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GENERAL NOTICE

NOTICE 20 OF 2005 MINISTER OF COMMUNICATIONS

I, Dr. Ivy Matsepe-Casaburri, Minister of Communications, hereby publish **the following** Invitation to Apply for the provision of Telecommunications services in the under serviced areas in terms of section **34 (2)** of the Telecommunications Act, 1996 (Act **103 of** 1996).


Dr. Ivy Matsepe-Casaburri
MINISTER OF COMMUNICATIONS

INTRODUCTION

■. SUBJECT OF THE INVITATION TO APPLY (ITA)

- 1.1 I, Dr Matsepe-Cassaburri, hereby publish the Invitation To Apply for the licensing process in terms of section 40 A (2) (a) of the Telecommunications Act. The ITA is with regard to applications for an Under Serviced Area License (hereinafter referred to as "USAL's") by, amongst others, small business operators commonly known as Small Medium and Micro Enterprises (SMME's).

Interested persons are hereby invited to submit applications in respect of areas as determined and published by the Minister under Government Gazette number **229954** and **223164** of 2002.

The following list of district names as well as numbers in which these municipalities belongs to are as described by the Municipal Demarcation Board established in terms of Local Government (Act 209 of 1993).

Abbreviation: CBDC - Cross Boarder District Council
DC - District Council

Limpompo Province

- (i) CBDC4 Bohlabela District Municipality
- (ii) DC34 Vhembe District Municipality

KwaZulu Natal

- (i) DC27 Umkhanyakude
- (ii) DC29 King Shaka

Eastern Cape

- (i) DC13 Chris Hani
- (ii) DC14 Ukwahlamba

Free State Province

- (i) DC20 Northern Free State
- (ii) DC19 Thabo Mafutsanyana

Gauteng

- (i) CBDC2 Metsweding
- (ii) CBDC8 Westrand

Mpumalanga

- (i) DC31 Nkangala
- (ii) DC30 Eastvaal

North West Province

- (i) DC39 Bophirima
- (ii) DC37 Bojanala Platinum

- 1.2 The licensing objective is to provide business and residential services; to provide competing telecommunications services; to enhance the value-added, quality and range of services; to add to services innovation and value-for-money for consumers;
- 1.3 The USAL's (see Introduction) in respect of which this Invitation is issued is provided for in **section 40A** of the Act. The license shall include at a minimum, local, voice telephone services, fixed mobile, data services, emergency services, directory services, voice over internet protocol, public pay phone and operator-assisted services. The license has been attached to serve as a guideline for the services to be provided by the licensee as **Annexure "B"**. The USAL'S shall take into account the requirements of business and residential users and the provision of modern information services.
- 1.4 Pursuant to the Act, the form of the Invitation shall be as follows:
 - 1.4.1 Subject-matter of this Invitation: the provision of Telecommunications service.
 - 1.4.2 Term of license: Twenty-Five (25) years from the signing of the License coupled with an expectancy that the License will be extended by the Authority for additional 25 years term.
 - 1.4.3 The Applicant shall be a company duly incorporated under the laws of the Republic of South Africa.
 - 1.4.4 Applicants shall be responsible for the review and interpretation of the Invitation; including all attachments and the License. Applicants shall be fully liable if, due to its failure to comply with such requirements their Application is rejected or disqualified by the Authority.
 - 1.4.5 Each Applicant shall be responsible for the assessment and analysis of the South African telecommunications market and the relevant regulatory environment. Neither the Minister, the Authority, nor the Government of the Republic of South Africa, their officials and/or employees shall be responsible for any disadvantage suffered by an Applicant, prior to, during or subsequent to the Application process as a result of the inaccurate assessment and analysis of the South African telecommunications market or regulatory environment, or for any other reason whatsoever. In addition, Applicants shall be responsible for the procurement and interpretation of data necessary for the fulfillment of their obligations, and shall bear all

liability incurred in connection with the use thereof. Applicants shall seek their own counsel in the preparation of their Application.

