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GENERAL NOTICE

Communications, Ministry of

General Notice

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GENERAL NOTICE

NOTICE 3458 OF 2002

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

1. SUBJECT OF THE INVITATION TO APPLY

- 1.1 I, Dr Matsepe-Cassaburri, hereby publish the invitation to apply, inviting applications for **the first phase** of the licencing process for the provision of telecommunications services in terms of section 40 A (2) (a) of the said Act, with regard to the manner and form for submission of applications for Under-Serviced Area Licences (hereinafter referred to as "USALs") by, amongst others, small business operators commonly known as Small Medium and Micro Enterprises (SMMEs).

Interested persons are hereby invited to submit applications in respect of the areas as determined and published by the Minister under government gazette number **229954** and **223164** of 2002. **There will be one licence issued in each area (district).**

Northern Province

- (i) CBDC4 Bushbuckridge/Lowveld Municipality
- (ii) DC35 Capricon District

Kwazulu Natal

- (i) DC21 Ugu District Municipality
- (ii) DC26 Zululand District

Eastern Cape

- (i) DC15 OR Tambo Municipality
- (ii) DC12 Amatole District

Free State Province

- (i) DC20 Northern Free State District
- (iii) DC18 Lejweleputswa

North West Province

- (i) DC 38 Central
- (ii) DC 39 Bophirima

1.2.1 The licencing objective is to provide business and residential services, to provide for 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 Under service area licenses 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 draft licence has been attached to serve as a guideline for the services to be provided by the licensee as **Annexure "A"**. The under service licensee 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 licence: Twenty (25) years from the signing of the Licence coupled with an expectancy that the License may be extended by the Authority for additional periods subject to certain conditions being fulfilled.

1.4.3 The Applicant shall be 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 draft Licence. 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 of the use thereof. Applicants shall seek their own counsel in the preparation of application.

- 1.4.6 Interested persons may submit questions of clarification concerning the invitation to apply directly to the Minister. Such questions must be in writing, and be hand delivered, e-mailed or faxed to the Minister not later than 4 weeks after the publication of this Invitation To Apply to the following address:

The Minister of Communications

Under Serviced Area Licence's Project

Nkululeko House

399 Duncan Street

Hatfield, Pretoria

Private Bag X860

Pretoria, South Africa

Fax No: (012) 427 – 8086

E-mailaddress: mashila@doc.pwv.gov.za omelia@doc.pwv.gov.za

- 1.4.7 Unless otherwise extended, any queries shall be communicated in writing to the Minister up to FOUR weeks after the publication of this Invitation To Apply.
- 1.4.8 Prospective Applicants should not wait until the deadline and are encouraged to submit queries as soon as possible.
- 1.4.9 In order to assist Applicants in the preparation of their applications, 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;
- 1.4.10 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 (R30 000) shall be paid by the Applicant at the time of filing their application. The application fee shall be in the form of a bank guarantee cheque in favour of Independent

Communications Authority of South Africa. Payments not made in the form of a bank guarantee cheque will be disqualified.

- 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 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:
- 3.2.1 No employee of the Ministry of Communications, the Authority and Universal Service Agency or any civil servant of the Government of the Republic of South Africa shall apply for the Licence.

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

5. TERMS AND CONDITIONS RELATING TO THE LICENCE ACTIVITIES

- 5.1 **Annexure 'A'** contains a draft USAL's Licence to be issued in terms of this Invitation. The draft Licence sets out the rights and obligations of the Licensee and the terms and conditions relating to the Licence activities.
- 5.2 Applicants are invited to make comments and representations with respect to the draft Licence 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

The annual licence 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 licence fee may be adjusted 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

Applicants shall be within the framework stipulated by applicable law, or regulations determine subscriber tariffs in accordance with business and other considerations.

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 INVITATION

- 11.1 The Minister in consultation with the Authority may amend the Invitation.
- 11.2 The Minister shall publish a notification regarding the amendment of the Invitation in the same way as the Invitation itself was announced and shall publish such amendment in the Government Gazette.
- 11.3 In case of an amendment to the invitation the deadline available specified for the submission of Applications may be extended by the Minister, if necessary.
- 11.4 Applications already submitted before the publication of the amendment, will be afforded an opportunity to amend their applications accordingly.

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 the application form.
- 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 Licence 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 to which it; or any shareholder holding a majority interest in the applicant; or any venture in which the applicant has a majority interest has tax; official fee or liabilities towards allocated public funds that are overdue for a period of at least one year. The information necessary for the assessment of the extent 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 the relevant certificate(s) from the South African Revenue Service 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 applicants have appointed and/ or made use of a consultant(s) shall disclose in writing that such consultant did not perform similar, related or any other duties directly or indirectly to any applicant submitting an application pursuant to this Invitation to Apply.

