



Government Gazette

REPUBLIC OF SOUTH AFRICA

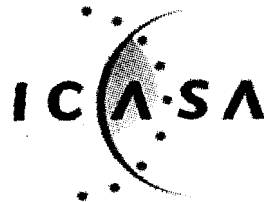
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AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL NOTICE

NOTICE 2725 OF 2004

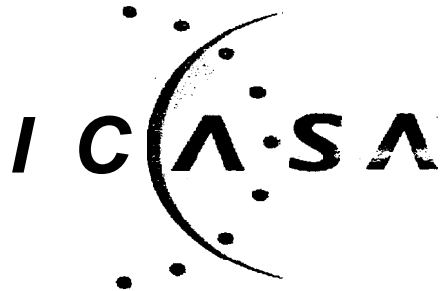


INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

**ISSUE OF LICENCE IN TERMS OF SECTION 40A OF THE
TELECOMMUNICATIONS ACT, ACT NO. 103 OF 1996, TO PROVIDE
TELECOMMUNICATIONS SERVICES TO UNDER-SERVICED AREAS**

It is hereby notified for general information that an under-serviced area licence in the form set out in the annexure to this notice, is being issued to Thinta Thinta Telecomms (Pty) Ltd by the Independent Communications Authority of South Africa.

ANNEXURE



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

**UNDER-SERVICED AREA LICENCE IN TERMS OF SECTION 40A OF THE
TELECOMMUNICATIONS ACT 103 OF 1996, AS AMENDED**

Issued to

**THINTA THINTA TELECOMMS (PROPRIETARY) LIMITED
(REGISTRATION NO.2003/000190/07)**

Signed at Sandton, Johannesburg, on 5 November 2004


**MANDLA LANGA
CHAIRPERSON**

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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 in the Telecommunications Act, 1996 (Act No. 103 of 1996), ("the Act").
- 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 reenactments (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).
- "Approved Equipment"** means telecommunication equipment which has been approved by the Authority in terms of the Act.
- "Billing Process"** means the totality of equipment, data, procedures and activities which the Licensee uses to determine the extent of any telecommunication services which it provides and the charges to be made for service usage.
- "Business Day"** means any day other than a Saturday, a Sunday or a public holiday in the Republic.
- "Chart Of Accounts and Cost Allocation Manual"** means a listing of accounts names and numbers used by the Licensee in its reporting together with the account descriptions, and the documents that set out the principles of allocation of revenue, costs, assets and liabilities, the form and content of which shall be agreed between the Authority and the Licensee in writing from time to time, and which shall be subject to any regulations made by the Authority pursuant to section 46 of the Act;

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

"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.

"Customer" means any person who has indicated a willingness to receive 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 services; or who is a customer of a Service Provider.

"Customer Premises Equipment" means an item of Approved Equipment, whether fixed or portable, by means of which signals are initially transmitted or ultimately received and is connected, or intended to be connected, to Terminal Connection Equipment.

"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 organisations contemplated in terms of section 78 of the Act.

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

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

"Licence" means this licence issued by the Authority to the Licensee under section 40(A) (2) (a) of the Act.

"Licensee" means Thinta Thinta Telecomms (Proprietary) Limited registration number 2003/000190/07, a duly incorporated company in terms of the company laws of the Republic of South Africa.

"Licence Area" means DC 21 Ugu District, KwaZulu-Natal Province as determined by the Minister in Government Gazette numbers 22954 and 23164.

"Mobile Terminal Equipment" means an item of Approved Equipment other than Customer Premises Equipment which may be

used by a Customer to send or receive telecommunications traffic which is to be or has been conveyed by means of the USATN;

"Net Operational Income" means the total invoiced revenue of the Licensee (less discounts, VAT and other indirect taxes) derived from customers of the Licensee for the provision to them of the service, less net Interconnect Fees and bad debts actually incurred and as provided for in terms of the Income Tax Act;

"Number" means any identifier 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 identifier which is not accessible to the generality of users of a telecommunication service.

"Numbering Plan" means a plan as prescribed by the Authority in accordance with section 89 of the Act.

"Public Emergency Service" means a telecommunication service described in clause 12.