1.4.6 Any queries in relation to this Invitation must be submitted in writing (via post, e-mail, fax) to:

1.4.7

Name: Mashila Matlala
Title: USAL'S Project
Physical Address: 399 Duncan Street
Hatfield, Pretoria
South Africa

Postal Address: Private Bag X 860
Pretoria
South Africa

Fax: +27 12 427 8097

E-Mail: mashila@doc.gov.za

1.4.8 Unless otherwise extended, any queries shall be communicated in writing to the above address up to FOUR weeks after the publication of this Invitation To Apply.

1.4.9 Prospective Applicants should not wait until the deadline and are encouraged to submit queries as soon as possible.

1.4.10 In order to assist Applicants in the preparation of their applications, the Independent Communications Authority of South Africa ("The Authority") shall make available documents from time to time setting out questions and answers which the Authority considers necessary to answer in order to ensure the integrity of the process. The Notice of such document(s) shall be published in the Government Gazette;

1.4.11 Neither the Minister, the Department of Communications nor the Authority shall entertain *ex parte* contacts with regard to this Invitation, the Invitation process nor any other matter relating to the proceedings for the application for the USAL's.

2. APPLICATION FEE AND OTHER COSTS RELATING TO THE APPLICATION

- 2.1 A non-refundable Application fee of thirty thousand rand (R30000) shall be paid by the Applicant at the time of filing their Application. A non-refundable fee of R30 000 shall be paid by the applicant. The application shall be in the form of a Bank guarantee cheque or deposited directly in ICASA account.

ICASA BANK DETAILS:

Bank: Nedbank
Branch: CCS - Pretoria
Branch code: 146245
Account no: 1462 002 927
Type of acc: Deposit account
Reference: "USAL LICENCE APPL FEE"

- 2.2 Applicants shall not be entitled to claim reimbursement of such Application fee for any reason whatsoever.
- 2.3 Applicants shall bear all costs incurred in connection with the preparation and submission of the Application. Regardless of the outcome of the application, Applicants may under no circumstances claim reimbursement from the Minister, the Authority or any other Government Ministry and/or Department, of any costs related directly or indirectly, to the Application.

3. CONDITIONS OF ELIGIBILITY IN RESPECT OF THE APPLICATION

- 3.1 Only legal persons and/or the consortia so formed may submit an application. An individual Applicant or a member of a consortium may not submit or have an interest in more than one application, (subject to clause 3.2) either individually or as a member of any other consortium. Applications shall include an original copy of the consortium agreement concluded by their members, countersigned by a notary public or certified by a commissioner of Oaths.
- 3.2 Applicants shall be subject to the provisions of regulations promulgated in terms of section 52 of the Act (limitation of ownership and control of telecommunication services). Further eligibility restrictions are as follows:
- 3.3 No employee of the Ministry of Communications, the Authority and Universal Service Agency, shall apply directly or indirectly for the license. No other civil servant, who is a member of Senior Management Service (**SMS**) of the government of the Republic of South Africa shall apply directly for the license or hold a position with the applicant.

4. SUBJECT AND CONTENT OF THE LICENCE

- 4.1 Description of the service: The USAL's shall be provided in the territory of the determined areas and in accordance with the conditions of the License.

- 4.2 The USAL's Licensee shall be entitled and required to construct, maintain and operate a telecommunications network, capable of the provision of a telecommunications service to collaborate with other licensed public operators.

5. TERMS AND CONDITIONS RELATING TO THE LICENCE ACTIVITIES

- 5.1 **Annexure 'B'** contains USAL's License to be issued in terms of this Invitation. The License sets out the rights and obligations of the Licensee and the terms and conditions relating to the Licence activities.
- 5.2 Applicants will be invited to make comments and representations with respect to the draft License to the Authority. The Authority will consider such comments and representations in awarding the License and may use such comments and representations in considering any amendments to the Licence.