- 12.7 The consultant(s) referred to in 12.6 shall also warrant in writing that they did not perform or undertake any duties related to any other application pursuant to this Invitation to Apply for more than one applicant.

12.8 Should the Applicant not provide the undertakings in 12.6 and 12.7, 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 Licence. 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 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 **14:00 on the 30th APRIL 2003**
- 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**

- 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 Licence 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 Invitation.
- 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 licence 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 HDGs 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-served 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 HDGs 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 should present its range of products,

proposed tariff packages and its plans for marketing and distributing service.

- 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 tariffs, 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 HDIs 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:

- (l) Experience in developing and managing telecommunication systems.
- (m) Experience in meeting consumer needs innovatively.
- (n) Experience in managing significant projects.
- (o) Access to financial resources.
- (p) Applicants understanding of the Telecommunications sector.

21.3.6 Empowerment: applicants shall demonstrate the level of involvement of HDIs 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

THE APPLICATION FORM**1. PART ONE - APPLICANTS DETAILS**

1.1 Full legal name of applicant.
1.2 Full names of two representatives duly authorised 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 complete and detailed description of all direct and indirect ownership interests in the applicant, including beneficial ownership interests.
2.8 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.
2.9	Provide a complete and detailed description of all direct and indirect voting interests in the applicant, including beneficial voting interest
2.10	Provide a complete and detailed description of all direct and indirect financial interests in the applicant, including beneficial financial interest.
2.11	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

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| 4.1 | Provide details of how the applicant intends to fund the share of the capital expenditure and operations of the Licence. 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 even 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 an 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:
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| 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
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5.7	Cash flow projections
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6. PART SIX - TECHNICAL PLAN

Provide a detailed description of network technical plan on matters such as:	
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6.1	Conceptual plan and network hierarchy
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6.2	Network planning principle
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6.3	Quality of service
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6.4	Metering and billing
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6.5	Operations and maintenance
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6.7	Network development schedule
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6.8	Network sharing with other operators
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6.9	Procurement Plan
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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.
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7.2	Provide details of plans that cover matters such as the distribution of handsets and accessories and the servicing of such equipment.
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7.3	Provide details of how network usage will be metered and of billing systems.
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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,
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	women and disabled persons.
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 licence 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

DRAFT LICENCE FOR UNDERSERVICED AREA LICENCES

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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 defined in the Telecommunications Act, 1996 (Act No. 103 of 1996) as amended ("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-enacts (with or without modification); and
 - (c) Any subordinate legislation made (before, on or after the date of this Licence) under any enactment, including, without limitation, one within paragraphs (a) or (b) or both.
- 1.5 The schedules to this Licence shall form part of the Licence.
- 1.6 In this Licence the following terms shall have the meanings given herein:
- "Act" means the Telecommunications Act, 1996 (Act No. 103 of 1996) as amended ("the Act").
- "Applicable Interest Rate" means the prime interest rate as published from time to time of the South African Reserve Bank established by section 9 of the Currency and Banking Act, No 31 of 1920, and operating in terms the South African Reserve Bank No.90 of 1989.
- "Approved Equipment" means telecommunication equipment which has been approved by the Authority under Chapter VI of the Act.
- "Basic Telephone Service" means a telecommunication service comprising technical features which are the minimum necessary to allow the

establishment of a telephony channel for the purpose of providing a telecommunication service in order to convey voice grade signals between two Items of Customer Premises Equipment connected to the Public Switched Telecommunication Network.

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

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

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

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

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

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

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

"Community Service Telephone" means Terminal Equipment:

- (a) which is registered as such by the licensee in its own records; and
- (b) which is made available to the general public for the provision of the service and, to this end is accessible at community service telephone tariff rates as approved by the Authority from time to time; and
- (c) which is located in the areas specified in the attachment 1; and
- (d) Single units of which may be grouped in a single location, in which event each individual telephone will be considered a single telephone for the purpose of the licensee's community service obligations as set out in attachment 1 to this licence.

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

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

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

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

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

"Directory Information Services" means the services described in clause

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

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

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

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

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

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

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

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

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

telecommunication system in a country other than the Republic but is conveyed via a telecommunication system in the Republic.

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

"ITU" means the International Telecommunications Union.

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

"Licensee" means a legal entity which has been issued with a licence in terms of section 40 A (2) (a) of the Act as required by the Act.

Licence Area: The geographic co-ordinates of the licence area within which the licensee is licensed to provide the service

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

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

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

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

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

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

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

"Network Connection Point" means any point within an item of Network Connection Equipment comprised in one telecommunication system at which signals are conveyed to or from a corresponding point in another item of Network Connection Equipment comprised in another telecommunication system.

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

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

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

"Overdue Interest Rate" means the prime interest rate plus 3%.