"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 Telephone Services are made available to the public or segments of the public and which may contain a device to accept payment for those services. Such apparatus may be designed or adapted for use for mobile radio communications.

"Public Telephone Service" shall include amongst others:

- a) the installation, repair and maintenance of Public Telephones;
- b) at the minimum, the conveyance of voice telephony messages to and from Public Telephones;
- c) the provision of Directory information Services from Public Telephones; and
- d) the provision of Public Emergency Call Services from Public telephones;

together with the installation, bringing into service, maintenance and repair of that part of the USATN which is provided, maintained and operated by the Licensee for the purposes of providing the relevant telecommunication service.

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

“Republic” means the Republic of South Africa, in accordance with the Constitution of the Republic of South Africa, Act No. 108 of 1996.

“Radio Frequency Spectrum” has the meaning assigned to such term in the licence granted to the Licensee under section 30 of the Act.

“Roll-out plan” means the plan for providing service referred to in schedule “A”.

“Roll-out targets” means roll-out targets set out in schedule “A”

“Service Provider” means any person who provides the Licensee’s USATS to customers and which Service Provider has a contract with the Licensee for such purpose.

“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;
- (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.

“Under-Serviced Area” means any area which has been determined as such in terms of section 40A (b) the Minister of Communications.

“Under-Serviced Area Telecommunications Network (USATN)” means a telecommunication network utilised by an Under-Serviced Area Licensee for the provision of USATS within its Licence Area.

“Under-Serviced Area Telecommunications Service (USATS)” means any telecommunication service which an Under-Serviced Area Licensee is licensed to provide within its licensed area.

“Wholly owned Subsidiary” has the meaning assigned to such term in the Companies Act.

2. LICENCE AREA

The Licence Area is **DC 21 Ugu District, KwaZulu-Natal Province** as shown in the map in Schedule C.

3. RIGHTS AND OBLIGATIONS TO PROVIDE A USATS

- 3.1 The Licensee shall be entitled to construct, maintain and use the USATN within the Licence Area and to provide USATS in terms of section 40A (3) of the Act.
- 3.2 Without prejudice to clause 3.1 above, the Licensee shall be entitled to, in terms of section 40A (3), provide any telecommunication services including voice over Internet protocol (VoIP) services, fixed-mobile services and Public Telephone Services, **in respect** of the Licence Area.
- 3.3 The Licensee may, obtain interconnection in accordance with the provisions of section **40A (6)**.
- 3.4 Without prejudice to clause **3.1** above, the Licensee shall be entitled to:
- 3.4.1 sell or lease the use of; or
 - 3.4.2 install or maintain, or both
- any telecommunication facility or 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 VI of the Act which may be relevant to the sale, lease, installation or maintenance of any telecommunication apparatus
- 3.5 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 USATN and to provide all or any **of** the USATS together with all or any other rights granted to the Licensee under this Licence.
- 3.6 The Licensee **is** authorised to exercise its rights granted pursuant to the Licence, by itself and/or in co-operation with a third party agent, contractor, Service Provider, ~~provided that-~~
- 3.6.1 the Licensee enters into a written agreement with any such third party agent, contractor, or Service Provider;
 - 3.6.2 the Licensee remains responsible **to** the Authority for the performance of its obligations under the Licence irrespective of

the acts and omissions of each such third party agent, contractor, or Service Provider; and

3.6.3 the written agreement stipulates adequate terms to ensure that in the exercise of any of the rights granted to the Licensee, such third party agent, contractor, or Service Provider does not contravene any conditions of the Licence, including without limitation, Licence terms relating to users or applicable laws, and regulations in force.

3.7 The Licensee shall notify the Authority of any agreement to outsource the provision of telecommunications services entered into by the Licensee pursuant to Clause 3.6 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 fifteen (15) days of receipt of the notice described in the previous sentence.

4. TELECOMMUNICATION SERVICES TO BE PROVIDED BY UNDER-SERVICED AREA LICENSEES

4.1 Subject to the Act and other provisions of this Licence, the Licensee is authorised to provide any telecommunication services including voice over Internet protocol services (VOIP), fixed-mobile services and Public Telephone Services, in respect of the Licence Area.

