnection with another telecommunication system.

**"Network Connection Point"** means any point within an item of Network Connection Equipment comprised in one telecommunication system at which signals are

conveyed to or from a corresponding point in another item of Network Connection Equipment comprised in another telecommunication system.

**"Number"** means any numeral(s) which would need to be used in connection with any telecommunication service for the purposes of establishing a connection with any Terminal Connection Point, user or telecommunication apparatus connected to any telecommunication system providing a telecommunication service, but not including any numeral which is not accessible to the generality of users of a telecommunication service.

**"Numbering Plan"** means a plan, which may be prescribed by the Authority in accordance with section 89 of the Act, describing the method adopted or to be adopted for allocating and reallocating a Number to any Terminal Connection Point, user, telecommunication apparatus or particular telecommunication service.

**"Operator"** means any person licensed to provide a telecommunication service pursuant to a licence of a type referred to in section 34(2) of the Act.

**"Outstanding Demand"** means the sum total of the Customer Pipeline and the Waiting List.

**"Overdue Interest Rate"** means the prime interest rate as published from time to time of the South African Reserve Bank plus 3%.

**"Point of Connection"** means a fixed point between--

- (a) a Network Connection Point comprised in one telecommunication system and a Network Connection Point comprised in another telecommunication system; or
- (b) a Terminal Connection Point and Customer Premises Equipment, in each case through which a signal is conveyed.

**"Post Office"** means any facility defined or described as such in the Postal Services Act.

**"Postal Services Act"** means Act No. 124 of 1998, as amended.

**"Private Circuit"** means a telecommunication facility which provides for transmission capacity between fixed points within a telecommunication system and does not enable the Customer to control the switching functions.

**"Public Emergency Call Service"** means the services described in condition 10.

**"Public Pay-telephone"** means apparatus (including any kiosk, booth, acoustic hood, shelter or similar structure in which that apparatus may be installed) at which Public

Pay-telephone Services are made available to the public or segments of the public, and which contains a device to accept payment for those services.

**"Public Pay-telephone Service"** means all or any of-

- (e) the installation, repair and maintenance of Public Pay-telephones;
- (f) the conveyance of voice telephony messages to and from Public Pay-telephones;
- (g) the provision of Directory Information Services from Public Pay-telephones;  
and
- (h) the provision of Public Emergency Call Services from Public Pay-telephones;

together with the installation, bringing into service, maintenance and repair of that part of the Public Switched Telecommunication Network which is provided, maintained and operated by the Licensee for the purposes of providing the relevant telecommunication service; provided, however, Public Pay-telephone Service shall not include the provision of community service telephones as contemplated in the licences issued under section 37 of the Act.

**"Rand"** or **"R"** means the lawful currency of the Republic.

**"Rate Regime"** means fees and charges for telecommunications services which are prescribed in terms of section 45 of the Act.

**"Regulatory Accounts"** means accounts as may be prescribed in terms of section 46 of the Act.

**"Renter"** means any Customer Premises Equipment and Exchange Line which are together rented by a person for the purpose of providing the whole or any part of a Public Pay-telephone Service, which person--

- (a) has entered into a contract with the Licensee to provide such Public Pay-telephone Service, and

- (b) is able to determine the location from which such service will be provided, who shall have access to such service, or when access to such service will be provided.

**"Replacement Line Target"** means the total number of new digitalised Exchange Lines to be brought into service in order to replace existing non-digitalised Exchange Lines as specified for the relevant financial year. The Replacement Line Target shall not be included in calculating the New Line Roll-out Target.

**"Republic"** means the Republic of South Africa, including all of its territories and possessions and its territorial waters.

**"Retail Activities"** means those activities of the Licensee involving the provision of telecommunication services to Customers, including, without limitation, all persons to whom the Licensee provides a Basic Telephone Service.

**"School"** means--

- (a) an institution registered as such in terms of any applicable law; or
- (b) an educational institution or part of an educational institution at which education is provided to pupils, whether such institution is public or private.

**"Spectrum"** has the meaning assigned to such term in the licence granted to the Licensee under Section 30 of the Act.

**"Terminal Connection Equipment"** means, in relation to any telecommunication system, an item of telecommunication apparatus comprised in that telecommunication system which is situated in a fixed position in a Customer's premises and which enables--

- (a) Customer Premises Equipment to be connected to that telecommunication system;
- (b) signals to be conveyed in either direction between the Customer Premises Equipment and that telecommunication system; and
- (c) the proper functioning and operation of the Customer Premises Equipment and telecommunication system to be tested.

**"Terminal Connection Point"** means any point within an item of Terminal Connection Equipment at which signals are conveyed to or from one or more items of Customer Premises Equipment.

**"Township"** means a piece of land or settlement, whether surveyed as such or established in any informal manner, predominantly inhabited by communities historically discriminated against on the basis of race.

**"Under-serviced Area"** means any area which has been determined to have less than 5% teledensity in terms of section 40A by the Minister of Communications.

**"Waiting List"** means the applications, which have been verified and confirmed by the Licensee, from the Existing Waiting List combined with the New Waiting List.

**"Wholesale Activities"** means those activities of the Licensee involving the provisions of telecommunication services to Operators, including, without limitation, use of the Public Switched Telecommunication Network and the services that are incidental to such use.

**"Wholly-owned Subsidiary"** has the meaning assigned to such term in the Companies Act.

## **2. RIGHTS AND OBLIGATIONS TO PROVIDE TELECOMMUNICATIONS SERVICES**

2.1 The Licensee shall be entitled to construct, maintain and use the Public Switched Telecommunication Network in the Republic and to provide Public Switched Telecommunication Services in terms of section 36 of the Act.

2.2 The Licensee may, in terms of Sec 32(A) (2)(a), use the telecommunications facilities of Telkom South Africa Limited for a period of 2 years from the date of commencement of service. Upon expiration of the 2-year period, the Licensee shall be entitled to use telecommunications facilities in accordance with section 44 of the Act.

2.3 Without prejudice to conditions set forth in Clause 2.2 and subject to section 43 of the Act and the guidelines contemplated thereunder, the Licensee is authorised-

(a) to connect, or cause or allow to be connected, to any telecommunication system or telecommunication service which the Licensee is entitled to provide under the terms of this Licence-

(i) any telecommunication system or telecommunication service in the Republic which is licensed under the terms of the Act, the licence for

which permits that connection, or which the Authority has prescribed can be provided without a licence;

(ii) any telecommunication system or telecommunication service situated outside the Republic except where such connection would contravene a treaty or other agreement to which the Republic is a party;

(iii) any Customer Premises Equipment; and

(iv) any telecommunication equipment which is installed in a vehicle, vessel or other floating structure, aircraft or satellite;

(b) to convey to and from that connected telecommunication system, telecommunication service or telecommunication equipment, any signal and to perform any switching incidental to that conveyance;

and

(c) to provide any telecommunication service that is incidental to that connection or conveyance.