6. OWNERSHIP STRUCTURE OF THE LICENSEE

The Applicant shall be required to establish a company incorporated under the laws of South Africa.

7. LICENCE FEE AND TERMS OF PAYMENT

License fee: the annual license fee payable two years after effective date, an amount equal to 0.1% of the Licensee's annual revenues realized from the provision of service. The recurring license fee may be adjusted downward based on the Licensee's performance and other considerations.

8. OTHER FEES PAYABLE BY THE LICENSEE

With respect to the DCS 1800 MHz, 3G and any other spectrum licences issued to the Licensee, the Licensee shall pay the radio frequency spectrum use fees as specified by the Minister and the Authority.

9. SUBSCRIBER TARIFFS

- 9.1 Applicants shall be within the framework stipulated by applicable law, or regulations determine subscriber tariffs in accordance with business and other considerations.
- 9.2 Applicant shall set forth its proposed services and the tariffs associated therewith in table or spreadsheet format.

10. CONFIDENTIAL TREATMENT OF INFORMATION

- 10.1** The applicants shall acknowledge that all data, information and communication exchanged, and to be exchanged in connection with this application process is not confidential and will be open for public inspection.
- 10.2** If the Applicant wishes to exclude certain confidential information from public inspection as provided for in section **34** of the Act, the Applicant shall submit two additional copies marked "For Public Inspection", which copies shall exclude such confidential information and shall clearly indicate where such confidential information has been excluded therefrom, together with the Applicant's request to the Authority to have that confidential information excluded from public inspection in terms of section **34(4)(b)** of the Act,

11. AMENDMENT OF THE ITA

- 11.1** The Minister in consultation with the Authority may amend the ITA.
- 11.2** The Minister shall publish a notification regarding the amendment of the ITA in the same way as the ITA itself was announced and shall publish such amendment in the Government Gazette.
- 11.3** In case of an amendment to the ITA the deadline available specified for the submission of Applications may be extended by the Minister, if necessary.

12. TERMS AND CONDITIONS RELATING TO THE APPLICATION

- 12.1** The language of Applications and any communications in connection therewith between the Minister, the Authority and the Applicant, including any requests of the Authority regarding the supply of data and any supplementary documents submitted by the Applicant in relation to the Application, shall be in English. Support materials to the Application shall be submitted in English.
- 12.2** Applications shall be prepared in accordance with the structure and order as set out in **Annexure "A"**.
- 12.3** The Applicant shall make the following statements in its Application:
- 12.3.1** The Applicant shall make the warrants and representation set out in clause **3** above.
- 12.3.2** The Applicant shall unconditionally warrant the fulfillment of the undertakings assumed in its Application.
- 12.3.3** The Applicant shall warrant that it will accept the License if it is selected as the successful Applicant and the Authority awards the License to the Applicant pursuant to this Invitation.
- 12.3.4** The Applicant shall warrant that there exists no cause for disqualification or curtailment against it, and that acceptance of its application in this process

would not result in the creation of such causes for disqualification or curtailment.