4.2 Subject to 4.1 above, the Licensee:

4.2.1 may supply telecommunications equipment, install, bring into service, maintain and repair that part of the USATN that is provided, maintained and operated by the Licensee for the purpose of providing USATS or;

4.2.2 may provide any other service authorised by the Authority or reasonably complementary to USATS such as the provision, repair and maintenance of equipment located on a Customer's premises and any other telecommunications apparatus of any kind;

4.2.3 may provide all or any telecommunication facilities to be used by any person for the provision of Value Added Network Services;

4.2.4 may provide all or any telecommunication facilities comprising fixed lines to be used by any Mobile Cellular Operator for the provision of Mobile Cellular Telecommunication Service.

4.3 Without derogating from the provisions of clause 8, the Roll-out obligations set out in Schedule A or the penalties set out in schedule B, the Licensee may provide roaming services to the extent, and on such commercial terms and conditions, as may be agreed with one or more

other licensees authorised to provide telecommunications services in the Licence Area. Such a roaming agreement may allow:

4.3.1 Customers of the Licensee to use the network of another licensee; *or*

4.3.2 customers of the another licensee to use the USATN; or

4.3.3 customers of either licensee to use **the** network of the other licensee.

5. FACILITIES LEASING

5.1 With due regard to the provisions of clause 3.6 the Licensee shall remain responsible for making **its** own arrangements for all infrastructure involved in providing the service and shall be responsible for installation, networking and operation of necessary equipment and systems.

5.2 Within a period **of** 36 months from date of issue of this Licence, the Licensee shall be obliged to maintain and use its network.

5.3 Any extensions beyond the period of 36 months on facilities leasing shall be subject to the prior approval of the **Authority**.

6. TECHNOLOGY

6.1 The Licensee shall be entitled to use any type of technology subject to the provisions of Chapters IV, V and VI of the Act.

6.2 In the case of new technologies where no available standards have been determined, the Licensee shall seek the approval of the Authority before deploying such technologies.

6.3 The mode of **ownership** of Customer Premises Equipment and Mobile Terminal Equipment will be at the option of the Customer.

7. RADIO FREQUENCY AND SPECTRUM

7.1 The radio frequency spectrum licences available **for** the services provided by the Licensee shall be as determined by the Authority in terms of section 30 of the Act.

7.2 The Licensee shall pay a nominal fee **of R 1-00** for access to the allocated frequencies.

7.3 The Licensee shall pay a spectrum usage fee as prescribed.

8. ROLL-OUT TARGETS AND PENALTIES FOR NON-COMPLIANCE

8.1 The Licensee shall meet or exceed the Roll-out obligations in each phase of the Roll-out plan attached at schedule A.

8.2 The Authority shall be entitled to review from time to time the Licensee's compliance with its Licence obligations, including those in Schedule A. In performing a review the Authority shall take into account the certified annual reports submitted in accordance with clause 20.2 and the financial statements and regulatory accounts submitted in accordance with clause 15.4. The Authority shall also be entitled to request further information from the Licensee, review documents, propose sanctions and perform other such duties as authorised by the Act.

8.3 If at any time the Authority is satisfied that the Licensee has failed to meet any of the Roll-out obligations, or is likely to fail to meet any such obligation, the Authority may direct the Licensee to take such remedial or other action as the Authority may determine.

8.4 If at any time the Authority is satisfied that the Licensee has:

- (a) failed to meet any of its Roll-out obligations;
- (b) failed to comply with a direction under clause 8.3;
- (c) used any part of a subsidy from the Universal Service Fund other than exclusively for the acquisition and construction of infrastructure in accordance with section 66(1)(f) of the Act; or
- (d) failed to comply with any other condition under which such subsidy was made available to the Licensee by the Universal Service Agency,

the Authority may, after consultation with the Universal Service Agency, direct the Licensee to repay to the Universal Service Agency the whole or part of any subsidy received from the Universal Service Fund.

8.5 The Licensee shall comply with any direction by the Authority under clause 8.3 or 8.4.

8.6 Without prejudice to the foregoing provisions of this clause 8, in the event that the Licensee fails to complete any phase of the Roll-out Plan set out in schedule A, the Licensee shall pay to the Authority such penalty, if any, as the Authority may determine in accordance with the provisions of schedule B.

