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# GENERAL NOTICE

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## NOTICE 3396 OF 2003



### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

#### **NOTICE OF INTENTION TO AMEND THE NATIONAL MOBILE DATA TELECOMMUNICATIONS LICENCE ISSUED TO WIRELESS BUSINESS SOLUTIONS (Pty) Ltd IN TERMS OF SECTION 78 OF THE POST OFFICE ACT NO 44 OF 1958**

The Independent Communications Authority of South Africa ("the Authority") hereby:

- (1) gives notice of an application received from Wireless Business Solutions (Pty) Ltd (hereinafter referred to as "WBS") to amend its National Mobile Data Telecommunications Licence in terms of section 48(1)(e) read with sections 34(3), 34(4), 34(5) and 35 of the Telecommunications Act, No.103 of 1996, as amended (hereinafter

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referred to as "the Act"). A copy of the application is annexed hereto;

- (2) WBS is the holder of a National Mobile Data Telecommunication Licence to provide a mobile data telecommunications service.
- (3) The Authority hereby invites written comments from interested parties to be submitted no later than **15 January 2004** with regard to the proposed amendments.
- (4) The Authority further gives notice that written representations will be made publicly available except where respondents request that their responses or parts thereof be kept confidential. Respondents are requested to separate any confidential material into a clearly marked annexure, marked confidential.
- (5) Persons submitting written representations are invited to indicate in the first page of their submission whether they would like to make oral representations, which shall be limited to one (1) hour.
- (6) Interested persons are hereby invited to submit written representations on the proposed amendments by WBS. These representations are to be forwarded to the Authority on or before **15 January 2004**, by post, hand delivery, fax **and** also in electronic format (Microsoft Word 6.0, Adobe PDF) for the attention of:

Ms Lee-Ann Cassie  
Manager: Telecommunications, Enforcement  
ICASA  
Private Bag X10002  
Sandton  
2146

Block C  
Pin Mill Farm,  
164 Katherine Street,  
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**Schedule A****NATIONAL MOBILE DATA TELECOMMUNICATIONS LICENCE**

**Issued to ~~Vula Mobile Data(Pty) Ltd trading as Wireless Business Solutions of 2/219 George Street, Glen Austin, MIDRAND~~ Wireless Business Solutions (Proprietary) Limited Registration No: 96/13739/07, of 15<sup>th</sup> Floor, Radiopark Building, Henley Road, Auckland Park, JOHANNESBURG (the Licensee) in respect of the Territory in terms of Section 78 of the Post Office Act, read with the radio licence issued in terms of the Radio Act.**

**DEFINITIONS**

In this licence:

- (a) all words and expressions used shall, unless the context otherwise requires, have the same meanings as ascribed thereto in terms of the Post Office Act.
- (b) the following words and expressions shall have the meanings ascribed to them hereunder:

"Authority" means the ~~South African Telecommunications Regulatory Authority~~ **Independent Communications Authority of South Africa** established in terms of section 3 of the **Independent Communications Authority of South Africa Act, No 13 of 2000** and entrusted with regulation of telecommunications in terms of the Telecommunications Act;

- (a) ~~containing switching capability allowing for the routing of calls between subscribers of the network; and~~
- (b) ~~allowing for hand-over of continuously maintained calls between base stations; and~~

~~(c) allowing for wide-area radio coverage by means of several cells provided for from base stations and allowing for ordered reuse of frequencies between such cells;~~

**"Commercial Date"** means the date on which the Licensee may commence providing the Service in terms of paragraph 4.1 of this licence for commercial purposes, which shall not be later than 1 January 1998 or such other date as may be determined by the Authority by written notice to the Licensee;

**"Customer"** means any person who has applied in writing to enter into a contract for the provision of the Service with the Licensee or a Service Provider or has entered into and not in breach of such a contract;

**"Frequency Band"** means a specified range of frequencies for use by one or more radio communications services;

**"Frequency Band Plan"** means the table setting out the allocations of various frequency bands for use by one or more radio communications service under specified conditions, as published from time to time in the Government Gazette in terms of section 29 of the Telecommunications Act;

**"Interconnection Agreement"** means the agreement between Telkom or any similarly licensed person and the Licensee defining the commercial and technical arrangements for:

- (a) the transfer of Messages in either direction between Telkom or any such similarly licensed person and the Licensee;
- (b) the use of Leased Connections; and
- (c) the provision of related services; and
- (d) the charging and payment of any fees tariff or charge by Telkom or any such similarly licensed person to the Licensee or by an Operator to the Licensee and *vice versa*;

**“Interconnection Fees”** means all the charges payable by or to the Licensee for the use of Leased Connections, including call charges, and any other charges and fees payable in connection with the provision of services in terms of an Interconnection Agreement;