2.4 Without derogating from the conditions set forth in Clause 2.2, the Licensee-

(a) shall be entitled--

(i) to sell or lease the use of; or

(ii) to install or maintain, or both;

any telecommunication apparatus, including, without limitation, any Customer Premises Equipment, whether or not it is owned by the Licensee, subject to any terms and conditions that may from time to time be prescribed by the Authority under Chapter V of the Act which may be relevant to the sale, lease, installation or maintenance of any telecommunication apparatus;

- (b) Shall be entitled to manufacture telecommunication apparatus, including, without limitation, Customer Premises Equipment; and
  - (c) Shall be entitled to design, develop, manufacture or otherwise to publish in any manner or form software to be used in connection with any telecommunication apparatus, including, without limitation, Customer Premises Equipment, provided that such software is not commercially distributed, marketed or sold to third parties, unless consented to by the Authority.
  - (d) The Licensee shall not be entitled to sell such Telecommunications equipment or to use in South Africa such network facilities which are maintained by or purchased or leased from a company with its seat registered outside South Africa which holds a direct or indirect ownership interest in the Licensee.
- 2.5 Subject to other provisions of this Licence, the Licensee and any or all of its Wholly-owned Subsidiaries shall be entitled by virtue of this Licence to operate the Public Switched Telecommunication Network and provide all or any of the Public Switched Telecommunication Services together with all or any other rights granted to the Licensee under this Licence.
- 2.6 The Licensee is authorized to exercise its rights granted pursuant to the Licence throughout the Republic of South Africa, including South African territorial waters and airspace (the "Territory"), by itself and/or in co-operation with a third party agent, contractor, network operator or service provider, provided that-
- (a) the Licensee enters into a written agreement with any such third party agent, contractor, network operator or service provider;
  - (b) the Licensee remains responsible to the Authority for the performance of its obligations under the License irrespective of the acts and omissions of each such third party agent, contractor, network operator or service provider; and
  - (c) the written agreement stipulates adequate terms to provide that in the exercise of any of the rights granted to the Licensee, such third party agent, contractor, network operator or service provider uses its best efforts not to

contravene any of the conditions of this License, including without limitation, Licence terms relating to users or applicable laws, and regulations in force.

- 2.7 The Licensee shall notify the Authority of any agreement entered into by the Licensee pursuant to Clause 2.6 at least 30 days prior to the commencement of activities pursuant to such agreement. The Authority may require the Licensee to modify the proposed agreement or may prohibit such cooperation by notifying the Licensee thereof within 15 days of receipt of the notice described in the previous sentence.
- 2.8 Subject to the Act and Clause 2.10 below, the Licensee shall have the right to contractually bind any person licensed to provide Value Added Network Services-
- (a) not to resell capacity on any telecommunication facility so obtained, or cede or assign its rights to use that telecommunication facility, or to sublet or otherwise part with control of it, until the date fixed by the Minister pursuant to section 40(4) of the Act; and
  - (b) not to convey voice telephony as part of any Value Added Network Service.
- 2.9 Subject to the Act and Clause 2.10 below, the Licensee shall have the right to contractually bind any person licensed to provide Private Telecommunication Networks-
- (a) not to resell capacity on any telecommunication facility so obtained, or cede or assign its rights to use that telecommunication facility or to sublet or otherwise part with control of it, until the date fixed by the Minister pursuant to section 41(5) of the Act.
- 2.10 Any contract entered into containing the restrictions set out in Clause 2.8 and/or 2.9 above, shall contain a provision whereby the restriction shall automatically expire and have no more legal force and effect on the date that providers of Value Added Network Services or Private Telecommunication Networks, as the case may be, are legally permitted to engage in the activities set out in Clause 2.8(a) and (b) and Clause 2.9(a).

- 2.11 Nothing in this Licence shall prejudice any rights or privileges granted or afforded to the Licensee under all or any of the provisions of the Act and any other legislation or under any other licence issued to the Licensee under the Act.
- 2.12 Unless otherwise approved by the Authority, the total funded debt of the Licensee shall not exceed two-thirds (2/3) of the total equity of the Licensee.

### 3. SERVICES TO BE PROVIDED

- 3.1 Subject to the Act and other provisions of this Licence, the Licensee is authorised to provide the following elements of the Public Switched Telecommunication Service:

- (a) the National Long-distance Telecommunication Service;
- (b) the International Telecommunication Service;
- (c) the Local Access Telecommunication Service;
- (d) the Public Pay-telephone Service;
- (e) maritime Telecommunication services.
- (f) service comprising the provision of Telegram.
- (g) fixed mobile services.
- (h) the supply of telecommunications equipment, the installation, bringing into service, maintenance and repair of that part of the public switch telecommunication network that is provided, maintained and operated by the public switch telecommunication services Licensee for the purposes of providing any telecommunication service, such as the provision of telecommunication circuits for-
  - i. Private Circuits;
  - ii. links between sites of the same Operator or multiple Operators;
  - iii. telecommunication facilities used for the provision of private telecommunication networks;
  - iv. telecommunication facilities used for the provision of value-added network services;

- v. telecommunication facilities used for the provision of telecommunication services in under serviced areas contemplated in section 40A of the Act;
  - vi. telecommunication services used to provide voice over Internet protocol;
  - vii. third generation telecommunication facilities;
  - viii. telecommunication facilities to provide fixed mobile services in the 1800 MHz frequency band; and
- 
- (i) any other service authorized by the Authority or reasonably complementary to the provision of those services (whether provided on a fixed or fixed mobile basis) such as the provision, repair and maintenance of equipment located on a Customer's premises and any other telecommunications apparatus of any kind.
  - (j) all or any telecommunication facilities to be used by any person for the provision of Value Added Network Services;
  - (k) all or any telecommunication facilities comprising fixed lines to be used by any Operator for the provision of Mobile Telecommunication Services; and
  - (l) all or any telecommunication facilities to be used by any person for the provision of any Private Telecommunication Network, other than a Private Telecommunication Network, referred to in section 41 (2) of the Act.

#### **4. ROLL OUT TARGETS AND PERFORMANCE GUARANTEE**

- 4.1 The Licensee shall meet or exceed the Roll Out obligations as set out in the roll out plan attached herein in accordance with the terms and conditions and within the timeframes specified therein.
- 4.2 The Licensee shall within fourteen (14) days of the issue of this Licence, provide the Authority with a performance guarantee in the amount of R50,000,000-00 (two million Rand).