9. GENERAL CONDITIONS

9.1 Licence Term

- 9.1.1 **The** Licence term shall be twenty-five (25) years from the Effective Date.
- 9.1.2 Renewal of this licence shall be in accordance with the provisions of section 49 of the Act.

9.2 Annual Licence Fee

- 9.2.1 The annual Licence fee payable by the Licensee from twenty-four (24) months after the Effective Date of the Licence shall be equal to 0.1% of the Licensee's audited net operational Income generated from the provision of USATS.
- 9.2.2 The first payment of the licence fee shall be the end of the financial year after the expiration of the 24 months referred to in 9.2.1 above.
- 9.2.3 The annual Licence fee may be adjusted downward by the Authority as provided for in terms of schedule "A".

9.3 Amendment of the Licence

The Licence may only be amended as provided for in section 48 of the Act.

10. UNIVERSAL SERVICE OBLIGATIONS

- 10.1 The Authority may impose universal service obligations on the Licensee from time to time.
- 10.2 The Licensee shall comply with the universal service obligations, as may be imposed by the Authority from time to time.
- 10.3 Prior to imposing any such universal service obligations, the Authority shall consult with the Licensee.
- 10.4 Subsequent to the consultation as contemplated in 10.3 above, the Authority shall incorporate such universal service obligations in the form of an annexure to this Licence, which shall be construed as forming a part of this Licence.

11. DIRECTORY SERVICES

- 11.1 The provisions of this clause shall be suspended for a period of twenty four (24) months from the Effective Date or until the promulgation of regulations pursuant to section 89 A, whichever is sooner.
- 11.2 The Licensee shall make available directory services to users of its USATS at points served by its USATN.
- 11.3 The Licensee shall provide Directory Services which will enable callers to receive information concerning the telephone numbers listed therein. At the Licensee's discretion, directory services may be provided through a telephone enquiry service, or in another appropriate way
- 11.4 Each Customer has the right for his details to be made available, free of charge, to other providers of directory services. Where requested in writing by a Customer, the Licensee shall keep that Customer's name; address and telephone number confidential and not include such information in any published directory or otherwise make such information available.
- 11.5 The Licensee shall correct its internal records for purposes *of* providing directory services where a mistake in the Customer information is brought to its attention and shall pass on such corrections to other persons who legitimately require them for the purposes of providing directory services.

12. ACCESS TO PUBLIC EMERGENCY SERVICES

The Licensee shall provide access to Public Emergency Services by which members of the public may, at any time, communicate with any of the Emergency Organisations for the purpose of notifying them of an Emergency at no charge using the Public Emergency numbers "112" from any telephone connected to the Licensee's network and without having to use coins or cards from Public Telephones provided by the Licensee. This will include the provision of such service on a suspended line.

13. CONSULTATION WITH EMERGENCY ORGANISATIONS AND PROVISION OF SERVICES IN EMERGENCIES

- 13.1 The Licensee shall, after consultation with the authorities responsible for Emergency Organisations and departments of National, Provincial and Local Government within the Licence Area, 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.

13.2 The Licensee shall, in terms of any legislative requirement, which obliges the Licensee on request by any such person **so** designated in terms of such legislation to implement plans or arrangements, comply with such request insofar as **is** reasonable to do so.

13.3 Nothing in this Condition precludes the Licensee from:

13.3.1 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

13.3.2 making *the 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.

14. RESTRICTION ON CESSION, TRANSFER OF LICENCE, SHARES, OWNERSHIP AND CONTROL

14.1 The licensee shall, within a period of 24 months from date of issue of this licence, achieve and maintain a minimum of:

14.1.1 30% of the total issued voting share capital to be owned by the category of persons as contemplated in sections **35(4)** and **40A(2)(b)** of the Act, as applicable with the necessary changes in relation to this clause 14;

14.1.2 50% of the management structure that shall vest in the category of persons **as** Contemplated in section **35(4)** of the Act, as applicable with the necessary changes in relation to this clause 14, read with section **40A(2)(b)(ii)** of the Act.

14.2 The Licensee shall not at any time or under any circumstances use this Licence as a form of security to secure additional or initial funding.

14.3 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. In considering such an application the Authority will have regard to the participation of persons from historically disadvantaged groups and of women, as envisaged in section 40A (2) (b) of **the** Act.