**“ITU-T”** means the Telecommunications Standardisation sector of the International Telecommunications Union previously known as CCITT;

**“Leased Connection”** means a ~~Telecommunications Line~~ Telecommunication Facility connecting two points neither of which is Terminal Equipment and complying with ITU-T recommendations, including but not limited to X.25 connections, leased from Telkom or any similarly licensed person by the Licensee used between MDN elements and required for the provision of the Service;

**“Licensed Line”** means a ~~Telecommunications Line~~ Telecommunication Facility or any part thereof, including Radio Links, which the Licensee is authorised to construct, maintain and operate in terms of this Licence;

**“MAN”** means Mobile Access Number, the subscription number used to identify local, regional and world-wide Customers;

**“MDN”** means the Mobile Data Network operated and maintained by the Licensee in terms of this Licence in order to provide the Service, described as follows:

- (a) containing switching capability allowing for the routing of calls between subscribers of the network; and
- (b) allowing for hand-over of continuously maintained calls between base stations; and
- (c) allowing for wide-area radio coverage by means of several cells provided for from base stations and allowing for ordered reuse of frequencies between such cells;

**"Message"** means any data signal sent, or to be sent, for conveyance by means of a Licensed Line;

**"Minister"** means the Minister for ~~Posts, Telecommunications and Broadcasting~~ of Communications;

**"Operator"** means Telkom, the Licensee or any other similarly licensed person ~~licensed in terms of the Post Office Act and Radio Telecommunications Act~~;

**"Own Connection"** means a ~~Telecommunications Line~~ Telecommunication Facility connecting two points neither of which is Terminal Equipment and complying with ITU-T recommendations, not provided by Telkom or any similarly licensed person and used by the Licensee for the provision of the Service;

**"Post Office Act"** means the Post Office Act, Act No 44 of 1958;

**"Price Cap"** means  $CPI - X$ :

where CPI is the Consumer Price Index for all goods as published by the Department Of Statistics from time to time;

X is a figure to be determined every two years by the ~~Director-General, or Authority as the case may be,~~ after consultation with the Licensee;

**"PSDN"** means the Public Switched Data Network operated by Telkom or any similarly licensed person;

**"PSTN"** means the Public Switched Telephone Network operated by Telkom or any similarly licensed person;

**"Radio Act"** means the Radio Act, Act No 3 of 1952;

**"Radio Licence"** means the licence granted by the Director-General, or Authority as the case may be, to the Licensee in terms of the Radio Act or the Telecommunications Act, as the case may be, for provision of the Service.

**"Radio Link"** means the radio communications path established for the purposes of linking Radio Terminals with Base Stations, in accordance with the conditions of this Licence and the relevant Radio Licence;

**"Radio Regulations"** means the radio regulations made under section 95 of the Telecommunications Act or section 18 of the Radio Act, which were in force immediately prior to the commencement of the Telecommunications Act and are deemed to remain in force until amended or repealed under section 95(4) of the Telecommunications Act;

**"Radio Terminal"** means type approved radio equipment required by a Customer to access Radio Links of the Licensee;

**"Service"** means a national mobile data telecommunications service, using MDN topology and operating in the ~~413-418/423-428 Mhz bands~~ Frequency Bands allocated in the Frequency Band Plan for use by mobile telecommunication services, provided to Customers, consisting of:

- (a) the provision of any Licensed Line;
- (b) the conveyance of any Message by means of such Licensed Line; and
- (c) accessing the PSTN and PSDN;

together with any billing, data processing or other operation which is necessary to provide that service whether or not the Licensee charges a separate fee for it;

**"Service Provider"** means any person who is in the business of providing the Service to its Customers and which has a contract with the Licensee for such purpose;

**"Telecommunications Act"** means the Telecommunications Act No 103 of 1996;



**"Telecommunications Line Telecommunication Facility"** has the meaning as defined in the ~~Post Office~~ Telecommunications Act;

**"Telkom"** means Telkom SA Limited;

**"Terminal Equipment"** means equipment forming part of a Radio Terminal, or equipment on the same or adjacent premises connected to a Radio Terminal, which may be used by a Customer to send and/or receive Messages which are to be or have been conveyed by means of the MDN and which has been approved by the ~~Director General, or Authority as the case may be;~~

**"Territory"** means the geographical area of the Republic of South Africa;

**"Turnover"** means the total sales revenue of the business of the Licensee;

**"Universal Service Agency"** means the agency established in terms of section 58 of the Telecommunications Act;

**"Universal Service Fund"** means the fund established in terms of section 65 of the Telecommunications Act;

**"X.25"** means the ITU-T telecommunications protocol standard for packet switching.

For the purposes of this licence -

- (a) any reference to the singular includes the plural and vice versa;
- (b) any reference to natural persons includes legal persons; and
- (c) any reference to one gender shall include the other gender.