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

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

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

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

"Public Pay-telephone" means apparatus (including any kiosk, booth, acoustic hood, shelter or similar structure in which that apparatus may be installed) at which Public Pay-telephone Services are made available to the public or segments of the public, and which contains a device to accept payment for those services.

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

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

- (h) the provision of Public Emergency Call Services from Public Pay-telephones;

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

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

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

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

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

- (a) has entered into a contract with the Licensee to provide such Public Pay-telephone Service, and
- (b) is able to determine the location from which such service will be provided, who shall have access to such service, or when access to such service will be provided.

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

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

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

"SDCA" shall mean the short distance charging area.

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

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

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

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

"Under-serviced Area" means any area which has been determined to have less than 5% tele-density in terms of section 40A of the Act.

"Under – serviced Area telecommunications Network" means a telecommunications network utilised by an Under –Serviced Area Licensee.

"Under – serviced Area telecommunications Service:" means any telecommunication service which an Under – Serviced Area Licensee is licensed to provide.

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

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

2. LICENCE AREA

- 2.1 The geographic co-ordinates of the licence area within which the licensee is licensed to provide the service and infrastructure ;

3. RIGHTS AND OBLIGATIONS TO PROVIDE A TELECOMMUNICATION SERVICE

- 3.1 The Licensee shall be entitled to construct, maintain and use the Under – Serviced Area Telecommunication Network (USATN) within the licence area in the Republic and to provide telecommunication services in terms of section 40A (3) of the Act.
- 3.2 The Licensee shall, in terms of section 40A(3), provide any telecommunications services including voice over internet protocol services, fixed mobile services and public pay telephones, in respect of the area in which the licence applies.
- 3.3 The licensee may by agreement obtain interconnection to the networks of Public Switched Telecommunication Service licensees and the Mobile Cellular operators and through the national long - distance telecommunication service of a public switched telecommunication service licensee to the international telecommunication gateway of a carrier of carrier's licensee provided that such agreement complies with the existing interconnection guidelines together with those promulgated under section 40A(6) of the Act.
- 3.4 The Licensee shall be entitled to-
- 3.4.1 to sell or lease the use of; or
 - 3.4.2 to install or maintain, or both;
- any telecommunication apparatus, including, without limitation, any Customer Premises Equipment, whether or not it is owned by the Licensee, subject to any terms and conditions that may from time to time be prescribed by the Authority under Chapter V of the Act which may be relevant to the sale, lease, installation or maintenance of any telecommunication apparatus;
- 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 provide all or any of the Under – Serviced Area licensees Telecommunication Services (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 in the determined licence area, including South African territorial waters and airspace (the "Territory"), by itself and/or in co-operation with a third party agent, contractor, network operator or service provider, provided that-

- (a) the Licensee enters into a written agreement with any such third party agent, contractor, network operator or service provider;
- (b) the Licensee remains responsible to the Authority for the performance of its obligations under the License irrespective of the acts and omissions of each such third party agent, contractor, network operator or service provider; and
- (c) the written agreement stipulates adequate terms to provide that in the exercise of any of the rights granted to the Licensee, such third party agent, contractor, network operator or service provider uses its best efforts not to contravene any of the conditions of this License, including without limitation, Licence terms relating to users or applicable laws, and regulations in force.

3.7 The Licensee shall notify the Authority of any agreement 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 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 telecommunications services including voice over internet protocol services, fixed – mobile services and public pay telephones.

4.2 the supply of telecommunications equipment, the installation, bringing into service, maintenance and repair of that part of the USATN that is provided, maintained and operated by the under - serviced area Licensee for the purposes of providing any telecommunication service.

4.3 any other service authorized by the Authority or reasonably complementary to the provision of those services (whether provided on a fixed or fixed mobile basis) such as the provision, repair and maintenance of equipment located on a Customer's premises and any other telecommunications apparatus of any kind.

- 4.4 all or any telecommunication facilities to be used by any person for the provision of Value Added Network Services;
 - 4.5 all or any telecommunication facilities comprising fixed lines to be used by any Operator for the provision of Mobile Cellular Telecommunication Services; and
 - 4.6 all or any telecommunication facilities to be used by any person for the provision of any Private Telecommunication Network, other than a Private Telecommunication Network, referred to in section 41 (2) of the Act.
- 4.7 In provision of fixed mobile service, the Licensee shall be allowed to provide mobility to its subscribers with wireless access systems limited within the local area in the form of Short Distance Charging Area (SDCA) in which the subscriber is registered. While deploying such systems, the licensee has to follow the numbering plan of that SDCA and it should not be possible to authenticate and work with the subscriber terminal equipment in SDCAs other than in which it is registered. The system shall also be engineered so as to ensure that the handover of the subscriber does not take place from one SDCA to another SDCA while communicating. Further, the licensee shall ensure that the radio transmitters may be located and situated at a distance of 10 km from the demarcation boundary and that such radio transmitters will work in such a manner that any signal or signals, emanating there from, fade out when nearing or about to cross the boundary.