- 12.3.5 The Applicant shall make a representation as to whether any of the companies with participation or voting rights in excess of 5% in the Applicant - including consortium members - or in which the Applicant holds a majority interest is under dissolution, liquidation or bankruptcy procedure. The information supporting such representation shall be provided in an attachment to the Application.
- 12.3.6 The Applicant shall warrant the extent that the Applicant, any shareholder holding a majority interest in the Applicant or any venture in which the Applicant holds a majority interest has tax, official fee or liabilities, or liabilities towards allocated public funds that are overdue for one year. The information necessary for the assessment of the extended and the nature of such overdue payments shall be provided in the attachment to the application. The applicant, and members of the consortium thereof, shall provide relevant certificate from the South African revenue services to this effect.
- 12.3.7 The Applicant shall certify as to whether any judicial and/or collection procedure is in progress, or has been in progress in the last three (3) years against the Applicant, any shareholder holding a majority interest in the Applicant or any venture in which the Applicant holds a majority interest. If such judicial and/or collection procedures exist attach an exhibit to the application summarizing the details.
- 12.3.8 The Applicant shall warrant as to whether there exists any civil law suit in progress against the Applicant, any shareholder(s) holding a majority interest in the Applicant or any venture in which the Applicant holds a majority interest which is the subject of any judicial action. If such civil law suit exists attach an exhibit to the application summarizing the details.
- 12.4 The duly executed statements and representations set forth above shall be submitted by the Applicant in an appropriate form, together with all accompanying documents. Applications without the statements and representations may be disqualified by the Authority. The Authority reserves the right to request submission of additional information, documents, statements and representations.
- 12.5 All declarations, documents and information submitted in support of the Application, in particular business plans and technical plans shall form an integral part of the Application.
- 12.6 If the applicant or any member of its consortium has appointed and/or made use of a consultant(s), the applicant shall disclose in writing that such consultant(s) did not perform similar, related or any other duties directly or indirectly or any capacity whether as consultant or shareholder to any other applicant submitting an application pursuant to this Invitation to Apply.

12.7 The consultant(s) referred to in 12.6 above shall also warrant in writing that they did not perform, undertake any duties and/or taken shareholding in any other applicant or application pursuant to this ITA.

12.8 Should the applicant not provide the undertakings in terms of clause 12.6 and 12.7 above, the Application may be disqualified by the Authority,

13. BINDING EFFECT OF THE APPLICATION

The Applications submitted to the Authority shall be binding on the Applicant and shall continue to be binding upon the Applicants until the License is issued. Should the Applicant specify a term shorter than the above period, the Application may be disqualified by the Authority.

14. RIGHTS RELATING TO APPLICATION DOCUMENTATION

14.1 Applicants must acknowledge that the Authority shall not have a non-exclusive right to use, for the entire period, the Application documents, including any information included therein. Such right shall extend to the reproduction of the Application through printing or by electronic means, for use in materials prepared by the Authority in connection with the Application, or any other uses relating to the adjudication process, the selection of the successful applicant, conclusion, issue and the potential revision and/or amendment of the License. Such right shall be transferable to the Minister, the Authority, officials of, or experts appointed by the Minister and/or Authority, or any other person(s) or organisation(s) authorised to act on their behalf.

14.2 Applicants must acknowledge that such applications shall be accessible by the Minister, the Authority, their officials and experts, as well as any other persons and organizations authorized by applicable law to have access to the confidential information.

15. SUBMISSION OF APPLICATION

15.1 Format, signing and packaging of Applications

15.1.1 Original and duplicate copies of the Application shall be prepared in printed form in accordance with application form. The Applicant shall submit as a part of the Application an executive summary not exceeding fifteen (15) pages.

15.1.2 The Application documentation (including the executive summary but excluding the attachments) shall not exceed two hundred (200). Each page of the Application documentation (including the Application, the executive summary and the attachments), other than the attachments the submission of which is not required by this invitation to the Application, shall be signed by the representatives of the Applicant. Any correction, rider or deletion shall only be valid if countersigned by the representatives

of the Applicant. Copies of the documents concerning representation (signature specimen, power of attorney in a notarized document or a private document providing conclusive evidence shall be submitted in the original document, while duplicate copies of these documents may be attached to duplicate copies of the Application.

15.1.3 The Applicant shall submit one (1) original copy and twenty (20) numbered duplicate copies of the Application. One copy shall be unbound and unstapled and be marked as "ORIGINAL COPY" and the rest shall be bound and marked duplicate copies each with a number from one to twenty. The Applicant shall also submit on copy of its entire application, including attachments on one or more PC compatible CD-Rom disk.