## 1. LICENCE AUTHORITY

1.1 The Licensee is authorised by this licence on a non-exclusive basis to construct, maintain and operate a national MDN for the Territory to:

- (a) provide the Service, and

- (b) connect Terminal Equipment for the provision of Service, and
- (c) interconnect with any licensed PSTN or other eOperator,
- all of which subject to the provisions of paragraph 3.
- 1.2 The rights in terms of paragraph 1.1 may be exercised through agents, contractors or Service Providers of the Licensee, as applicable. The Licensee shall be responsible for their acts or omissions.
- 1.3 Nothing in this licence shall be construed or understood as to relieve the Licensee or any other party of the obligations to comply with any other applicable Statutory prohibition or obligation and in particular the obligations to comply with the provisions of the Radio Act, ~~the Post Office Act~~ Regulations and the Telecommunications Act.
- 1.4 The licence shall not be transferable unless the prior written approval of the ~~Director General, or Authority as the case may be,~~ ~~had~~ has been obtained and then only on such conditions as ~~he or she~~ the Authority may prescribe, including the —payment of a fee.

## 2. LICENCE FEES

- 2.1 In consideration for the granting to the Licensee of the rights to construct, maintain and operate a MDN as provided for in paragraph 1, the Licensee shall pay to the ~~Director General, or Authority as the case may be:~~
- (a) an amount of R1 500 000 payable on date of issue of this licence, or at the instance of the Licensee the following amounts:
- i. R500 000 payable on date of issue of the licence; plus
  - ii. R632 500 payable on the first anniversary of the Commercial Date; plus
  - iii. R739 500 payable on the second anniversary of the Commercial Date;

but subject to a 15% pro-rata discount in the event of the early payment of any or all of the above amounts, calculated on the amount paid in advance.

(b)

- i. an amount constituting 0.2% of Turnover for the first two financial years payable within three months after the end of each financial year of the Licensee, and
- ii. thereafter an annual amount of 2% of Turnover, quarterly assessed Turnover within 45 days of the end of such quarter, to be adjusted and accompanied by an audit certificate within three months of the end of each financial year of the Licensee.

(c) Periodical contributions to the Universal Service Fund in accordance with the Telecommunications Act.

(d) An annual frequency licence fee of R25 000,00 per assigned 12,5 kHz frequency pair or such other frequency licence fee and as determined by the ~~Director General~~, or the Minister or the Authority, as the case may be, from time to time.

2.2 Notwithstanding the provisions of paragraph 19.1 any amount in respect of paragraphs 2.1(a), (b), (c) and (d) above, outstanding for more than 30 days after the due date, will bear interest at a rate of 3% above the prime rate published by Nedbank and calculated from the due date of the specific payment, to the date of actual payment.

### 3. LICENCE DETAILS

3.1 Subject to the provisions of the Telecommunications Act, including any regulations or guidelines issued in terms of the Act and paragraph 3.2 below, the Licensee shall be obliged to use Leased Connections for all connections other than Licensed Lines unless Telkom has indicated to the

Licensee in writing in compliance with the Interconnection Agreement that it is unwilling or unable to provide such Leased Connections, in which instance the Licensee may apply to ~~the Director-General, or the Authority as the case may be,~~ to procure or construct and to use Own Connections.

- 3.2 The Licensee is hereby authorised to procure, construct, maintain and use Own Connections to connect its own MDN elements if these elements are installed on the same or adjacent premises, both occupied by the Licensee.
- 3.3 All international calls originating within or destined for the MDN shall be routed via the Telkom international exchange(s) or the international exchange(s) of any other similarly licensed person.
- 3.4 The Licensee shall undertake an implementation programme in accordance with schedule 1 attached hereto (Implementation Timetable) agreed to between the Licensee and ~~the Director-General, or the Authority as the case may be,~~ and lodged with ~~the Director-General, or the Authority as the case may be.~~

#### 4. COMMENCEMENT AND PERIOD OF LICENCE

- 4.1 The licence does not authorise the use of any Licensed Line until after:
- (a) the amounts specified in paragraph 2.1 (a) and (d) have been paid;
  - (b) the date when the Interconnection Agreement referred to in paragraph 6.1 has been approved by ~~the Director-General, or the Authority as the case may be;~~
  - (c) the date when the Joint Economic Development Plan Agreement has been agreed to; and
  - (d) the provision of a Performance Guarantee in terms of paragraph 17,
- herein after referred to as the Commercial Date.