- 4.3 In the event of the Licensee failing to furnish the performance guarantee required by clause 4.2, the Authority shall notify the Licensee in writing of such failure, and shall require the Licensee to remedy its failure by no later than 21 (twenty one) calendar days after such written notification.
- 4.4 In any case where the Licensee fails to satisfy its obligations under this License or otherwise violates any term or conditions of this License, any applicable regulation, or the Act and such failure or violation is determined by the Authority to be material, the Authority shall have the right to draw upon the guarantee to satisfy any sanction imposed by the Authority in accordance with clause 30 of this License and consistent with the Act.
- 4.5 The Authority shall be entitled to regularly review compliance by the Licensee with the License obligations. In performing a review or any other regulatory duties the Authority shall be entitled to request further information from the Licensee, review documents, propose sanctions and perform other such duties as authorized by the Act.

## **5 PROVISION OF UNIVERSAL ACCESS AND COMMUNITY SERVICE OBLIGATIONS.**

### **5.1 Basic Service Provisions**

- 5.1.1 Subject to clause 5.1.2 below, the Licensee shall provide over the Public Switched Telecommunication Network the following telecommunication services:

- 5.1.1 to every person in the Republic who request it; any of the following:

- i. Basic Telephone Services;
- ii. the installation and connection to an item of Terminal Connection Equipment an item of Customer Premises Equipment capable of making use of the Basic Telephone Services; and

- iii. the maintenance or repair of that item of Customer Premises Equipment supplied by the Licensee or in the case of Customer Premises Equipment supplied by a person other than the Licensee, maintenance or repair of that item pursuant to terms and conditions of any agreement entered into between the Licensee and such user on terms satisfactory to the Licensee;

5.1.2 a Public Pay-telephone Services which satisfies the requirements of Section 24.2 below; and

5.1.3 access to the public Emergency Call Services and Directory Information Services by means of either the telecommunication services referred to in Section 5.1.1(a)(i) or (b);

except to the extent that, in the Authority's opinion, based on a showing by the Licensee, including any information supplied by the Licensee at the request of the Authority or other information the Authority may consider, any demand for such telecommunication services is, or can be met, without prejudice to any of the Roll-out Targets, by other means and that, accordingly, it would be unduly burdensome from both a business and financial perspective in the circumstances for the Licensee to provide the telecommunication service requested.

5.1.2 In addition to the exception set out in clause 5.1.1 above, the obligation to provide the telecommunication service referred to in clause 5.1.1 above to any person who requests it shall be subject to the following exceptions:

- (a) the Licensee shall be treated as being in compliance with clause 5.1.1 where at the relevant time the Licensee is in compliance with its obligations set out in the attachment herein and the provisions of this License relating thereto and any necessary telecommunication apparatus or telecommunication facility necessary to provide the relevant telecommunication service in that area has been installed and become operational; and

5.1.4 the person requesting the telecommunication service has entered into a contract for services in accordance with clause 16 below and otherwise has satisfied the terms and conditions set out in such contract.

## 5.2 Community Service Obligations

5.2.1 The Licensee shall establish and maintain School Internet Laboratories (computer laboratories with Internet Connectivity) in 2500 ( two thousand five hundred) schools in peri-urban and rural areas designated by the Authority, over 10 (ten) years as specified in **Attachment 1**.

5.2.2 The licensee shall construct, operate and maintain 30 000 (thirty thousand) Community Service Telephones over 10 (ten) years, in rural areas designated by the Authority in terms of the geographic information survey conducted by the Universal Service Agency as specified in **Attachment 1**.

## 6 GENERAL CONDITIONS

### 6.1 Licence Term

6.1.1 The licence term shall be twenty (25) five years from the Effective Date.

6.1.2 The Authority will extend, the period of the licence as set out in clause

6.1.1 above in accordance with and under the following conditions:

6.1.1 Except where the Licensee has repeatedly and materially failed to satisfy the conditions of the License or to comply with applicable regulations or applicable laws over the course of the License term.

6.1.2 At least 18 months prior to the expiration of the License term, the Licensee shall file with the Authority a written certification of substantial and material compliance based on annual reports required pursuant to clause 20 below.

6.1.3 The Licensee shall comply with any request by the Authority for information or documents necessary to verify the accuracy of the written certification filed by the Licensee pursuant to Section 6.1.2(b) above.

6.1.4 Where the Licensee timely files the certification required in Section 6.1.2(b) above, unless otherwise notified in writing by the Authority within six (6) months of filing of the certification that extension will be denied effective

on the expiration date of the License, extension of the License shall be granted for an additional term, effective upon the expiration date of the License, provided the Licensee has paid, or made other arrangements to the reasonable satisfaction of the Authority, any applicable taxes, fees, and/or other charges, including any outstanding fines or forfeitures due as of the License expiration date.

6.1.5 Prior to any License extension, the Authority may take necessary steps in cooperation with the Licensee, to review and make modifications to the terms and conditions of the License in accordance with the existing regulatory framework at that time.

6.1.6 Prior to denying any request for extension pursuant to clause 6.1.2(d), the Authority shall request in writing that the Licensee take such specified action as the Authority deems necessary to rectify or compensate for the substantial and material non-compliance by the Licensee. A time period shall be specified for such action (being not more than 8 months). If such rectification/compensation is not achieved, only then may the Licence expire without extension.

## 6.2 Licence fee and Terms of payment

6.2.1 The Licensee shall pay a non-recurring licence fee of R300,000 000,00 (three hundred million Rand) exclusive of value added tax. The Licensee shall be entitled to pay the licence fee over a period not exceeding ten (10) years at an annual percentage rate of prime plus one percent (1%).

## 6.3 Annual licence fee:

6.3.1 The annual licence fee payable by the Licensee, from twelve(12) months after the effective date of the Licence shall be equal to 0,1% of the net invoiced annual sales realized from the PSTS revenue computed in accordance with South African GAAP. Such amount is exclusive of value added tax. If the amount of the annual licence fee does not exceed R10,000 000,00 (ten million Rand), the licence fee may be paid in two instalments: the fee payable for sales realized in the first six 6 months shall be due by

August 31 of the same year and the second instalment by March 31 of the following year. If the amount of annual licence fee exceeds R10 000 000,00 (ten million Rand) the fee shall be payable as follows: the first instalment shall be due by January 15 of the following year, while the second instalment shall be due by June 15 of that year.

6.3.2 The annual License fee may be adjusted downward or waived by the Authority where the Authority determines that the Licensee has substantially exceeded the Roll Out Targets in any given year by more than 50%.

#### 6.4 Bank Guarantee

6.4.1 Where the Licensee fails to make any payment or to make full payment of the amounts due under clause 6.2 or clause 6.3 above, the Authority may use the bank guarantee secured pursuant to Clause 4.3.1 above to satisfy any outstanding payment obligation(s) of the Licensee.