15.2 In case of any conflict among the contents of the original and duplicate copies of the Application, the original copy shall prevail. All tables and financial submissions shall be prepared in accordance with South African GAAP as part of the Application and shall also be submitted on PC compatible CD-Rom, in MS Excel 8.0(Office 2000) format. In case of any conflict between the hard copy and the copy submitted on the CD-Rom disk, the hard copy shall prevail.

15.3 Applications shall be submitted in sealed sturdy containers addressed to the Chairperson of the Authority, indicating the name and contact address of the Applicant. The envelope shall be labeled as:

15.3.1 "USAL'S LICENCE APPLICATION" Each document (that is, the Application and the attachments), the application fee.

16. PLACE AND DEADLINE FOR SUBMISSION OF APPLICATIONS

16.1 Applications shall be submitted no later than [21 February 2005] 14h00.

16.2 Applications shall be submitted to the following address:

**The Chairperson
Independent Communications Authority of South Africa (ICASA)
USAL'S ITA Process
64 Pin Mill Farm
164 Katherine Street
Sandton
South Africa**

(011) 321-8548 (FAX)

16.3 Applications shall be received by the Authority in the presence of an independent auditor. When receiving the applications, the independent auditor shall affix on

each container the time of receipt and shall provide each Applicant with an acknowledgement. Applications received after this time may be rejected and returned unopened to the applicant by the Authority. The process set out herein shall be open to the public and press. Applicants are invited to attend.

16.4 During the receipt process the Authority shall disclose to the persons the names of the Applicants and any other information it deems important.

16.5 The Minister in consultation with the Authority may extend the deadline for submission of Applications. The decision concerning such extension shall be published in an amendment to the Invitation. In case of any extension the legal consequences of non-compliance with deadlines shall apply to such modified deadline.

17. AMENDMENT AND WITHDRAWAL OF APPLICATIONS

17.1 Unless otherwise determined by the Authority, the Applicant shall not be entitled to amend its application during the period of binding effect specified in this Invitation. Should the Applicant withdraw its application during such period, the Applicant shall lose the Application fee.

17.2 If the Authority decides to allow amendments to applications, it shall establish the rules, procedures and timeframes for submitting such amendments by notice in the Government Gazette.

18. EVALUATION OF APPLICATIONS

18.1 Opening of Applications

18.1.1 The Applications submitted in an appropriate manner shall be opened on the premises of the Authority. In the presence of an independent auditor, by the Authority within two (2) hours from the expiry of the deadline for submission of applications. The Application opening shall be open to the members of the Authority, the independent auditor and the two (2) representatives of the Applicant. Any person present at the Application opening shall sign an attendance sheet. The Authority shall take the minutes of the application opening, which shall be authenticated by the independent auditor.

19. SUBSTANTIVE INVALIDITY OF APPLICATIONS

19.1 The Authority shall examine the content of the applications submitted as to whether they fulfill the formal and substantive requirements of applicable law and this Invitation (including, whether the order of subjects is consistent with that determined in the Invitation, or the Applicant has submitted all the declarations, certificates, application fee and other documents specified in the Invitation). The Authority shall be entitled to conduct, a repeated review of formal compliance, as a consequence of which the Authority may disqualify the application.

- 19.2 In the evaluation of applications the Authority shall, at its sole discretion and with full regard to reasons of fairness, be entitled to request the submission of additional documents or information in order for a more thorough evaluation and analysis of the applications. Applicants shall be notified by the Authority of any such request in writing. Any communication regarding questions and answers between the Authority and the Applicants shall be made in writing. The submission of additional documents shall solely be for the purposes of interpretation and shall not give rise to a right to modify the amount of License fee, business plan, or any fundamental undertakings in the Application.