- 4.2 Subject to the conditions of this licence, and any other authoritative instrument applicable either to this licence or to the operations of the Licensee the validity period of this licence shall be 10 years from the Commercial Date provided that either party may terminate this licence upon 1 (one) years written notice to the other, provided further that no such notice may be given by the ~~Director-General, or the Authority as the case may be,~~ within 9 (nine) years after the Commercial Date
- 4.3 Should no notice of termination be given in terms of paragraph 4.2 this licence shall automatically be renewed for a further period of 1 year on *mutatis mutandis* the same terms and conditions unless the ~~Director-General or the Authority as the case may be~~ and the Licensee agree in writing on any new or amended terms and conditions.

## 5. PERFORMANCE SPECIFICATIONS

- 5.1 The Licensed Lines installed, maintained and used by the Licensee shall throughout the term of the licence conform to such specifications and standards and ITU-T recommendations as prescribed by the ~~Director-General or the Authority as the case may be.~~
- 5.2 The Licensee shall at all times fully comply with the ~~radio~~ Radio regulations ~~Regulations of the International Telecommunication Union and~~ applicable standards bodies of the International Telecommunication Union as they apply to the Republic of South Africa from time to time.
- 5.3 The Licensee shall introduce measures and use its resources to ensure that apparatus used by the Licensee and Customers in the Licensed Lines and Terminal Equipment shall comply with:
- (a) the requirements for Electro Magnetic Compatibility; and
  - (b) the requirements for network interface,

both as prescribed by the ~~Director-General~~ Minister, or the Authority as the case may be, in accordance with international specifications and standards.

- 5.4 The Licensee shall not provide the Service to Customers other than by means of Terminal Equipment.

## 6. INTERCONNECTION OF NETWORKS

- 6.1 The Licensee shall be obliged to conclude an Interconnection Agreement with Telkom or any similarly licensed person after receiving such a written request from the ~~Director-General~~, or the Authority as the case may be, for the purposes of securing that the Licensee can provide the Service.
- 6.2 The Licensee shall conclude such an Interconnection Agreement within the period specified by the ~~Director-General~~, or the Authority as the case may be, which shall not be less than three months.
- 6.3 No Interconnection Agreement or amendment thereof may enter into force until approved by the ~~Director-General~~, or the Authority as the case may be. The ~~Director-General~~, or the Authority, as the case may be, shall give his, its decision within 30 working days after full particulars of the terms and conditions of that agreement or amendment thereof, together with an explanation of the purpose of the agreement or amendment thereof, have been furnished to the ~~Director-General~~, or the Authority as the case may be.
- 6.4 If at any time the Licensee is requested to enter into negotiation with a view to the modification of an existing Interconnection Agreement, it shall, if so directed by the ~~Director-General~~, or by the Authority as the case may be, in writing, enter into negotiations with Telkom or any similarly licensed person to reach agreement on such modification within the time stipulated by the ~~Director-General~~, or the Authority, as the case may be, which shall not be less than three months.

6.5 If for any reason there is failure to conclude an Interconnection Agreement with Telkom or any similarly licensed person in terms of paragraphs 6.1 and 6.2, or agree on a modification in terms of paragraph 6.4, and if he or she is so requested by Telkom or any similarly licensed person or the Licensee, in writing:

- (a) ~~the Director General, or the Authority as the case may be,~~ may within 60 days determine either the terms and conditions of the Interconnection Agreement or that the terms and conditions of the Interconnection Agreement should be modified and, if he or she the Authority does so determine, the form of the modification that is to be incorporated into the agreement; and
- (b) if any such modification is incorporated into the Interconnection Agreement, the Licensee shall comply with the agreement incorporating such modifications as so determined as if that agreement as modified had been voluntarily entered into by it.

6.6 ~~6.6—The Director General, or the Authority as the case may be,~~ shall provide all necessary assistance as he or she the Authority is lawfully able or entitled to give, as may be reasonably required of him or her the Authority to the Licensee to give effect to paragraph 6.

6.7 The provisions of this paragraph 6 shall be subject to section 43 and 44 of the Telecommunications Act, including any applicable regulations or guidelines issued under the Telecommunications Act and, in the event of any inconsistency between the provisions of the Act and any Interconnection Agreement, the provisions of the Act shall prevail.

## 7. CUSTOMER PRIVACY

7.1 The Licensee shall use all reasonable endeavours to ensure that information obtained or received in the performance of the Service by itself or its Service Providers is kept confidential, not disclosed or made

accessible to third parties or used otherwise than for the purposes or furtherance of the Service.

- 7.2 The Licensee shall not directly or indirectly communicate any information about a Customer otherwise than in the normal course or conduct of the business of the Licensee to any other business of the Licensee or any other person.