- 14.4 The Licensee shall comply with any regulations promulgated by the Authority under section 52 of the Act.
- 14.5 The Licensee shall annex to this Licence, its shareholder's agreement, which shall be construed as forming a part of this Licence.
- 14.6 Any amendments to the shareholder's agreement of the Licensee shall be subject to the prior approval of the Authority.

15. REPORTING OF TARIFFS, ACCOUNTS AND RECORDS

- 15.1 The Licensee shall not charge any tariffs or fees for the service or for any other services whatsoever until such tariffs and fees have been lodged in writing with the Authority and approved by the Authority.
- 15.2 The tariffs and fees must be in a form approved by the Authority, which shall provide the Licensee with written reasons, within 7 (seven) days, in the event of non-approval, provided that, if no notice of non-approval is given within 7 (seven) days of lodging the proposed tariffs and fees with the Authority, the Authority shall be deemed to have approved such tariffs and fees. The notice of tariffs and fees lodged with the Authority must state the period for which they are to be in force. The period must not begin before the seventh day after the notice has been lodged with the Authority. In relation to each kind of service that the Licensee proposes to offer during the period concerned, the notice must set:
- 15.2.1 a description of the service; and
 - 15.2.2 details of the nature and amounts of charges payable for the service.
- 15.3 If the charges in a tariff plan vary, whether in their nature, in their amounts or both, the notice must set out why and how the charges vary.
- 15.4 The notice must be precise and detailed enough to be used to calculate the nature and amounts of charges payable for the supply of any aspect of service in particular cases.
- 15.5 Tariffs shall be non-discriminatory for comparable telecommunication services rendered to the same categories of users:
- 15.5.1 The Licensee shall file with the Authority their audited financial statements within three months of the Financial Year end.

- 15.5.2 The Licensee shall be required to comply with any regulations that may be prescribed in terms of section 46 for Under-Serviced Area Licensees.
- 15.5.3 Following notice by the Authority (such notice to be given at least 48 months after the Effective Date of this Licence or such other period as may be prescribed by the Authority), the Licensee shall put in place the necessary accounting and management information systems to enable it to prepare regulatory accounts in accordance with the Chart of Accounts and Cost Allocation Manual to be prescribed by the Authority, and thereafter shall prepare such regulatory accounts as are required by the Authority. Following the notice by the Authority (such notice to be given at least 12 months after the notice of preparation of the appropriate accounts), any cross-subsidisation within the Licensee's business shall be in accordance with regulations prescribed by the Authority.

16. FAIR TRADING

- 16.1 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:
- 16.1.1 the provision of any telecommunication services (including, without limitation, maintenance services) in accordance with any obligations within the Licence Area as imposed by this Licence;
 - 16.1.2 the connection of Approved Equipment to the USATN;
- 16.2 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 the licensed lines.
- 16.3 The Licensee shall not make it a condition of:
- 16.3.1 providing any telecommunication service by means of the USATN;
 - 16.3.2 supplying any telecommunication apparatus for a connection to the USATN; or
 - 16.3.3 connecting any telecommunication apparatus or system to the USATN,
- 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.

- 16.4 The above clause shall not prevent the Licensee from:
- 16.4.1 imposing any terms and conditions as are permitted under section 43 and 40(A)(6) of the Act and the guidelines contemplated there under;
 - 16.4.2 offering discounts based on term commitments or commitments for multiple services where such discounts reflect economies of scope or of scale.
- 16.5 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 in terms of clause 15.5.3 of this licence.
- 16.6 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 16, shall be determined by the Authority, but nothing done in any matter by the Licensee shall be regarded as undue preference or undue discrimination or unfair cross subsidisation for the purposes of this clause 16 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**.

17. INTERCONNECTION SERVICES AND FACILITIES LEASING

- 17.1 Without any prejudice to the provisions of 3.6 and subject to any exercise by the Authority of its functions under regulations pursuant to sections 40A(6), 43 and 44 of the **Act** in relation to the Interconnection and Facilities Leasing Guidelines promulgated pursuant to the provision of the Act, the Licensee may to the extent requested by any other person providing telecommunication services within the Licence Area, interconnect its telecommunication system to the telecommunication system of the other person and where so requested by such other person, lease or otherwise make available telecommunication facilities to such other person(s) pursuant to an agreement. The processes and procedures shall be governed by the Interconnection and Facilities Leasing guidelines that are in effect at the time.