#### 6.5 Amendment of the Licence

6.5.1 The licence may be amended as provided for in the Act.

6.5.2 If a proposed amendment to this Licence relates to universal access or universal service obligations, including, without limitation, any of the Roll-out Targets or New Line Roll-out Targets, contemplated in section 36 (2) or section 48(1) (a) of the Act, this Licence may be amended only with the concurrence of the Licensee.

### 7 DIRECTORY SERVICES

7.1 The Licensee shall provide users of its Public Fixed Telecommunication Services with Directory Services at points served by its Public Switched Telecommunication Network.

- 7.2 The Licensee shall provide Directory Services whereby callers may receive information concerning the telephone numbers of subscribers listed or to be listed in the printed directories described in clause 7.4 below (including any corrections or updates).
- 7.3 The Licensee may impose a charge approved by the Authority for the provision of Directory Services. In approving any charge, the Authority may allow for a reasonable minimal number of free inquiries prior to the Licensee applying any approved charge and, in accordance with Section 24 below, may treat public telephones differently where user access to printed directories may be limited.
- 7.4 The Licensee shall publish and make available to all subscribers, free of charge, at least once every year, a telephone directory ("white pages") which shall include: name (in alphabetical order), address and telephone number of each subscriber.
- i. The telephone directories shall also include Emergency service number 112 and the numbers for Emergency Organisations, general information on tariffs, information identifying any number prefixes necessary for making international and, as applicable, local and national long distance calls, and any information determined by the Licensee to be of general interest to the public.
  - ii. The Licensee may combine the directory listings in a single national telephone directory or publish multiple directories divided by geographical areas as determined by the Licensee in which case each local directory need only be made available to subscribers in that geographical area.
- 7.5 Each subscriber has the right to be listed free of charge in the telephone directory. Where requested in writing by a subscriber, the Licensee shall keep that subscriber's name, address and telephone number confidential and not include such information in any published directory or otherwise make such information available in connection with the Licensee's directory services.

- 7.6 The Licensee has the right to publish and make available commercial telephone directories ("yellow pages") in printed, electronic and/or any other form. Listings in these commercial telephone directories are optional. The Licensee may impose a fee for listings in the commercial directory.
- 7.7 Where the Licensee chooses to combine the commercial and non-commercial directories, it shall separate the two directories by clearly marked sections or use differently colored pages.
- 7.8 The Licensee shall correct its internal records for purposes of providing directory services where a mistake in the subscriber information is brought to its attention and shall correct such information as applicable in the next general publication of the printed directory.

## **8 RESTRICTION ON TRANSFER OF LICENCE, SHARES, OWNERSHIP AND CONTROL**

- 8.1 No ownership interest or control of the Licensee shall be transferred or otherwise assigned prior to the Licensee first submitting a written application to the Authority and obtaining the prior written approval of the Authority. This Clause 8.1 shall be governed by and construed in accordance with the regulations promulgated by the Authority under Section 52 of the Act.

## **9 ACCESS TO EMERGENCY CALL SERVICES AND OPERATOR ASSISTANCE**

- 9.1 The Licensee shall provide users of the Public Switched Telecommunication Network with operator assistance and Emergency services at points served by the Public Switched Telecommunication Network.
- 9.2 The Licensee may impose a charge for operator assistance services provided pursuant to Clause 9.1 above.
- 9.3 The Licensee shall provide Public Emergency Services by which any member of the public may, at any time and as swiftly as practicable, communicate with any of the Emergency Organisations for the purpose of notifying them of an emergency

at no charge using the Emergency call numbers "112" and "999" and without having to use coins or cards from pay telephones provided by the Licensee. This will include the provision of such service on a suspended line.

#### **10 CONSULTATION WITH EMERGENCY ORGANISATIONS AND PROVISION OF SERVICES IN EMERGENCIES**

10.1 The Licensee shall, after consultation with the authorities responsible for Emergency Organisations and such departments of central and local government as the Authority may from time to time determine and whose names are notified to the Licensee for that purpose, make plans or other arrangements for the provision or, as the case may be, the rapid restoration of such telecommunication services as are practicable and may reasonably be required in Emergencies.

10.2 The Licensee shall, on request by any such person as is designated for the purpose in the relevant plans or arrangements, implement those plans or arrangements insofar as is reasonable to do so.

10.3 Nothing in this Condition precludes the Licensee from:

10.3.1 recovering the costs which it incurs in making or implementing any such plans or arrangements from those on behalf of or in consultation with whom the plans or arrangements are made; or

10.3.2 making implementation of any plans or arrangements conditional upon the person or persons for whom or on whose behalf that plan or arrangement is to be implemented indemnifying the Licensee for all costs incurred as a consequence of the implementation.

#### **11 PRICE REGULATION**

11.1 The Licensee shall file rates as well as the relevant terms and conditions with the Authority pursuant to which the Licensee proposes to offer PSTS that are subject to the Rate Regime determined pursuant to section 45(2) of the Act. Such rates shall be filed at least thirty (30) Business Days before the proposed date on which such rates are to become effective where the Licensee proposes to increase rates and at least five (5) days before the proposed date on which such rates are to

become effective where the Licensee proposes to decrease rates. Rates shall be filed with and in the form specified by the Authority. The Authority may disapprove the proposed rates only if:

- 11.1.1 the calculations contain mathematical errors; or
  - 11.1.2 the terms and conditions violate applicable laws, including, without limitation, policy directions, regulations and the Rate Regime, in a material respect.
- 11.2 Disapproval of the rates by the Authority shall be in writing. In the case of rate increases, if the Authority does not deliver to the Licensee a notice in writing of disapproval at least fifteen (15) Business Days before the proposed Effective Date of the rates, the rates shall be deemed to be approved. For rate decreases, the rates shall be deemed to be approved if the Authority does not deliver to the Licensee a notice in writing of disapproval at least twenty-four (24) hours prior to the proposed Effective Date.
- 11.3 Tariffs shall be non-discriminatory for comparable telecommunication services rendered to the same categories of users. In meeting its obligation pursuant to this paragraph, the Licensee may establish different tariffs taking into account: subscriber usage or volume, service packages and feature groups purchased, and the number of accounts or subscriber numbers purchased by a single subscriber. The Licensee may also apply different tariffs for limited duration in connection with promotions supporting its marketing efforts for any service offering.

## 12 PREPARATION OF ACCOUNTS

12.1 Subject to clause 12.4, the Licensee shall prepare, in respect of each of its financial years, accounts on an historic and a current cost basis in respect of--

12.1.1 the Licensee's Retail Activities; and

12.1.2 the Licensee's Wholesale Activities,

(together referred to as the "Regulatory Accounts").