## 8. FAIR TRADING

- 8.1 The Licensee and its agents, contractors and Service Providers shall not show any undue preference to or exercise undue discrimination against any person or class or description of persons in respect of the provision of any Service or in respect of the construction or maintenance of Licensed Lines.

- 8.2 The Licensee shall include a provision in its contracts with its Service Providers requiring that they comply with a code of practice for consumer affairs to be established by the Licensee containing at least the following:

- (a) guidance to Customers in respect of disputes or complaints relating to the provision of the Service by them;
- (b) advice to Customers on charging and billing and concerning such inquiries;
- (c) advice and procedures on the proper use of the Service by Customers; and
- (d) standards of conduct expected in the provision of the Service by Service Providers to Customers.

- 8.3 Notwithstanding the provisions of paragraph 8.1, the Licensee may provide the Service to a Customer or Service Provider on charges, terms and conditions which are preferential if the charge in question is in



accordance with a tariff plan duly approved by the ~~Director-General, or the Authority as the case may be.~~

- 8.4 The sharing of the Licensee's infrastructure and physical facilities with other similarly licensed persons and the terms and conditions thereof shall be subject to the prior approval of the ~~Director-General, or the Authority as the case may be.~~
- 8.5 The Licensee shall lodge with the ~~Director-General, or the Authority as the case may be,~~ representative sample copies of all contracts relating to the Service or the provision of the Service entered into between the Licensee and any Customer, Service Provider and supplier of telecommunications facilities.

## 9. ACCOUNTING

- 9.1 The Licensee shall maintain proper accounting records in accordance with a Chart of Accounts and Cost Allocation Manual to be prescribed by the ~~Director-General, or the Authority as the case may be.~~ Until such time the Licensee shall maintain proper accounting records in accordance with Generally Accepted Accounting Practice in such form as is sufficient to show all the activities and explain the transactions of the Licensee and of each of the Licensee's businesses engaged in:
- (a) the construction of the Licensed Lines;
  - (b) the maintenance of the Licensed Lines;
  - (c) payment for construction of Leased Connections and Own Connections;
  - (d) payment for rental/maintenance of Leased Connections and Own Connections;
  - (e) its principal business;

- (f) the supply of Terminal Equipment;
- (g) the provision of supplementary services;
- (h) such other categories as ~~the Director-General, or the Authority as the case may be,~~ may from time to time require separately from each other and from the other businesses or activities of the Licensee.

9.2 The Licensee shall record in such accounting records at full or market related cost any material transaction between:

- (a) it and any of the businesses of the Licensee;
- (b) one such business and another; and
- (c) it and any other juristic person in which the Licensee has shares; and
- (d) it and any other person who has shares in the Licensee or in the shareholders of the Licensee; and
- (e) it and a subsidiary company as defined in the Companies Act, Act No 61 of 1973 of such Licensee.

9.3 Within 3 months of the end of each financial year of the Licensee, the Licensee shall present to the ~~Director-General, or the Authority as the case may be,~~ audited annual financial statements prepared in accordance with Generally Accepted Accounting Practice and as approved by the Licensee.

## 10. SERVICES, TARIFFS AND FEES

10.1 The Licensee shall not implement a service or charge any tariffs or fees for the Service and any other service whatsoever, until such services,

- tariffs and fees have been lodged by notice together with a tariff plan in writing with the ~~Director General, or the Authority as the case may be.~~
- 10.2 The notice lodged shall be in a form approved by the ~~Director General, or the Authority as the case may be.~~ It must state the period (ie the term) for which it shall apply. The term must not begin before the tenth working day after the notice has been lodged with the ~~Director General, or the Authority as the case may be.~~ In relation to each kind of service the Licensee proposes to offer during the term, the notice must set out:
- (a) a description of the service; and
  - (b) details of the nature and amounts of charges payable for the service, also indicating which services are provided free of charge.
- 10.3 If the charges in a tariff plan vary in their nature, amount or both, the notice must set out the reasons why and how the charges vary.
- 10.4 The notice must be precise and detailed enough to be used to work out the nature and amounts of charges payable for the supply of the service.
- 10.5 The Licensee shall not without the approval of the ~~Director General, or the Authority as the case may be,~~ increase any existing tariff plan by an amount which is greater than the Price Cap, unless such a charge constitutes a special promotion for marketing or advertising purposes. If the ~~Director General, or the Authority as the case may be,~~ disallows or delays a proposed tariff increase, he ~~or she~~ the Authority shall provide written reasons therefore to the Licensee.
- 10.6 The tariffs and fees which the Licensee may charge as from the Commercial Date are annexed hereto as Schedule 2.