20. EVALUATION OF APPLICATIONS

- 20.1 An application shall be deemed valid and eligible for evaluation only if it fulfils, either originally or as a result of the submission of additional documents, all the formal and substantive requirements stipulated by applicable law as well as this ITA.
- 20.2 After the submission of applications in terms of this Invitation, the Authority will consider all applications in terms of the Act and regulations and this Invitation.
- 20.3 Using the evaluation criteria set out below the Authority shall rank the applications.

21. EVALUATION CRITERIA

- 21.1 The evaluation criteria to be applied by the Authority when considering applications flows generally from section 2 of the Act (i.e. the objects of the Act). However in consideration of this license there shall be particular regard to section 40A 2 (b) of the Telecommunications Amendment Act of 2001. It is set out therein that in consideration of applications in terms of this clause due regard shall be given to applications by persons from Historically Disadvantaged Groups (HDG's) and from applicants which are managed and controlled, or owned by women.
- 21.2 The table in sub-clause 21.5 below indicates the evaluation criteria and the associated evaluation points on which the Authority shall evaluate valid applications. The evaluation points set forth below represent the weighting of each criterion within the complete evaluation.
- 21.3 The evaluation of the applications will focus on the following factors, which collectively, will demonstrate which applicant is best suited to provide telecommunication services in the under-serviced areas:

- 21.3.1 **Ownership and Control:** applicants are to provide a detailed description of the direct and indirect ownership of the entity as follows:

- (a) The applicant is required to show the involvement of Historically Disadvantaged Groups (HDG's) and women at the following levels within the consortium:
 - (i) Beneficial ownership
 - (ii) Participation at Board Level
 - (iii) Participation at Operational Level
 - (iv) Participation in Management.

21.3.2 Consumer Benefits: the benefits the applicant is offering to the consumer. Each application should cover the following areas:

- a) **Service innovation and packaging.** Applicants should demonstrate their understanding of Consumer needs and the unique Consumer requirements in the under-served areas. The applicant must present its range of services, proposed tariff packages and its plans for marketing and distributing.
- b) **Tariff level and flexibility.** A key element of delivering consumer benefit is the tailoring of tariffs to attract the widest practicable number of consumers. The applicant should describe its approach for setting tariffs, its liability to offer flexible pricing packages, and its commitments to a competitive market.
- c) **Quality of Service.** The applicants are expected to demonstrate understanding of consumer perception of service quality by describing quality of service targets they will undertake. The applicant should also propose a method for verifying achievement of quality of service targets.
- d) **Geographic Coverage.** The applicant should demonstrate an understanding of the geographic coverage requirements of potential consumers and the value consumers will attach to targeted coverage levels described in their application. Applicants should commit to targets that they believe are both required and financially viable in Under-Served Areas.

21.3.3 Business Plan: quality and content of the Business Plan focusing on tariff, realistic assumptions, a sound marketing plan, and financial forecasts for a minimum period of five years.

The applicant is thus required to address the following:

- (a) Provision of a detailed market analysis
- (b) Provision of a detailed demand analysis
- (c) Forecast of market share

- (d) Presentation of market size and segmentation
- (e) Description of the products and services
- (f) Pricing strategies
- (g) Marketing strategy
- (h) An investment plan
- (i) A financial analysis of key ratios
- (j) Business experience in other markets

21.3.4 **Technical Plan:** quality and content of the Technical Plan including a timetable for implementation of coverage targets, efficiency of network design, and plans for ensuring quality of service standards.

In providing a technical plan the applicant must address the following:

- (a) Details in terms of network planning
- (b) How HDG (see 21.3.1(a)) will be engaged in the technical operations
- (c) Network coverage and rollout plans
- (d) Details of system capacity requirement
- (e) Details of spectrum requirements and plans for its efficient usage
- (f) Detail of you're planning tools, source data and design methodology
- (g) Technology selection and the basis for choosing such technology
- (h) Understanding of network management and security
- (i) Number portability and carrier pre-selection considerations
- (j) Infrastructure sharing with other operators
- (k) A detailed schedule of your roll-out plans.