- 12.2 The Licensee shall establish the Regulatory Accounts in accordance with the Chart of Accounts and the Cost Allocation Manual (COA/CAM).
- 12.3 The Licensee shall prepare sufficient accounting and reporting arrangements to enable it to comply with this condition.
- 12.4 The Licensee shall not be required to prepare Regulatory Accounts in accordance with this condition until it has put in place the necessary accounting and management information systems which will enable it to do so. The Licensee shall put such systems in place by the fifth anniversary of the Effective Date, provided that Licensee shall not be required to do anything under this condition which would impose an undue burden on the Licensee having regard to its obligations under the remaining conditions of this Licence.
- 12.5 The Licensee shall, if requested by the Authority to do so, procure in respect of each set of Regulatory Accounts an audit report by the Licensee's auditors in which they will state whether in their opinion the Regulatory Accounts comply with the Chart of Accounts and the Cost Allocation Manual, and fairly present the assets, liabilities, revenues, and expenses in respect of the Licensee's Retail Activities and Wholesale Activities.
- 12.6 The Licensee shall send a copy of each set of Regulatory Accounts to the Authority within twenty (20) Business Days of the completion of the audit referred to in condition 13.5 or, if no audit is requested by the Authority pursuant to that condition, within three (3) months of the end of the relevant financial year.
- 12.7 The Chart of Accounts and the Cost Allocation Manual may be changed as agreed from time to time by the Licensee and the Authority and the Licensee shall be entitled to a reasonable period within which to implement any such changes. Until such time as the initial Chart of Accounts and the Cost Allocation Manual are agreed between the Licensee and the Authority audited annual financial statements shall be prepared in accordance with generally accepted accounting principles, consistently applied.

### 13 FAIR TRADING

13.1 The Licensee shall not show undue preference to, or exercise undue discrimination against, particular persons or persons of any class or description in respect of--

13.1.1 the provision of any telecommunication services (including, without limitation, maintenance services) in accordance with any obligations imposed by this Licence;

13.1.2 the connection of Approved Equipment to the Public Switched Telecommunication Network;

13.1.3 the granting of permission to connect any Operator's telecommunication system with the Public Switched Telecommunication Network in accordance with section 43 of the Act and the guidelines contemplated thereunder; and

13.1.4 the quality and terms of any Interconnection Services provided by the Licensee to an Operator under any agreement between them.

13.2 The Licensee may be deemed to have shown undue preference or undue discrimination as described in clause 13.1 if the Authority determines that it unfairly favours to a material extent any business carried on by it so as to place at a significant competitive disadvantage persons lawfully competing with that business.

13.3 The Licensee shall not, without the consent of the Authority, make-

13.3.1 the acquisition from any person in the Republic by the Licensee or any of its Wholly-owned Subsidiaries, or

13.3.2 the provision of services by any person in the Republic to the Licensee or any of its Wholly-owned Subsidiaries, with respect to any telecommunication services or apparatus, conditional upon agreement that those services and apparatus shall be supplied exclusively to the Licensee.

13.4 Clause 13.3 shall not apply with respect to the supply of any telecommunication services or apparatus where-

13.4.1 the Licensee or any of its Wholly-owned Subsidiaries holds any Intellectual Property Right in that telecommunication service or apparatus; or

13.4.2 the telecommunication apparatus is distinguishable by its external appearance, or by any marking or similar feature, from other telecommunication apparatus of the same type, and is intended, by virtue of those distinguishing features, to be associated with the Licensee or its Wholly-owned Subsidiary;

13.4.3 the Licensee, or any of its Wholly-owned Subsidiaries, makes available research, design or development work, or agrees to finance that work on condition that the telecommunication service or apparatus concerned shall be exclusively supplied to it; or

13.4.4 the Licensee has an exclusive right to supply the telecommunication service or apparatus concerned.

13.5 For the purpose of this condition, "Intellectual Property Right" includes, without limitation, patents, trademarks, designs, know-how, copyright and other trade secrets, and all rights or forms of protection of a similar nature.

13.5.1 The Licensee shall not make it a condition of--

(a) providing any telecommunication service in the Republic by means of the Public Switched Telecommunication Network;

(b) supplying any telecommunication apparatus in the Republic for connection to the Public Switched Telecommunication Network; or

(c) connecting any telecommunication apparatus or system in the Republic to the Public Telecommunication Network;

that any person requesting the telecommunication service, apparatus or connection concerned should acquire from the Licensee or any other person specified by it any telecommunication service other than the particular telecommunication service requested, except where the telecommunication service requested cannot otherwise

be provided, or the telecommunication apparatus requested cannot otherwise reasonably be used.

4.6 The above clause shall not prevent the Licensee from--

13.4.5 imposing any terms and conditions as are permitted under section 43 of the Act and the guidelines contemplated thereunder;

13.4.6 where it supplies as part of the same transaction, or related series of transactions, offering discounts based on term commitments or commitments for multiple services or for purchasing two or more telecommunication services which are of a similar type (or so related as to permit economies of scale where they are provided together), or for purchasing two or more items of telecommunication apparatus, offering quantity discounts or from offering more favourable terms and conditions in respect of those telecommunication services or apparatus; and

13.4.7 imposing any other conditions with respect to the provision or supply all the telecommunication services or apparatus, or connection of the telecommunication system or apparatus, referred to in clause 13.5 as are reasonably incidental to such provision, supply or connection or as may otherwise be agreed by the Authority.

13.5 The Licensee will not unfairly cross-subsidise its service offerings and any cross subsidisation shall be in accordance with COA/CAM regulations prescribed by the Authority

13.6 Any question relating to whether any act done or course of conduct pursued by the Licensee amounts to unfair cross-subsidisation, undue preference or undue discrimination as described in clause 13.1 or 13.7 shall be determined by the Authority, but nothing done in any matter by the Licensee shall be regarded as undue preference, undue discrimination or unfair cross-subsidisation for the purposes of this clause 13 if, and to the extent that, the Licensee is required or permitted to do the relevant matter or thing in such manner by or under any provision of this Licence, any regulation or the Act.

#### **14 REQUIREMENT TO PROVIDE CONNECTION SERVICES INCLUDING CO-LOCATION AND FACILITY SHARING**

14.1 Subject to any exercise by the Authority of its functions under regulation pursuant to Sections 43 and 44 of the Act in relation to the Interconnection and Facilities Sharing guidelines, the Licensee shall to the extent requested by any other person providing telecommunication services, interconnect its telecommunication systems to the telecommunication system of the other person and where so requested by such other person, including private telecommunication networks, lease or otherwise make available telecommunication facilities to such other person(s) pursuant to agreement. The processes and procedures, including the parameters of such obligation shall be governed by the Interconnection and Facilities Sharing guidelines that are in effect at the time.

#### **15 REQUIREMENT TO OFFER CONTRACTS FOR TELEPHONE SERVICES**

15.1 The Licensee shall provide the Public Switched Telecommunication Services authorized pursuant to this License pursuant to a subscriber contract.