4. FACILITIES LEASING AND INTERCONNECTION

- 4.1 The licensee shall make its own arrangements for all infrastructures involved in providing the service and shall be solely responsible for installation, networking and operation of necessary equipment and systems;
- 4.2 For the purposes of interconnection, the licensee shall be subject to the provisions contained in section 43 of the Act and the supplementary guidelines issued pursuant to section 40A (6) .

5. TECHNOLOGY

- 5.1 The licensee shall be entitled to use any type of network equipment , including circuit and /or packet switches, wireless and/or optical fibre in local loop that meet the relevant International Telecommunications Union Standards and must be subject to the provisions of chapter V of the Act.
- 5.2 The mode of ownership of subscriber's terminal equipment will be at the option of the subscriber. In the case of new technologies where no available standards have been determined, the licensee shall seek the approval of the Authority deploying such technologies.

- 5.3 For the use of space segments, the licensee shall co-ordinate with and obtains facilities from Telkom or the SNO or GMPCS Licensees.

6. FREQUENCY AND SPECTRUM ALLOCATION

- 6.1 The allocated frequencies for the service shall be as follows 1800MHz and the wireless local loop.
- 6.2 The licensee shall pay a nominal fee of R 1-00 for access to the allocated frequency.

7. ROLL OUT TARGETS AND PERFORMANCE GUARANTEE

- 7.1 The Licensee shall meet or exceed the Roll Out obligations as set out in the roll out plan attached herein in accordance with the terms and conditions and within the timeframes specified therein.
- 7.2 In any case where the Licensee fails to satisfy its obligations under this License or otherwise violates any term or conditions of this License, any applicable regulation, or the Act and such failure or violation is determined by the Authority to be material, the Authority shall have the right to impose any sanction in terms of the revocation clause of this license and consistent with the Act.
- 7.3 The Authority shall be entitled to regularly review compliance by the Licensee with the License obligations. In performing a review or any other regulatory duties the Authority shall be entitled to request further information from the Licensee, review documents, propose sanctions and perform other such duties as authorized by the Act.

8. GENERAL CONDITIONS

8.1 Licence Term

- 10.1.1 The licence term shall be twenty (25) five years from the Effective Date with the option for an extension period of five years.
- 10.1.2 The Authority will extend, the period of the licence as set out in clause 10.1.1 above in accordance with and under the following conditions:

- (a) Except where the Licensee has repeatedly and materially failed to satisfy the conditions of the License or to comply with applicable regulations or applicable laws over the course of the License term.
- (b) At least 18 months prior to the expiration of the License term, the Licensee shall file with the Authority a written certification of substantial and material compliance based on annual reports required pursuant to the clause on the provision of information below.
- (c) The Licensee shall comply with any request by the Authority for information or documents necessary to verify the accuracy of the written certification filed by the Licensee pursuant to clause 10.1.2(b) above.
- (d)
- (e) Prior to any License extension, the Authority may take necessary steps in cooperation with the Licensee, to review and make modifications to the terms and conditions of the License in accordance with the existing regulatory framework at that time.
- (f) Prior to denying any request for extension pursuant to clause 10.1.2(d), the Authority shall request in writing that the Licensee take such specified action as the Authority deems necessary to rectify or compensate for the substantial and material non-compliance by the Licensee. A time period shall be specified for such action (being not more than 8 months from the date of request). If such rectification/compensation is not achieved, only then may the Licence expire without extension.

10.3 Annual licence fee:

10.3.1 The annual licence fee payable by the Licensee, from forty eight (48) months after the effective date of the Licence shall be equal to 0.1% of the net invoiced annual sales realised from the revenue computed in accordance with South African GAAP.

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

8.4 Bank Guarantee

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

10.5 Amendment of the Licence

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

10.5.2 If a proposed amendment to this Licence relates to the Roll-out Targets or New Line Roll-out Targets, as contemplated in clause 9 above, this Licence may be amended only with the concurrence/consultation of the Licensee.

9. DIRECTORY SERVICES

9.1 The Licensee shall provide users of its USATS with Directory Services at points served by its USATN.

9.2 The Licensee shall provide Directory Services whereby callers may receive information concerning the telephone numbers of subscribers listed or to be listed in the printed directories described in clause 11.4 below (including any corrections or updates).

9.3 The Licensee may impose a charge approved by the Authority for the provision of Directory Services. In approving any charge, the Authority may allow for a reasonable minimal number of free inquiries prior to the Licensee applying any approved charge and, in accordance with clause 26, on **disabled persons** below, may treat public telephones differently where user access to printed directories may be limited and/or restricted.