18. REQUIREMENTS TO OFFER CONTRACTS FOR TELECOMMUNICATION SERVICES

18.1 The Licensee shall provide the USATS authorised by this Licence pursuant to a written Customer contract, except where written contract **is not required.**

18.2 The Customer contract shall either specify the type of service offered and the terms and conditions on which the telecommunication 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:

18.2.1 the supply time for initial connection;

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

18.2.3 the financial penalties the Customers have to pay in case **of** payment delay;

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

18.2.5 the types of maintenance service offered;

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

18.2.7 a summary of the method of initiating procedures for the settlement of disputes in respect of the contract; and

18.2.8 information on service quality levels offered.

18.3 The form or model of the Customer contract, including the general terms and conditions and any amendment thereto used by the Licensee to satisfy its obligations under clause **18** shall be lodged by the Licensee. Any amendments to the form or model of the contract shall be submitted to the Authority at least **22** Business Days prior to its coming into force.

18.4 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.

- 18.5 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.

19. NUMBERING PLAN

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 within a reasonable period, pursuant to the Numbering Plan prescribed by the Authority.

20. PROVISION OF INFORMATION

- 20.1 (a) The Licensee shall furnish to the Authority such information as the Authority may reasonably require for the purpose of carrying out any of its functions under the Act.
- (b) Information required to be furnished under this Condition shall be furnished in such form and manner and at such times as the Authority may reasonably require.
- (c) Nothing in this Condition shall prejudice any right of the Authority to require information under any other provision of this Licence or the Act.
- 20.2 Without prejudice to the generality of the preceding paragraphs of this condition, 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 Service Targets for the preceding Financial Year.
- 20.3 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 information provided under this clause 20, reasonably justifying confidentiality, such as commercially sensitive or proprietary information relating to the financial capacity or business plans of the Licensee and trade secrets, shall not be open to public inspection or disclosed to any third party.
- 20.4 For purposes of this Clause 20 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.

21. BILLING ARRANGEMENTS

- 21.1 Except in the case of prepaid services or Public Telephone Services where no bill is necessary, the Licensee shall provide a bill to each Customer, in a form that complies with clause 22 below, for the services rendered during any period determined by the Licensee. The Licensee shall establish appropriate processes and procedures to ensure that Customer 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 Customer in question.
- 21.2 Without prejudice to the generality of clause 21.1 above, the Licensee shall at all times maintain in operation such a Billing Process as facilitates compliance by the Licensee with clause 21.1. The Licensee may at its discretion outsource its billing operations provided it shall remain primarily responsible for meeting its obligations under this Licence.
- 21.3 The Licensee shall not be regarded as being in contravention of its obligation under clause 21.2 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.
- 21.4 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 21.2 above.
- 21.5 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 clause 21. Where the Authority provides written notice to the Licensee that it is exercising its right under this clause, 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.

22. ITEMISED BILLS

- 22.1 Except in the case of prepaid service or Public Telephone Service, the Licensee shall provide each subscriber who so requests, an itemised bill in such a form and with appropriate explanation to plainly show the call details of the Customer for the billing period to verify the billed amount.

- 22.2 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.
- 22.3 The Licensee may make an itemised bill available in a secure location on its website if so requested by a Customer.

23. NON-PAYMENT OF BILLS

- 23.1 Where a Licensee's Customer has not paid the Licensee all or part of a bill for the services rendered to that Customer by the Licensee the Licensee may take steps to secure payment, including discontinuance of service; provided that any measure taken by the Licensee shall:
- 23.1.1 be proportionate and non-discriminatory;
 - 23.1.2 be set out in the Customer contract entered into with the Customer pursuant to clause 18 above and publicised in accordance with that clause;
 - 23.1.3 give due warning in advance of any consequent service interruption or disconnection to the Customer; and
 - 23.1.4 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.