15.2 The subscriber contract shall either specify the type of service offered and the terms and conditions on which the telephone service is to be provided under the contract or shall make reference to publicly available terms and conditions. The contract or publicly available terms and conditions shall at least specify, if relevant:

15.2.1 the supply time for initial connection;

15.2.2 the service covered by and the terms of the contract;

15.2.3 the financial penalties the subscribers have to pay in case of payment delay;

15.2.4 the conditions referring to suspension or interruption of the service in case of non-payment by the subscriber;

15.2.5 the types of maintenance service offered;

15.2.6 the compensation or refund arrangements or both for the Licensee's subscribers which apply if the contracted service is not met and, if none are applicable, a statement to that effect;

15.2.7 a summary of the method of initiating procedures for the settlement of disputes; and

15.2.8 information on service quality levels offered.

15.3 The form or model of the subscriber contract, including the general terms and conditions and any amendment thereto used by the Licensee to satisfy its obligations under this Section 16 shall be approved by the Authority. Any amendments to the form or model of the contract shall be submitted to the Authority at least 60 days prior to its coming into force.

15.4 The Licensee shall secure such alteration to the terms and conditions of any such contract, and the conditions of any compensation or refund arrangements or both used by the Licensee, as the Authority may direct.

15.5 The Licensee shall make the form or model contract, including any amendments approved by the Authority available to the public by filing a copy with the Authority; making copies available during regular business hours at its principal offices and any branch offices open to the public; and by posting an electronic version on its web site.

15.6 The Licensee shall retain each subscriber contract or a copy thereof in its records for at least one year following termination of the respective subscriber's contract. The Licensee shall retain all telephone activity and billing records for each subscriber for at least one year following the corresponding activity and billing.

## **16 NUMBERING PLAN**

16.1 The Authority shall make available to the Licensee sufficient blocks of Numbers, having regard to the expected growth and demand for telecommunication services, for a Number to be allocated without undue delay. Number blocks will be made

available to the Licensee under this clause 16.1 pursuant to the Numbering Plan prescribed by the Authority.

16.2 The Licensee and the Authority shall from time to time consult with each other with respect to--

16.2.1 the arrangements for the allocation and re-allocation of Numbers within the Numbering Plan, as may be amended from time to time; and

16.2.2 any developments of, additions to, or replacements of the Numbering Plan.

16.3 The Licensee shall not charge any person for a Number allocated to that person; provided however, nothing in this clause 16.3 shall preclude the Licensee from recovering from an Operator the reasonable cost of allocating a Number or block of Numbers and carrying out any change to the Public Switched Telecommunication Network, that is necessary for the purpose of emitting messages to be sent to a Number allocated to that Operator, and any reasonable cost arising from that change.

## **17 NUMBER PORTABILITY**

17.1 The Licensee shall provide Number Portability in accordance with and on terms and conditions specified in the regulations in effect at the time.

## **18 CARRIER PRE-SELECTION**

18.1 The Licensee shall provide Carrier Pre-selection in accordance with and on terms and conditions specified in the regulations in effect at the time.

## **19 PROVISION OF INFORMATION**

19.1 The Licensee shall submit to the Authority within four (4) months after the end of each financial year a report, certified by an appropriately qualified independent auditor, which sets out the extent to which the Licensee has, during the financial year in relation to which the report is submitted, met its obligation with respect to the Roll-out Targets and the Service Targets for the preceding financial year.

19.2 Subject to applicable law, the Authority shall, at the written request of the Licensee, use its reasonable endeavours to ensure that all or any part of the report referred to in Clause 19.1 above reasonably justifying confidentiality, such as commercially sensitive or proprietary information relating to the financial capacity or business plans of the Licensee, trade secrets, etc., shall not be open to public inspection or disclosed to any third party.

19.3 For purposes of this Clause 19.1 commercially sensitive documents or information or other matters reasonably justifying confidentiality shall exclude documents or information that was or becomes, or as a matter of law should be, generally available to the public.

## 20 BILLING ARRANGEMENTS

20.1 The Licensee shall provide a bill to each subscriber, in a form that complies with clause 21 below, for the services rendered during any period determined by the Licensee. The Licensee shall establish appropriate processes and procedures to ensure that subscriber bills are accurate and the amount due (after deducting any credits, discounts or similar adjustments) is no higher than an amount which represents the true extent of the services actually provided by the Licensee to the subscriber in question.

20.2 Without prejudice to the generality of clause 20.1 above, the Licensee shall at all times maintain in operation such a Billing Process as facilitates compliance by the Licensee with, and is calculated to prevent contravention by it of, that paragraph. The Licensee may at its discretion out source its billing obligation; provided however, it shall remain primarily responsible for meeting its obligations under this License.

20.3 The Licensee shall not be regarded as being in contravention of its obligation under Clause 20.1 above except where the failure is in relation to the billing process and the Licensee has failed to take all reasonable steps to prevent a contravention of that obligation.

20.4 The Licensee shall keep such records as may be necessary or as may be determined by the Authority to be necessary for the purpose of satisfying the

Authority that the billing process has the characteristics required by Clause 20.2 above, provided that nothing in this Clause 20.4 shall require the Licensee to retain any records for more than 2 years from the date in which they came into being.

20.5 The Authority shall have the right to inspect and independently verify the Licensee's billing process for purposes of ensuring compliance with the Licensee's obligations under this Section 21. Where the Authority provides written notice to the Licensee that it is exercising its right under this Section 21.5, the Licensee shall cooperate with the Authority by making available appropriate personnel with knowledge of the billing process; providing all back up and support documentation and other information that the Authority may request and otherwise assisting the Authority in the process.

## **21 ITEMISED BILLS**

21.1 The Licensee shall provide each subscriber who so request an itemised bill in such a form and with appropriate explanation to plainly show the call details of the subscriber for the billing period to verify the billed amount.

21.2 In any case where the Authority promulgates regulations or otherwise publishes basic principles of itemised billing, the Licensee's compliance with such regulations or principles shall satisfy its obligations

21.3 The Licensee shall ensure that calls which are free of charge to its Subscribers, including calls to help lines, shall be identified in its Subscribers' itemised bills.

21.4 The Licensee may make an itemised bill available in a secure location on its website if so requested by a subscriber.

## **22 NON-PAYMENT OF BILLS**

22.1 Where a Licensee's subscriber has not paid the Licensee all or part of a bill for the services rendered to that subscriber by the Licensee the Licensee may take steps to secure payment, including discontinuance of service; provided that any measure taken by the Licensee shall-

22.1.1 be proportionate and non-discriminatory;

- 22.1.2 be set out in the subscriber contract entered into with the subscriber pursuant to clause 16 above and published in accordance with that clause;
- 22.1.3 give due warning in advance of any consequent service interruption or disconnection to the Subscriber; and
- 22.1.4 except in cases of fraud, persistent late payment or non-payment, ensure, as far as is technically possible, that any service interruption is confined to the service concerned.