9.4 The Licensee shall publish and make available to all subscribers, free of charge, at least once every year, a telephone directory ("white pages") which shall include: name (in alphabetical order), address and telephone number of each subscriber.

i. The telephone directories shall also include Emergency service number 112 and the numbers for Emergency Organizations, general information on tariffs, information identifying any number prefixes necessary for making international and, as applicable, local and national long distance calls, and any information determined by the Licensee to be of general interest to the public.

ii. The Licensee may combine the directory listings in a single national telephone directory or publish multiple directories divided by geographical areas as determined by the Licensee in which case each local directory need only be made available to subscribers in that geographical area.

11.5 Each subscriber has the right to be listed free of charge in the telephone directory. Where requested in writing by a subscriber, the Licensee shall keep

that subscriber's name; address and telephone number confidential and not include such information in any published directory or otherwise make such information available in connection with the Licensee's directory services.

11.6 The Licensee has the right to publish and make available commercial telephone directories ("yellow pages") in printed, electronic and/or any other form. Listings in these commercial telephone directories are optional. The Licensee may impose a fee for listings in the commercial directory.

11.7 Where the Licensee chooses to combine the commercial and non-commercial directories, it shall separate the two directories by clearly marked sections or use differently colored pages.

11.8 The Licensee shall correct its internal records for purposes of providing directory services where a mistake in the subscriber information is brought to its attention and shall correct such information as applicable in the next general publication of the printed directory.

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

12.1 The licensee shall not at any time or under any circumstances use this license as a form of security to secure additional or initial funding.

12.2 No ownership interest or control of the Licensee shall be transferred or otherwise assigned prior to the Licensee first submitting a written application to the Authority and obtaining the prior written approval of the Authority. This Clause 12.1 shall be governed by and construed in accordance with the regulations promulgated by the Authority under Section 52 of the Act.

11. ACCESS TO EMERGENCY CALL SERVICES AND OPERATOR ASSISTANCE

11.1 The Licensee shall provide users of its Telecommunication Network with operator assistance and Emergency services at points served by the Telecommunication Network.

11.2 The Licensee may impose a charge for operator assistance services provided pursuant to Clause 9.1 above.

11.3 The Licensee shall provide Public Emergency Services by which any member of the public may, at any time and as swiftly as practicable, communicate with any of the Emergency Organisations for the purpose of notifying them of an emergency at no charge using the Emergency call numbers "112", "10111" and "999" and without having to use coins or cards from pay telephones provided by the Licensee. This will include the provision of such service on a suspended line.

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

- 12.1 The Licensee shall, after consultation with the authorities responsible for Emergency Organisations and such departments of central and local government as the Authority may from time to time determine and whose names are notified to the Licensee for that purpose, make plans or other arrangements for the provision or, as the case may be, the rapid restoration of such telecommunication services as are practicable and may reasonably be required in Emergencies.
- 12.2 The Licensee shall, on request by any such person as is designated for the purpose in the relevant plans or arrangements, implement those plans or arrangements insofar as is reasonable to do so.
- 12.3 Nothing in this Condition precludes the Licensee from:
- (a) 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
 - (b) Making implementation of any plans or arrangements conditional upon the person or persons for whom or on whose behalf that plan or arrangement is to be implemented indemnifying the Licensee for all costs incurred as a consequence of the implementation.

13. PRICE REGULATION

- 13.1 The Licensee shall file rates as well as the relevant terms and conditions with the Authority pursuant to which the Licensee proposes to offer services contemplated in clause 4 above. Such rates shall be filed at least thirty (30) Business Days before the proposed date on which such rates are to become effective where the Licensee proposes to increase rates and at least five (5) days before the proposed date on which such rates are to become effective where the Licensee proposes to decrease rates. Rates shall be filed with and in the form specified by the Authority. The Authority may disapprove the proposed rates only if:
- (a) the calculations contain mathematical errors; or
 - (b) The terms and conditions violate applicable laws, including, without limitation, policy directions, regulations and the Rate Regime, in a material respect.
- 13.2 Disapproval of the rates by the Authority shall be in writing. In the case of rate increases, if the Authority does not deliver to the Licensee a notice in writing of disapproval at least fifteen (15) Business Days before the proposed Effective Date of the rates, the rates shall be deemed to be approved. For rate

decreases, the rates shall be deemed to be approved if the Authority does not deliver to the Licensee a notice in writing of disapproval at least twenty-four (24) hours prior to the proposed Effective Date.

- 13.3 Tariffs shall be **non-discriminatory** for comparable telecommunication services rendered to the same categories of users. In meeting its obligation pursuant to this paragraph, the Licensee may establish different tariffs taking into account: subscriber usage or volume, service packages and feature groups purchased, and the number of accounts or subscriber numbers purchased by a single subscriber. The Licensee may also apply different tariffs for limited duration in connection with promotions supporting its marketing efforts for any service offering.