24. PUBLIC TELEPHONE SERVICES

- 24.1 The Licensee shall install and maintain its Public Telephones in working order. The Licensee shall choose the type of Public Telephones and place for their installation, taking into consideration the penetration of the USATN and the population density in the respective area.
- 24.2 All Public Telephones that are installed, modified or replaced by the Licensee shall be capable of making local, national long distance and International Calls.
- 24.3 Public 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 number for Emergency services, operator assistance and directory information services.

- 24.4 In addition to the information required to be available at each Public Telephone pursuant to clause **24.3**, the Licensee shall also post the name, address and telephone number for the reporting of complaints.
- 24.5 Tariffs for Public Telephone Services are subject to the Authority's approval.

25. SERVICES FOR PEOPLE WITH DISABILITIES

- 25.1 The Licensee shall provide services related to the provision of telecommunication services for people with disabilities in accordance with regulations promulgated by the Authority under the Act. Prior to such regulations coming into force, the Licensee shall also comply with the requirements of Conditions **25.2** and **25.3**.
- 25.2 The Licensee shall consult with the Authority from time to time about the arrangements relating to:
- (a) the supply of, and the provision of maintenance services in respect of, telecommunication apparatus designed or adapted to meet the reasonable demands of people with disabilities, taking into account the development and provision of the Licensee's services; and
 - (b) shall, at the request of the Authority, participate in any advisory group established to address the needs of people with disabilities.
- 25.3 The Licensee shall use its reasonable endeavours to ensure that there are available for supply in such a way as to meet all reasonable demands for Customer Premises Equipment of the following descriptions:
- (a) Customer Premises Equipment capable of being inductively coupled to hearing aids which have been designed to be so coupled to Customer Premises Equipment; and
 - (b) Customer Premises Equipment incorporating sound amplification facilities,

provided that this condition shall be deemed to be satisfied if the Licensee uses its reasonable endeavours to ensure that there is available for supply either one type of Customer Premises Equipment which meets both descriptions or two types of Customer Premises

Equipment each of which meets one of the requirements set forth in paragraphs (a) or (b).

- 25.4 The Licensee shall take all reasonable steps to install and keep installed in at least fifty per cent (50%) of the Public Telephones, taking into account equal geographic spread among all areas at which it provides Public Telephone Services, apparatus enabling persons with disabilities to use Public Telephones.
- 25.5 On the fifth anniversary of the Effective Date the percentage of such Public Telephones at which the Licensee shall be obligated to install and keep installed such apparatus **shall** be agreed between the Licensee and the Authority.

26. CONFIDENTIALITY OF INFORMATION

- 26.1 The Licensee shall not disclose information of a Customer except with the consent of the Customer, 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 or in terms of a request by a 112 emergency centre.
- 26.2 The Licensee shall not use information provided by its Customers or obtained in the course of provision of service to its Customers and users, other than for and in relation to the provision of service by the Licensee or such other purpose as expressly authorised by the Customer or user.
- 26.3 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.
- 26.4 The prohibitions contained in clause 26.1 above do not apply with respect to the name, address and telephone number of Customers for purposes of providing printed and directory information services in accordance with clause 11.3 above.

27. CODE OF CONDUCT ON THE CONFIDENTIALITY OF CUSTOMER INFORMATION.

- 27.1 The Licensee shall take all reasonable steps to ensure that its employees observe the provisions of a code of conduct which:
- 27.1.1 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 Customer or that Customer's business without the prior consent of that Customer; and

27.1.2 Regulates the information about any such Customer or his business that may be disclosed without his consent.

27.2 The Licensee shall within **6** months from the Effective Date of this Licence, 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.

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

28. CODE OF PRACTICE FOR CONSUMER AFFAIRS

The Licensee shall, in consultation with the Authority, prepare and publish not later than six (**6**) months after the Effective Date or such later date as the Authority may agree, a code of practice (the "Code of Practice") that duly takes account of the predominant regional language giving guidance to the Licensee's Customers in respect of any disputes with, and complaints from, those Customers relating to the provision of telecommunication services. The Licensee's contracts with Service Providers shall secure at least similar service standards for their Customers. The Licensee shall consult with the Authority not less frequently than once every three (**3**) years about the operation of the Code of Practice.