## **23 PUBLIC PAY-TELEPHONE SERVICES**

- 23.1 The Licensee shall install and maintain its Public Pay-telephones in working order. The Licensee shall choose the type of Public Pay-telephones and place for their installation, taking into consideration the penetration of the Public Switched Telecommunication Network and the population density in the respective area.
- 23.2 All Public Pay-telephones that are installed, modified or replaced by the Licensee shall be capable of making local, national long distance and International Calls.
- 23.3 Public Pay-telephones that are installed, modified or replaced by the Licensee shall be accompanied by information panels placed on or near them in plain view of users which shall specify: instructions for use, applied tariffs (or a telephone number where up-to-date tariff information may be obtained), and telephone numbers for Emergency services, operator assistance and directory information services. Calls from Public Pay-telephones for purposes of accessing Emergency services, operator assistance and directory information services shall be free of charge unless otherwise authorized by the Authority.
- 23.4 In addition to the information required to be available at each Public Pay-telephone pursuant to clause 23.4, the Licensee shall also post the name, address and telephone number for the reporting of complaints.

## **24 SERVICES FOR DISABLED PERSONS**

- 24.1 The Licensee shall provide services for disabled persons in accordance with regulations promulgated by the Authority under the Act.

## **25 CONFIDENTIALITY OF INFORMATION**

- 25.1 The Licensee shall not disclose information of a subscriber except with the consent of the subscriber, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorised by or under any law.
- 25.2 The Licensee shall not use information provided by its subscribers or obtained in the course of provision of service to its subscribers and users other than for and in relation to the provision of service by the Licensee.
- 25.3 The Licensee shall not make use of network or traffic data, traffic profiles or any other data of any nature, and which are not otherwise lawfully publicly available and which become available to the Licensee directly or indirectly as a result of entering into interconnection arrangements or otherwise as a result of carrying telecommunications traffic except in rendering the services at issue.
- 25.4 The prohibitions contained in clause 25.1 above do not apply with respect to the name, address and telephone number of subscribers for purposes of providing printed and directory information services in accordance with clause 7 above.

## **26 CODE OF CONDUCT ON THE CONFIDENTIALITY OF CUSTOMER INFORMATION.**

- 26.1 The Licensee shall take all reasonable steps to ensure that its employees observe the provisions of a code of conduct which:
- 26.1.1 Specifies the persons or classes of persons to whom they may disclose information which has been acquired in the course of the Licensee's business about a subscriber or that subscriber's business without the prior consent of that subscriber; and
- 26.1.2 Regulates the information about any such subscriber or his business that may be disclosed without his consent.
- 26.2 The Licensee shall within 12 months of the Effective Date of this License file a draft of its code of conduct with the Authority for its approval. In the event of a

disagreement between the Licensee and the Authority on the contents of the code of practice or any portion thereof, the Authority's ruling shall prevail.

26.3 This condition is without prejudice to the general duties at law of the Licensee towards its subscribers.

## **27 EMPLOYMENT EQUITY, HUMAN RESOURCE DEVELOPMENT AND TRAINING.**

27.1 The Licensee shall comply with the provisions of the Employment Equity Act No. 55 of 1998, Skills Development Act No. 97 of 1998, Labour Relations Act No. of 1994 and any other applicable laws and reports submitted to the Department of Labour in this regard by the Licensee shall also be submitted to the Authority.

## **28 MISCELLANEOUS**

### **28.1 Adherence to International Standards**

28.1.1 The Licensee shall comply with the applicable standards and requirements of the ITU, WTO and any other international institution as agreed to or adopted by the Republic.

### **28.2 Legal compliance**

28.2.1 The Licensee shall comply with all applicable laws of the Republic and with all international obligations to which the Republic is bound and, unless expressly indicated to the contrary, nothing in this Licence shall be construed or understood so as to relieve or exempt the Licensee or any other party, including any of the Licensee's employees, agents, contractors or Service Providers, from complying with the provisions of this Licence, the Act or any other law to the extent that it may be applicable.

### **28.3 Access to network facilities**

28.3.1 The Licensee shall grant unhindered access to all its facilities, installations and records to all officers authorised as inspectors by the Authority for such purposes.

- 28.3.2 The Licensee shall provide details of its facilities, installations and networks in such format and at such times as may reasonably be requested by the Authority from time to time.

#### 28.4 Notices and addresses

- 28.4.1 Any notice or certification given by the Authority to the Licensee shall be in writing;
- 28.4.2 if delivered by hand to the Licensee's address, it shall be deemed, until the contrary is proved by the Licensee, to have been received by the Licensee at the time of delivery; and
- 28.4.3 if posted by pre-paid registered post from an address within the Republic to the Licensee at the address furnished by it, it shall be deemed, until the contrary is proved by the Licensee, to have been received by the Licensee on the 14<sup>th</sup> day of posting.

### 29 REVOCATION

- 29.1 This Licence may be revoked by the Authority at any time by ninety (90) days notice in writing given to the Licensee at its registered office in any of the following circumstances:
- 29.1.1 If the Licensee agrees in writing with the Authority that this Licence should be revoked;
- 29.1.2 if the Licensee repeatedly fails to comply with an order by the Authority under section 100 of the Act (which order has not been set aside by, or is not the subject to proceeding before, a court as referred to in section 100 of the Act) and such failure is not rectified within ninety (90) days after the Authority has notified the Licensee in writing; or
- 29.1.3 if the Licensee is placed in final liquidation or under a provisional or final judicial management order.

- 29.2 Except in cases set out in clause 29.1 above, where a breach or violation of this Licence occurs, no fine, penalty or sanction shall be imposed on the Licensee in the absence of written notice ("Notice of Non-Compliance") having been given to the Licensee, stating clearly and specifically the nature of the alleged breach or infraction and stating the precise penalty or sanction which might be imposed in the absence of a cure of the alleged breach or infraction.
- 29.3 In determining any penalty or sanction, the Authority will take into consideration the nature of the contravention, and whether the contravention is material or repeated. The Authority shall also consider any steps the Licensee took upon discovery of the contravention to comply with the License or applicable law or regulations and whether the Licensee took any actions to mitigate the effects of the contravention.
- 29.4 Where the Licensee receives notice of violation pursuant to this clause 29 , the Licensee shall have three months from receipt of the Notice of Non-Compliance to demonstrate its compliance or to cure any breach or infraction in order to avoid imposition of the contemplated penalty or sanction. Where the Licensee cannot demonstrate compliance or cure the breach or infraction within the three month period to the reasonable satisfaction of the Authority, the Authority may impose fines or other penalties in accordance with the Act.