14. PREPARATION OF ACCOUNTS

- 14.1 Subject to clause 16.4, the Licensee shall prepare, in respect of each of its financial years, accounts on an historic and a current cost basis in respect of--
- (a) the Licensee's Retail Activities; and
 - (b) the Licensee's Wholesale Activities,
- (Together referred to as the "Regulatory Accounts").
- 14.2 The Licensee shall establish the Regulatory Accounts in accordance with the Chart of Accounts and the Cost Allocation Manual (COA/CAM).
- 14.3 The Licensee shall prepare sufficient accounting and reporting arrangements to enable it to comply with this condition.
- 14.4 The Licensee shall not be required to prepare Regulatory Accounts in accordance with this condition until it has put in place the necessary accounting and management information systems which will enable it to do so. The Licensee shall put such systems in place by the **fifth anniversary of the Effective Date**, provided that Licensee shall not be required to do anything under this condition which would impose an undue burden on the Licensee having regard to its obligations under the remaining conditions of this Licence.
- 14.5 The Licensee shall, if requested by the Authority to do so, procure in respect of each set of Regulatory Accounts an audit report by the Licensee's auditors in which they will state whether in their opinion the Regulatory Accounts comply with the Chart of Accounts and the Cost Allocation Manual, and fairly present the assets, liabilities, revenues, and expenses in respect of the Licensee's Retail Activities and Wholesale Activities.
- 14.6 The Licensee shall send a copy of each set of Regulatory Accounts to the Authority within twenty (20) Business Days of the completion of the audit referred to in clause 13.5 or, if no audit is requested by the Authority pursuant

to that condition, within three (3) months of the end of the relevant financial year.

- 14.7 The Chart of Accounts and the Cost Allocation Manual may be changed as agreed from time to time by the Licensee and the Authority and the Licensee shall be entitled to a reasonable period within which to implement any such changes. Until such time as the initial Chart of Accounts and the Cost Allocation Manual are agreed between the Licensee and the Authority audited annual financial statements shall be prepared in accordance with generally accepted accounting principles, consistently applied.

15. FAIR TRADING

- 15.1 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—

- (a) the provision of any telecommunication services (including, without limitation, maintenance services) in accordance with any obligations within the determined geographic area as imposed by this Licence;
- (b) the connection of Approved Equipment to the Telecommunication Network;
- (c) the granting of permission to connect any Operator's telecommunication system with the Public Switched telecommunications network in accordance with section 43 of the Act and the guidelines contemplated hereunder; and
- (d) The quality and terms of any Interconnection Services provided by the Licensee to an Operator under any agreement between them.

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

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

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

15.4 Clause 17.3 shall not apply with respect to the supply of any telecommunication services or apparatus where-

- (a) the Licensee or any of its Wholly-owned Subsidiaries holds any Intellectual Property Right in that telecommunication service or apparatus; or
- (b) the telecommunication apparatus is distinguishable by its external appearance, or by any marking or similar feature, from other telecommunication apparatus of the same type, and is intended, by virtue of those distinguishing features, to be associated with the Licensee or its Wholly-owned Subsidiary;
- (c) the Licensee, or any of its Wholly-owned Subsidiaries, makes available research, design or development work, or agrees to finance that work on condition that the telecommunication service or apparatus concerned shall be exclusively supplied to it; or
- (d) The Licensee has an exclusive right to supply the telecommunication service or apparatus concerned.

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

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

- (a) Providing any telecommunication service in the Republic by means of the Public Switched Telecommunication Network;
- (b) supplying any telecommunication apparatus in the Republic for connection to the Public Switched Telecommunication Network; or
- (c) Connecting any telecommunication apparatus or system in the Republic to the Public Telecommunication Network;

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

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

- (a) imposing any terms and conditions as are permitted under section 43 of the Act and the guidelines contemplated there under;
- (b) where it supplies as part of the same transaction, or related series of transactions, offering discounts based on term commitments or commitments for multiple services or for purchasing two or more

telecommunication services which are of a similar type (or so related as to permit economies of scale where they are provided together), or for purchasing two or more items of telecommunication apparatus, offering quantity discounts or from offering more favourable terms and conditions in respect of those telecommunication services or apparatus; and