10.7 The Licensee shall publish details of its tariffs and fees and any other terms and conditions on which its services are provided by:

- (a) making them available for inspection at its major places of business during normal business hours, and
- (b) sending the, appropriate parts thereof to any person who may request same.

## 11. ACCESS FOR INSPECTION

11.1 The Licensee shall, to the extent that it is reasonably able to, grant unhindered access to all its facilities, installations and records relating to this licence to all officers authorised as inspectors by the ~~Director General or the Authority, as the case may be,~~ from time to time.

11.2 The Licensee shall provide details of its facilities, installations and networks relating to its licence in such format and at such times as may reasonably be requested by the ~~Director General or the Authority, as the case may be.~~

## 12. FREQUENCIES

12.1 The ~~Director General, or the Authority as the case may be,~~ shall, in accordance with a ~~Master~~ the Frequency Band Plan as amended from time to time allocate for purposes of the licence to the Licensee for the duration of the licence such frequencies as may be required to provide the Service, ~~up to a maximum of 15 contiguous duplex channels each 12.5 kHz in bandwidth.~~ Such ~~channels~~ frequencies shall ultimately be available for assignment to the Licensee on a dedicated basis for use nationally pending the completion of the South African Band Re-planning Exercise and the implementation thereof in a timescale yet to be determined by the ~~Director General, or the Authority as the case may be,~~ but no longer than 3 years from the date of issue of the licence. In the interim the ~~Director General, or the Authority as the case may be,~~ shall assign those

~~channels~~ frequencies of the allocation required by the Licensee and available on a geographically co-ordinated co-primary basis with other users in the band. ~~The band identified is that of 413-418/423-428 MHz (base RX and base TX respectively). The minimum assignment to be made upon the issue of the licence is:~~

~~(a) 6 duplex channels in the greater Gauteng area; and~~

~~(b) 10 duplex channels in the greater Durban area; and~~

~~(c) 4 duplex channels in the greater Cape Town area; and;~~

~~(d) upon confirmation of this requirement 15 duplex channels in the greater areas of Bloemfontein, Port Elizabeth and East London.~~

12.2 Notwithstanding the provisions of the previous condition ~~the Director-General, or the Authority as the case may be,~~ shall be entitled, at no cost to ~~to the Director-General, or the Authority as the case may be,~~ to substitute a different frequency for any of the frequencies so assigned if this is necessary:

**(a) for the implementation of any international agreement entered into by the Government of the Republic of South Africa;**

**(b) to ensure the proper management of the radio spectrum; or**

**(c) for the avoidance of harmful interference.**

12.3 In the event of substitution of any frequency ~~the Director-General, or the Authority as the case may be,~~ shall give as much notice as is reasonably practicable and, before taking any such action, shall consult with the Licensee.

12.4 The Licensee shall only be entitled to utilise an assigned frequency after the issue by ~~the Director-General, or the Authority as the case may be,~~ of a valid Radio Licence covering such frequency.

### 13. CUSTOMER SERVICE STANDARDS

- 13.1 The Licensee shall develop, publish and enforce guidelines for use by its personnel when handling enquiries and complaints from a Customer to whom it supplies telecommunications facilities and provide similarly in its contracts with Service Providers.
- 13.2 The guidelines relating to enquiries and complaints are to be published and be made available to Customers at the commencement of Service to such Customers.
- 13.3 The guidelines must address the following areas of the provision of customer services:
- (a) the procedures for the handling of complaints by Customers;
  - (b) the time frame for handling complaints through this procedure;
  - (c) further recourse available to a Customer who is dissatisfied with the Licensee's complaints handling procedure or outcome of a complaint;
  - (d) procedures adopted by the Licensee to ensure the accuracy of a Customers account;
  - (e) availability to Customers of quality of service information relating to the Licensee's network services.
- 13.4 The Licensee shall keep and maintain statistics on the quality of service of its Service and on complaints made to the Licensee by Customers with which the Licensee deals in accordance with the guidelines. The Licensee shall provide these statistics to ~~the Director General, or the Authority as the case may be,~~ as part of the report referred to in paragraph 18.
- 13.5 ~~The Director General, or the Authority, as the case may be,~~ may after consultation with the Licensee publish the statistics kept in terms of

paragraph 13.3 provided such publication shall relate to a period of not less than 3 months and shall be published together with similar information pertaining to any similarly licensed person.

#### 14. REPRESENTATIVE

14.1 A telecommunications representative may be appointed by ~~by the Director General or the Authority as the case may be,~~ to assist him in examining any *bona fide* complaints from Customers and the Licensee shall provide, all reasonable assistance to such telecommunications representative for such purposes. The Licensee shall afford its Customers (not being a Service Provider) and shall require that its Service Providers, in their contracts, give its Customers the opportunity to refer disputes between them relating to the Service to the telecommunications representative.