**ATTACHMENT 1****(A) SNO Roll-Out Plan**

1. The Licensee shall roll out its network according to the following network roll-out plan:
  - 1.1 Within 5 (Five) years of the date when the licence is issued to the licensee, the Licensee shall have covered all the major metropolitan cities as shall be determined by the Authority
  - 1.2 Within 10 (ten) years of the date when the licence is issued to the licensee, the Licensee shall have covered 80% (eighty percent) of the geographical territory of the Republic.
2. If additional spectrum in appropriate bands is allocated, the network roll-out plan shall be changed by agreement between the Authority and the Licensee.
3. Should the Licensee fail to meet its commitments in respect of the geographic area roll-out plan as set out above within each applicable period, the Authority may impose a penalty not exceeding R50 000 000 (Fifty million Rand) that bears the same proportion to R50 000 000 (fifty million Rand) as the geographic area of the Territory not covered bears to the required percentage that ought to have been covered according to the roll-out plan.

**(B) Community Service Obligations**

1. The Licensee shall construct, operate and maintain 30 000 (thirty thousand) Community Service Telephones in rural areas to be designated by the Authority excluding those areas determined to have less than 5% teledensity by the Minister.
2. Should the licensee be prepared to locate its Community Service Telephones in specific locations identified by the Authority in terms of the geographic information survey conducted by the Universal Service Agency, the Authority will credit the licensee through a multiple count accreditation system.
3. The licensee will discharge its obligations as set out in paragraph 1 above in accordance with the following implementation timetable:
  - 3.1 Within 3 (three) years of the date of issue of the licence, the Licensee shall have installed a total of 5 000 (five thousand) Community Service Telephones in rural areas as set out above;

- 3.2 Within 5 (five) years of the date of issue of the licence, the Licensee shall have installed an additional total of 10 000 (ten thousand) Community Service Telephones in rural areas;
  - 3.3 Within 10 (ten) years of the date of issue of the licence, the Licensee shall have installed an additional total of 15 000 (fifteen thousand) Community Service Telephones in rural areas;
4. The Licensee shall submit to the Authority an annual roll-out plan for Community Service Telephones, that specifies the rural areas and Community Centres where such Community Service Telephones are to be installed, taking into account the Licensee's spectrum allocation, network coverage and capacity.
5. The roll-out plans referred to above shall be submitted to the Authority at least 3 (three) months prior to the projected commencement date of the roll-out plan concerned.
6. The roll-out plans referred to above may be supported by statistical data available to the Licensee and acceptable to the Authority relating to percentage penetration of fixed lines.
7. The roll-out plan referred to above may be amended by agreement between the Licensee and Authority to include any proposals made by the Authority within the 3 (three) month period referred to in paragraph 5.
8. For the purposes of determining whether the Licensee has complied with its obligations set out above, the Authority and the Licensee shall use their best endeavours to reach agreement, within 6 (six) months of the Commercial Date, on the applicable performance indicators which shall include indicators such as universality, accessibility, the extent to which the Community Service Telephones are usable, maintained and meet the needs of people leaving in rural areas. In the event that no agreement is reached within the time period stipulated above, the Authority shall determine such applicable performance indicators.
9. The implementation of the Licensee's obligations may, subject to the provisions hereof, be coordinated between the Licensee, similar licensees, PSTS licensees and the Universal Service Agency under the supervision of the Authority.
10. Save as specifically approved by the Authority, services provided in Community Centres shall not be taken into consideration for the purposes of the Community Service Telephone obligations of the Licensee as set out in the abovementioned implementation timetable unless such Community Centres are in rural areas.
11. Subsequent to the second anniversary of the date when the licence was issued to the licensee, the Authority shall periodically assess the Licensee's level of compliance with its obligations to construct, operate and maintain Community Service Telephones in rural areas

in accordance with the implementation timetable set out in paragraph 1. In the event of the Licensee failing to comply with any of its abovementioned obligations, the Authority shall be entitled from time to time, and after due enquiry, to impose reasonable fines, alternatively such fines as the Authority may prescribe by regulation, upon the Licensee, provided that any fine so imposed shall not result in a reduction of the Licensee's community service obligations and shall not preclude the Authority from imposing further fines upon the Licensee in the event of the Licensee persisting with its failure to comply with any particular obligation set out in paragraph 1.

**(C) Internet School Laboratories**

1. The Licensee shall establish and maintain 2500 (two thousand five hundred) internet laboratories in peri-urban and rural schools to be designated by the Authority in accordance with the following implementation timetable:
  - 1.1 Within 3 (three) years of the date of issue of the licence, the Licensee shall have installed a total of 500 (five hundred) Internet laboratories in the designated schools as set out above;
  - 1.2 Within 5 (five) years of the date of issue of the licence, the Licensee shall have installed a total of 1000 (one thousand) internet laboratories in designated schools as set out above;
  - 1.3 Within 10 (ten) years of the date of issue of the licence, the Licensee shall have installed a total of 2500 (two thousand five hundred) internet laboratories in designated schools as set out above.
2. The Licensee shall submit to the Authority an annual roll-out plan for Internet school laboratories, that specifies the schools where such internet laboratories have been established.
3. The roll-out plans referred to above shall be submitted to the Authority at least 3 (three) months prior to the projected commencement date of the roll-out plan concerned.
4. The roll-out plan referred to above may be amended by agreement between the Licensee and Authority to include any proposals made by the Authority within the 3 (three) month period referred to in paragraph 5.
5. For the purposes of determining whether the Licensee has complied with its obligations set out above, the Authority and the Licensee shall use their best endeavours to reach agreement, within 6 (six) months of the Commercial Date, to establish the extent to which the internet laboratories are functional, maintained and meet the needs of the schools in such areas.
6. The implementation of the Licensee's obligations may, subject to the provisions hereof, be coordinated between the Licensee, similar licensees,

PSTS licensees and the Universal Service Agency under the supervision of the Authority.

7. Subsequent to the second anniversary of the date when the licence was issued to the licensee, the Authority shall periodically assess the Licensee's level of compliance with its obligations to establish and maintain internet laboratories in the designated schools, in accordance with the implementation timetable set out in paragraph 1. In the event of the Licensee failing to comply with any of its abovementioned obligations, the Authority shall be entitled from time to time, and after due enquiry, to impose reasonable fines, alternatively such fines as the Authority may prescribe by regulation, upon the Licensee, provided that any fine so imposed

shall not result in a reduction of the Licensee's obligations to establish internet school laboratories and shall not preclude the Authority from imposing further fines upon the Licensee in the event of the Licensee persisting with its failure to comply with any particular obligation set out in paragraph 1.

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