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

15.7 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

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

16. REQUIREMENT TO PROVIDE CONNECTION SERVICES INCLUDING CO-LOCATION AND FACILITY SHARING

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

17. REQUIREMENT TO OFFER CONTRACTS FOR TELEPHONE SERVICES

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

- 17.2 The subscriber contract shall either specify the type of service offered and the terms and conditions on which the telephone service is to be provided under the contract or shall make reference to publicly available terms and conditions. The contract or publicly available terms and conditions shall at least specify, if relevant:
- (a) the supply time for initial connection;
 - (b) the service covered by and the terms of the contract;
 - (c) the financial penalties the subscribers have to pay in case of payment delay;
 - (d) the conditions referring to suspension or interruption of the service in case of non-payment by the subscriber;
 - (e) the types of maintenance service offered;
 - (f) the compensation or refund arrangements or both for the Licensee's subscribers which apply if the contracted service is not met and, if none are applicable, a statement to that effect;
 - (g) a summary of the method of initiating procedures for the settlement of disputes; and
 - (h) Information on service quality levels offered.
- 17.3 The form or model of the subscriber contract, including the general terms and conditions and any amendment thereto used by the Licensee to satisfy its obligations under this Section 16 shall be approved by the Authority. Any amendments to the form or model of the contract shall be submitted to the Authority at least 60 days prior to its coming into force.
- 17.4 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.
- 17.5 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.
- 17.6 The Licensee shall retain each subscriber contract or a copy thereof in its records for at least one year following termination of the respective subscriber's contract. The Licensee shall retain all telephone activity and billing records for each subscriber for at least one year following the corresponding activity and billing.

18. NUMBERING PLAN

- 18.1 The Authority shall make available to the Licensee sufficient blocks of Numbers, having regard to the expected growth and demand for telecommunication services, for a Number to be allocated without undue delay. Number blocks will be made available to the Licensee under this clause 16.1 pursuant to the Numbering Plan prescribed by the Authority.
- 18.2 The Licensee and the Authority shall from time to time consult with each other with respect to--
- (a) the arrangements for the allocation and re-allocation of Numbers within the Numbering Plan, as may be amended from time to time; and
 - (b) Any developments of, additions to, or replacements of the Numbering Plan.
- 18.3 The Licensee shall not charge any person for a Number allocated to that person; provided however, nothing in this clause 16.3 shall preclude the Licensee from recovering from an Operator the reasonable cost of allocating a Number or block of Numbers and carrying out any change to the Public Switched Telecommunication Network, that is necessary for the purpose of emitting messages to be sent to a Number allocated to that Operator, and any reasonable cost arising from that change.

19. NUMBER PORTABILITY

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

20. CARRIER PRE-SELECTION

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

21. PROVISION OF INFORMATION

- 21.1 The Licensee shall submit to the Authority within four (4) months after the end of each financial year a report, certified by an appropriately qualified independent auditor, which sets out the extent to which the Licensee has, during the financial year in relation to which the report is submitted, met its obligation with respect to the Roll-out Targets and the Service Targets for the preceding financial year.
- 21.2 Subject to applicable law, the Authority shall, at the written request of the Licensee, use its reasonable endeavours to ensure that all or any part of the

report referred to in Clause 19.1 above reasonably justifying confidentiality, such as commercially sensitive or proprietary information relating to the financial capacity or business plans of the Licensee, trade secrets, etc., shall not be open to public inspection or disclosed to any third party.

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

22. BILLING ARRANGEMENTS

- 22.1 The Licensee shall provide a bill to each subscriber, in a form that complies with clause 21 below, for the services rendered during any period determined by the Licensee. The Licensee shall establish appropriate processes and procedures to ensure that subscriber bills are accurate and the amount due (after deducting any credits, discounts or similar adjustments) is no higher than an amount which represents the true extent of the services actually provided by the Licensee to the subscriber in question.
- 22.2 Without prejudice to the generality of clause 20.1 above, the Licensee shall at all times maintain in operation such a Billing Process as facilitates compliance by the Licensee with, and is calculated to prevent contravention by it of, that paragraph. The Licensee may at its discretion out source its billing obligation; provided however, it shall remain primarily responsible for meeting its obligations under this License.
- 22.3 The Licensee shall not be regarded as being in contravention of its obligation under Clause 20.1 above except where the failure is in relation to the billing process and the Licensee has failed to take all reasonable steps to prevent a contravention of that obligation.
- 22.4 The Licensee shall keep such records as may be necessary or as may be determined by the Authority to be necessary for the purpose of satisfying the Authority that the billing process has the characteristics required by Clause 20.2 above, provided that nothing in this Clause 20.4 shall require the Licensee to retain any records for more than 2 years from the date in which they came into being.
- 22.5 The Authority shall have the right to inspect and independently verify the Licensee's billing process for purposes of ensuring compliance with the Licensee's obligations under this Section 21. Where the Authority provides written notice to the Licensee that it is exercising its right under this Section 21.5, the Licensee shall cooperate with the Authority by making available appropriate personnel with knowledge of the billing process; providing all back up and support documentation and other information that the Authority may request and otherwise assisting the Authority in the process.

23. ITEMISED BILLS

- 23.1 The Licensee shall provide each subscriber who so request an itemised bill in such a form and with appropriate explanation to plainly show the call details of the subscriber for the billing period to verify the billed amount.
- 23.2 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
- 23.3 The Licensee shall ensure that calls which are free of charge to its Subscribers, including calls to help lines, shall be identified in its Subscribers' itemised bills.
- 23.4 The Licensee may make an itemised bill available in a secure location on its website if so requested by a subscriber.