21.3.5 **Experience and Credibility:** applicants are to provide relevant experience on the provision of similar telecommunications services and projects.

Applications should therefore give clear evidence of the applicant's abilities and resources in relevant areas such as:

- (a) Experience in developing and managing telecommunication systems.
- (b) Experience in meeting consumer needs innovatively
- (c) Experience in managing significant projects.
- (d) Access to financial resources.
- (e) Applicants understanding of the Telecommunications sector.

21.3.6 **Empowerment:** applicants shall demonstrate the level of involvement of Historically Disadvantaged Group (HDG) or other groups and women. In this regard applicants must address the following:

- (a) Skills transfer
- (b) Procurement policies
- (c) Skills development
- (d) Employment opportunities
- (e) Community upliftment

21.3.7 Additional features including:

- (a) Access to emergency service numbers
- (b) Directory inquiry services
- (c) Billing feature
- (d) Arbitration and dispute settlement procedures for consumers.
- (e) Consumer education

21.4 The evaluation criteria and the associated evaluation points are set out below, which shall be applied by the Authority in evaluating submitted and valid applications. The points set forth below represent the weight of each evaluation criterion.

21.5 Table for evaluation criteria

Factors	Weight
Ownership and control	20
Consumer benefits	15
Business Plan	15
Technical Plan	15
Empowerment	20
Additional features	05
Experience and Credibility	10
Total	100

ANNEXURE "A"**THE APPLICATION FORM**

NB: Warrants and Representations required for clauses 3, 12 and 14: and Executive Summary- maximum 15 pages.

I. PART ONE - APPLICANTS DETAILS

1.1 Full legal name of applicant.
1.2 Full names of two representatives duly authorized to respond to queries and or communications from the Authority.
1.3 Physical address of the applicant.
1.4 Postal Address of the applicant
1.5 Telephone numbers
1.6 E-mail address
1.7 Telefax number

2. PART TWO - OWNERSHIP AND CONTROL

2.1 Provide a description of the applicant's legal status.
2.2 Provide certified copies of all relevant founding documentation.
2.3 Provide details of the applicant's date of formation and how the applicant has developed since.
2.4 Provide a detailed description of all direct and indirect ownership interests in the applicant, including beneficial ownership interests.
2.5 Provide the Applicant's mission and vision statements.
2.6 Provide a narration of the Applicants historical development with emphasis on its ownership patterns at each stage of growth.

2.7	Provide a brief description of all persons who hold a direct or indirect ownership interest in the applicant; at present or at any time during the existence of the Applicant.
2. 8	Provide a complete and detailed description of all direct and indirect voting interests in the applicant, including beneficial voting interest
2.9	Provide a complete and detailed description of all direct and indirect financial interests in the applicant, including beneficial financial interest.
2.10	Provide a complete and detailed description of the governing body of the applicant, for example the board of directors, indicating how such governing body is appointed and procedures governing such body.

3. PART THREE - MANAGEMENT

3.1	Provide a brief description of the corporate management of the applicant
3.2	Provide details of each member of the applicant's senior corporate management including directors, senior officers members, partners, trustees, as the case may be.
3.3	Provide the following details: name, date of birth, identity number, address, nationality, occupation and a brief <i>curriculum vitae</i> , with Relevant experience.