14.2 The Licensee or Service Provider shall provide all reasonable assistance to the telecommunications representative who shall in a fair and impartial manner have the right to adjudicate such disputes. The Licensee or Service Provider shall abide by all the decisions of and give effect to the written recommendations of the representative in respect of such adjudication.

14.3 In the event of the Licensee or Service Provider disputing a finding of the representative or objecting to the outcome of the adjudication, such disagreement or objection shall be submitted to ~~the Director General, or the Authority as the case may be,~~ for his decision, which decision supported by his written findings shall be final.

#### 15. RESTRICTION ON TRANSFER OF SHARES, DIRECTORSHIPS, ETC

15.1 Sixty percent (60%) of the issued voting share capital of the Licensee shall vest in a category of residents of the Republic of South Africa prescribed

by the Minister, or the Authority as the case may be, for a minimum period of five years.

15.2 Any transfer of shares which would result in:

- (a) the direct or indirect ownership of 25 percent of the issued voting share capital of the Licensee changing hands; or
- (b) the direct or indirect ownership of the issued voting share capital referred to in paragraph 15.1 of the Licensee changing hands; or
- (c) vesting the direct or indirect ownership of 50 percent or more of the share Capital changing hands in the hands of any non-resident of the Republic of South Africa; or
- (d) a change in the ownership of the issued voting share capital that results in a change to the composition of one-quarter of the Board of Directors,

shall require prior written approval of ~~the Director-General, or the Authority as the case may be,~~

15.3 The provisions of paragraphs 15.1 and 15.2 shall not preclude the shares of the Licensee from being listed on the Johannesburg Stock Exchange but only after the fifth anniversary of the Commercial Date.

## 16. AMENDMENT

16.1 ~~The Director-General or the Authority as the case may be~~ shall be entitled after consultation with the Licensee and any similarly licensed person to amend the licence conditions provided that:

- (a) no amendment may be made by ~~the Director-General, or the Authority as the case may be,~~ unless the amendments are necessary for the fulfillment of ~~the Director-General's or the Authority's as the case may be,~~ duties; or
- (b) such amendments are specifically agreed with the Licensee in writing.



16.2 The Licensee shall be entitled to apply for an amendment of its licence, in which event ~~the Director General, or the Authority as the case may be,~~ may after consultation with the Licensee amend the licence conditions.

## 17. PERFORMANCE GUARANTEE

17.1 The Licensee shall procure a performance guarantee, appended as Schedule 3, acceptable to ~~the Director General, or the Authority as the case may be,~~ underwriting the obligations of the Licensee in terms of this Licence.

## 18. REPORTING

18.1 The Licensee shall report in writing to ~~the Director General, or the Authority as the case may be,~~ within 30 days of 30 September and 31 March of each year.

18.2 Each report shall include particulars of the Service provided by the Licensee in terms of this Licence. The format of the report may be specified by ~~the Director General, or the Authority as the case may be.~~

## 19. REVOCATION

19.1 If any amount payable in terms of paragraph 2 of this licence is unpaid on the due date, ~~the Director General, or the Authority as the case may be,~~ may notify the Licensee in writing thereof. If the Licensee does not make payment of such amounts within 30 days after receipt of such notice then ~~the Director General, or the Authority as the case may be,~~ may, with the approval of the Minister, revoke this licence by not less than 30 days written notice to the Licensee.

19.2 ~~The Director General, or the Authority as the case may be,~~ may, otherwise than is provided for in paragraph 19.1, and with the approval of the Minister, revoke this licence by written notice to the Licensee in the following circumstances:



address, MAN, account number, message size, charge per character and time of call.

22.2 The Licensee shall set out in any account or invoice sent to any Customer the true extent of the Service actually provided to that Customer in the period to which the account or invoice relates.

22.3 The Licensee shall:

- (a) open its metering and billing system for inspection by the ~~Director General, or the Authority as the case may be,~~ at any reasonable time and shall co-operate in facilitating any such inspection; and
- (b) alter, adapt, modify or improve such system in accordance with any reasonable requirement which the ~~Director General, or the Authority as the case may be,~~ may specify,

for the purposes indicated in paragraphs 22.1 and 22.2 above.

22.4 The ~~Director General, or the Authority as the case may be,~~ agrees that:

- (a) when inspecting the Licensee's metering and billing system in terms of paragraph 22.3 ~~he or she~~ the Authority will give reasonable notice to the Licensee concerned except in any case where same would frustrate the purpose of the inspection; and
- (b) before specifying any alteration, adaptation, modification or improvement ~~he or she~~ the Authority will:
  - (i) take account of the general state of development of the Licensee's networks and the availability of finance to the Licensee; and
  - (ii) consult the Licensee and take account of any representations made by the Licensee.