24. NON-PAYMENT OF BILLS

- 24.1 Where a Licensee's subscriber has not paid the Licensee all or part of a bill for the services rendered to that subscriber by the Licensee the Licensee may take steps to secure payment, including discontinuance of service; provided that any measure taken by the Licensee shall-
- (a) be proportionate and non-discriminatory;
 - (b) be set out in the subscriber contract entered into with the subscriber pursuant to clause 16 above and published in accordance with that clause;
 - (c) give due warning in advance of any consequent service interruption or disconnection to the Subscriber; and
 - (d) 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.

25. PUBLIC PAY-TELEPHONE SERVICES

- 25.1 The Licensee shall install and maintain its Public Pay-telephones in working order. The Licensee shall choose the type of Public Pay-telephones and place for their installation, taking into consideration the penetration of the Public Switched Telecommunication Network and the population density in the respective area.
- 25.2 All Public Pay-telephones that are installed, modified or replaced by the Licensee shall be capable of making local, national long distance and International Calls.

25.3 Public Pay-telephones that are installed, modified or replaced by the License shall be accompanied by information panels placed on or near them in plain view of users which shall specify: instructions for use, applied tariffs (or a telephone number where up-to-date tariff information may be obtained), and telephone numbers for Emergency services, operator assistance and directory information services. Calls from Public Pay-telephones for purposes of accessing Emergency services, operator assistance and directory information services shall be free of charge unless otherwise authorized by the Authority.

25.4 In addition to the information required to be available at each Public Pay-telephone pursuant to clause 23.4, the Licensee shall also post the name, address and telephone number for the reporting of complaints.

26. SERVICES FOR DISABLED PERSONS

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

27. CONFIDENTIALITY OF INFORMATION

27.1 The Licensee shall not disclose information of a subscriber except with the consent of the subscriber, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorised by or under any law.

27.2 The Licensee shall not use information provided by its subscribers or obtained in the course of provision of service to its subscribers and users other than for and in relation to the provision of service by the Licensee.

27.3 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.

27.4 The prohibitions contained in clause 25.1 above do not apply with respect to the name, address and telephone number of subscribers for purposes of providing printed and directory information services in accordance with clause 7 above.

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

28.1 The Licensee shall take all reasonable steps to ensure that its employees observe the provisions of a code of conduct which:

- (a) Specifies the persons or classes of persons to whom they may disclose information which has been acquired in the course of the Licensee's

business about a subscriber or that subscriber's business without the prior consent of that subscriber; and

(b) Regulates the information about any such subscriber or his business that may be disclosed without his consent.

28.2 The Licensee shall within 12 months of the Effective Date of this License file a draft of its code of conduct with the Authority for its approval. In the event of a disagreement between the Licensee and the Authority on the contents of the code of practice or any portion thereof, the Authority's ruling shall prevail.

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

29. EMPLOYMENT EQUITY, HUMAN RESOURCE DEVELOPMENT AND TRAINING.

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

30. MISCELLANEOUS

30.1 Adherence to International Standards

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

30.2 Legal compliance

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

30.3 Access to network facilities

32.3.1 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.

32.3.2. 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 Notices and addresses

- (a) Any notice or certification given by the Authority to the Licensee shall be in writing;
- (b) 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
- (c) 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:

- (a) If the Licensee agrees in writing with the Authority that this Licence should be revoked;
- (b) 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
- (c) If the Licensee is placed in final liquidation or under a provisional or final judicial management order.

31.2 Except in cases set out in clause 29.1 above, where a breach or violation of this Licence occurs, no fine, penalty or sanction shall be imposed on the Licensee in the absence of written notice ("Notice of Non-Compliance") having been given to the Licensee, stating clearly and specifically the nature of the alleged breach or infraction and stating the precise penalty or sanction which might be imposed in the absence of a cure of the alleged breach or infraction.

31.3 In determining any penalty or sanction, the Authority will take into consideration the nature of the contravention, and whether the contravention is material or repeated. The Authority shall also consider any steps the Licensee took upon discovery of the contravention to comply with the License or

applicable law or regulations and whether the Licensee took any actions to mitigate the effects of the contravention.

- 31.4 Where the Licensee receives notice of violation pursuant to this clause 29, the Licensee shall have three months from receipt of the Notice of Non-Compliance to demonstrate its compliance or to cure any breach or infraction in order to avoid imposition of the contemplated penalty or sanction. Where the Licensee cannot demonstrate compliance or cure the breach or infraction within the three month period to the reasonable satisfaction of the Authority, the Authority may impose fines or other penalties in accordance with the Act.

SCHEDULE "A"

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