29. EMPLOYMENT EQUITY, HUMAN RESOURCE DEVELOPMENT AND TRAINING.

The Licensee shall comply with the provisions of the Employment Equity Act (No. **55** of 1998), the Skills Development Act (No. **97** of 1998), the Labour Relations Act (No. **55** of 1995), the Basic Conditions of Employment Act (No. **55** of 1995) 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.

30. MISCELLANEOUS

30.1 Adherence to International Standards

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

30.2 Legal compliance

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.

30.3 Access to network facilities

30.3.1 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.

31.3.2 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.

30.4 Force Majeure

The Licensee shall have no liability for failure or delay in complying with any provision of this Licence if, and to the extent and for so long as, that compliance is prevented or substantially hindered by any act of God, flood, fire, tempest, severe weather conditions, war (whether declared or not), civil disturbances, revolution, riot, insurrection, other natural disasters, act of terrorism, sabotage, other public emergencies or any other cause whatsoever which is substantially beyond the control of the Licensee; provided, however, that the Licensee may, as a matter of right, seek to demonstrate that such a cause is substantially beyond the control of the Licensee, or has occurred as a result of any act of government or a strike or labour dispute.

30.5 Notices and addresses

30.5.1 Any notice or certification given by the Authority to the Licensee shall be in writing;

30.5.2 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

- 30.5.3 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 14th day of posting.

31. REVOCATION

- 31.1 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:
- 31.1.1 If the Licensee agrees in writing with the Authority that this Licence should **be** revoked; or
 - 31.1.2 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
 - 31.1.3 if the Licensee is placed in final liquidation or under a provisional or final judicial management order.
 - 31.1.4 if the Licensee breaches the provisions of paragraph 14.1 above.

32. CONTRAVENTIONS

- 32.1 Except in **cases** set out in clause 31.1 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.
- 32.2 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 Licence or applicable law or regulations and whether the Licensee took any actions to mitigate the effects of the contravention.
- 32.3 Where the Licensee receives notice of violation pursuant to this clause 32.1, the Licensee shall have three (3) 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**.

Issued at Sandton, Johannesburg on 5 November 2004.


MANDLA LANGA
CHAIRPERSON

SCHEDULE "A"**ROLL-OUT PLAN SCHEDULE**

A1. Roll-out plan as proposed by an applicant in its application and approved by the Authority.

Rollout Targets (Narrowband & Broadband)

- Original plan assumed 2003 as 1st Year of Operation.
- Narrowband Network (Cumulative) Targets : (Assumes satisfactory Roaming agreement with an incumbent Mobile Operator)

A2. In accordance with the provisions of clause 9.2.3 of this licence and roll-out schedule above, the Licensee fee may be adjusted downward by the Authority as provided for in terms of table set out hereunder:

REDUCTION OF LICENCE FEE FOR EXCEEDING AND ACHIEVING ROLL-OUT OBLIGATIONS BY MARGIN OF SUCCESS			
LEVEL	CATEGORY A ≤ 5 %	CATEGORY B > 5 % AND ≤ 10 %	CATEGORY C > 10%
Percentage Reduction of Annual Licence fee	5.0%	10%	15%

SCHEDULE "B"**PENALTIES FOR NON-COMPLIANCE WITH ROLL-OUT OBLIGATIONS**

1. In the event that the Licensee fails to complete any phase of the Roll-out Plan attached at Schedule A, the Licensee shall be liable to a penalty as set out in the table hereunder by the Authority in accordance with the provisions of this Schedule B.

PENALTIES FOR FAILURE TO ACHIEVE ROLL -OUT OBLIGATIONS BY MARGIN OF FAILURE			
LEVEL	CATEGORY A 5 5 %	CATEGORY B > 5 % AND ≤ 10 %	CATEGORY C > 10 %
PENALTY	1.0% Turnover	5.0% Turnover	10% Turnover

2. In imposing the above penalties on the Licensee, the Authority shall take into account the following:
- 2.1 the extent of the non-compliance with Schedule A;
 - 2.2 the provisions of clause 30.4 of the Licence;
 - 2.3 the extent to which the failure was otherwise within the control of the Licensee;
 - 2.4 any steps that the Licensee has taken or is taking to remedy the failure; and
 - 2.5 any other factor which the Authority considers should be taken into account in the circumstances of the particular case.

ANNEXURE C

Phased Rollout and Coverage Plan