## 23. CONNECTION AND USE OF TERMINAL EQUIPMENT

23.1 The Licensee shall:

- (a) permit any Customer to connect Terminal Equipment to its Licensed Lines at any place in the Republic of South Africa where Service is offered;
- (b) permit any Customer to use Terminal Equipment when so connected to send and receive Messages by means of its Licensed Lines; and
- (c) not show any preference to or exercise any discrimination against any Customer or class of Customer when granting any such permission.

23.2 Nothing in this paragraph shall restrict the Licensee from:

- (a) disconnecting any Terminal Equipment from any of its Licensed Lines; or
- (b) disallowing continued use of any Terminal Equipment; or
- (c) refusing permission to a Customer to connect if:
  - (i) the Terminal Equipment in question ceases for any reason to be Terminal Equipment; or
  - (ii) the person using the Terminal Equipment is in arrears with payment of the Licensee's account

and the Director-General, or the Authority as the case may be, has not determined otherwise in any particular case.

## 24. ENFORCEMENT

24.1 If the Director-General, or the Authority as the case may be, is of the opinion that there has been a breach by the Licensee of one or more of the Licence conditions, the Director-General, or the Authority as the case may be, shall provide to the Licensee a written notice containing the following information:

- (a) identification of the conditions that it is alleged have been breached;
- (b) particulars of the alleged breach;
- (c) notice to the Licensee indicating such time as may reasonably be required to respond and to remedy the alleged breach.

24.2 The Licensee, shall respond to ~~the Director General, or the Authority as the case may be,~~ within the time stipulated in the notice as follows:

- (a) that it either confirms or denies the alleged breach and, where applicable, the extent to which the alleged breach is only partly denied; or
- (b) giving details of the extent that it accepts the alleged breach:
  - (i) advising ~~the Director General or the Authority as the case may be~~ how it intends the breach to be remedied and the time required therefor; and
  - (ii) informing ~~the Director General or the Authority as the case may be~~ of the reasons for such breach and requesting an extension of time (if any) which is reasonably required to remedy the breach.

24.3 ~~The Director General or the Authority as the case may be,~~ shall reasonably exercise his discretion in the granting of any such extension of time and shall in the event of his refusing an extension provide his reasons therefor in writing.

24.4 If the breach has not been remedied within the time stipulated in the relevant notice subject to paragraphs 24.2 and 24.3 ~~the Director General or the Authority as the case may be,~~ shall be entitled without prejudice to ~~his~~ its rights to demand specific performance, remedy such breach ~~himself~~ itself, or appoint another party to remedy such breach at the cost of

the Licensee, provided that the aggregated liability of the Licensee in respect of any breach or breaches arising from the same cause of action, including any such costs shall be limited to the payment of R5 000 000 (five million Rand).

- 24.5 The provisions of this paragraph and paragraph 19 above shall be without prejudice to any other remedies or rights to which the Licensee ~~or the Director General,~~ or the Authority as the case may be, may be entitled in law, provided that in the exercise of such remedies or rights the Licensee ~~or the Director General,~~ or the Authority as the case may be, shall, insofar as it is possible, comply with the provisions of this paragraph 24.

## 25. EXERCISE OF POWERS

- 25.1 In exercising any power granted to ~~the Director General,~~ or the Authority ~~Authority as the case may be,~~ in terms of this licence ~~the Director General,~~ ~~or the Authority as the case may be,~~ shall:

- (a) act reasonably having regard to all surrounding circumstances;
- (b) prior to exercising such power afford the Licensee every reasonable opportunity to make representations to ~~the,~~ ~~Director General,~~ or the Authority ~~as the case may be,~~ in respect of all relevant issues; and
- (c) at the request of the Licensee furnish written reasons for any decision so made.

## 26. CONFIDENTIALITY

- 26.1 This licence shall be a public document. Information supplied in terms of this licence which ~~the Director General,~~ or the Authority ~~as the case may be,~~ and the Licensee agree to be confidential, may not be disclosed without the Licensee's written approval. This does not include information

that the ~~Director-General, or, the Authority as the case may be,~~ is obliged to disclose in terms of an Act of Parliament or a court order.

Issued at Pretoria JOHANNESBURG on 27 June 1997 \_\_\_\_\_ 2003.

~~DIRECTOR-GENERAL~~ INDEPENDENT COMMUNICATIONS AUTHORITY OF  
SOUTH AFRICA

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