4. PART FOUR - FINANCIAL ABILITY

4.1	Provide details of how the applicant intends to fund the share of the capital expenditure and operations of the License, Applications must provide evidence of research and investigation on the costs in this regard. Detail of the source of funding the applicant intends to access and provide detailed proof of such funding. The information required in terms of this item as set out below is premised on the applicant being a company. In the event that the applicant is a natural person or an entity other than a company, provide the required certificates, descriptions and proof that would be appropriate for the applicant, ensuring that the substantive information required has been provided.
4.2	Provide Director's certificates in respect of the amount of issued and paid – up share capital, the aggregate values of shareholders loans to the company and a detailed breakdown of such loans.
4.3	Provide a description of the method by which share/loan capital is to be raised.
4.4	Provide a description of any additional commitments or obligations of any of the applicant's shareholders to provide further funds to the applicant.
4.5	Provide proof that a shareholder referred to above is financially capable of providing such funds.
4.6	Bank Facilities: Provide a description of and proof of bank facilities or other credit arrangements, for example-Banker's certificate of the amount of deposits available; Banker's certificate of the amount of the overdraft facilities available; Banker's certificate of the amount of other credit facilities; or bank guarantees.
4.7	Other: Provide a description of and proof of any other funding sources.
4.8	Provide copies of the audited financial statements and auditor's reports thereon for the previous three years, together with the most recent interim results for the applicant and persons who have a direct ownership interest in the applicant.

5. PART FIVE - BUSINESS PLAN

Provide a detailed description of the Business Plan by addressing the following matters:	
5.1	Market projections and assumptions
5.2	Provide brief marketing strategy
5.3	Financial projections and assumptions.
5.5	Brief revenue projections

5.6	Capital cost
5.7	Cash flow projections

6. PART SIX - TECHNICAL PLAN

Provide a detailed description of network technical plan on matters such as:	
6.1	Conceptual plan and network hierarchy
6.2	Network planning principle
6.3	Quality of service
6.4	Metering and billing
6.5	Operations and maintenance
6.7	Network development schedule
6.8	Network sharing with other operators
6.9	Procurement Plan

7. PART SEVEN - SERVICE IMPLEMENTATION

7.1	Provide details of the services to be provided including, without limitation, voice telephone services, data services, emergency services, directory services, operator assisted services, and value added network services and provide details of implementation time frames.
7.2	Provide details of plans that cover matters such as the distribution of handsets and accessories and the servicing of such equipment.
7.3	Provide details of how network usage will be metered and of billing systems.

8. PART EIGHT - EMPOWERMENT

8.1	Provide details of all direct and indirect ownership and control interests, without limitation to, voting, financial, governing and management interests held by persons from historically disadvantaged groups, in total and broken down by particular categories, including, without limitation, black persons, women and disabled persons.
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8.2	Provide complete details of the financial contributions to the applicant by persons from historically disadvantaged groups who hold ownership or control interests in the applicant. Also set out how dividends will be distributed to those empowerment groups that form part of the applicant.
8.3	Provide details of all positions of senior management held by persons from historically disadvantaged groups, in total and broken down by particular categories including, without limitation, black persons, women and disabled persons.
8.4	Provide details in respect of proposed staffing plans with regard to persons from historically disadvantaged groups.
8.5	Provide details of applicant's employment equity plans.
8.6	Provide details of plans to contribute to knowledge and skills transfer to persons from historically disadvantaged groups.
8.7	Provide details of plans for setting aside contracts for persons from historically disadvantaged groups.
8.8	Provide details of any corporate social responsibility activities that the applicant proposes to undertake in addition to any activities previously mentioned.

9. PART NINE - PERFORMANCE GUARANTEE

Indicate whether applicant will be willing to accept a performance guarantee as a license condition and, if so, provide details of such including without limitation details of the amount of the guarantee and proposed commitments related to coverage universal access and universal service obligations, empowerment and economic development

ANNEXURE "B"



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

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

Issued to

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■ 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 re-enactments (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 xxxxxxxxxxxxxxxxxxxx registration number xxxxxxxxxxxxxx, a duly incorporated company in terms of the company laws of the Republic of South Africa.

"Licence Area" means xxxxxxxxx District, xxxxxxxxx Province as determined by the Minister in Government Gazette numbers xxxxx.

"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 (1) by 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 xxxxxxxxxx District, xxxxxxxxxx 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 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 xx% 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.

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**MANDLA LANGA
CHAIRPERSON**

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