



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 458

Pretoria, 8 August 2003
Augustus

No. 25343



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 No.***GENERAL NOTICE****Independent Communications Authority of South Africa***General Notice*2193 Correction to draft licence published for under-serviced area licences contained in Government Gazette No. 24320
issued on 27 January 20033 25343

GENERAL NOTICE

NOTICE 2193 OF 2003



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE OF CORRECTION TO DRAFT LICENCE PUBLISHED FOR UNDERSERVED AREA LICENCES CONTAINED IN GOVERNMENT GAZETTE NO. 24320 ISSUED ON THE 27 JANUARY 2003.

The Independent Communications Authority of South Africa (the Authority) hereby gives notice that the draft licence published under government gazette number 24320 on the 27th of January 2003 is deleted in its entirety and is hereby replaced by the Licence attached to this Notice.

Interested persons are invited to submit written comments or representations in relation to the draft licence attached to this Notice and set out in the schedule, **by no later than 16h00 on the 10th of September 2003**. Such comments are to be forwarded to ICASA for the attention of Ms Michelle Hajari and may be e-mailed, faxed, posted or hand delivered at the following contact details:

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**MANDLA LANGA
CHAIRPERSON
ICASA**

DRAFT LICENCE

FOR

**UNDER-SERVICED AREA
LICENCES TO BE ISSUED
PURSUANT TO SECTION
40A**

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1 DEFINITIONS AND INTERPRETATIONS

- 1.1 In this Licence, unless otherwise stated, words and terms used shall have the same meaning as in the Telecommunications Act, 1996 (Act No. 103 of 1996) 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.
- "Approved Equipment" means telecommunication equipment which has been approved by the Authority under Chapter VI of the Act.
- "Billing System" means the totality of equipment, data, procedures and activities which the licensee uses to determine the charges to be made for service usage.
- "Billing Processes" means the billing and metering systems taken together.
- "Business Day" means any day other than a Saturday, a Sunday or a Public holiday in the Republic.
- "Companies Act" means the Companies Act 1973 (Act No. 61 of 1973).
- "Commercial Date" means the date, to be determined in writing by the Authority, when the licensee may, having complied with its obligations commence using licensed lines for commercial purposes
- "Customer" means any person who has indicated a willingness to receive services from the Licensee on the Licensee's terms and

conditions, or has, in writing, entered into a contract with the Licensee for the provision of such services.

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

"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.

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

"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 or territory 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 or territory 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 Telecommunication Union.

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

"Licensee" means "XYZ COMPANY", a duly incorporated company in terms of the company laws of the Republic of South Africa which has been issued with a licence in terms of section 40 A (2) (a) of the Act of the Act.

"Licence Area" means "ABC DISTRICT COUNCIL" as determined by the Minister in Government Gazette numbers 22954 and 23164.

"metering system" means the equipment, data procedures and activities which the licensee uses to determine the extent of any telecommunication services which it provides

"National Long-distance Network" means the telecommunication systems which are installed or otherwise provided, maintained and operated by a Licensee licensed to provide National Long-distance Telecommunication Service.

"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 or scheme of identification adopted or to be adopted for allocating and reallocating a Number to any Terminal Connection Point, user, telecommunication apparatus or particular telecommunication service.

"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.

"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 *may* contain a device to accept payment for those services.

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

- a) the installation, repair and maintenance of Public Pay-telephones;
- b) the conveyance of voice telephony messages to and from Public Pay-telephones;
- c) the provision of Directory Information Services from Public Pay-telephones; and
- d) 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 USATN which is provided, maintained and operated by the Licensee for the purposes of providing the relevant telecommunication service.

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

"Republic" means the Republic of South Africa, including all of its territories, 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.

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

"Roll-out Targets" means the target referred to in the schedule "A".

"Service target obligations" means the target set out in the schedule "A".

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

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

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

"Under-Serviced Area" means any area which has been determined to have less than 5% teledensity in terms of section 40A (4) by the Minister of Communications.

"Under-Serviced Area Telecommunications Network (USATN)" means a telecommunication network utilised by an Under Serviced Area licensee.

"Under-Serviced Area Telecommunications Service (USATS)" means any telecommunications service which an Under-Serviced Area Licensee is licensed to provide.

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

2. LICENCE AREA

The licence area is *"ABC District Council"*.

3. RIGHTS AND OBLIGATIONS TO PROVIDE A USATS

3.1 The Licensee shall be entitled to construct, maintain and use the USATN within the licence area and to provide USATS in terms of section 40A(3) of the Act.

3.2 Without prejudice to clause 3.1 above, the Licensee shall be entitled to, in terms of section 40A(3), provide any telecommunications services including voice over internet protocol (VoIP) 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 operators and the Mobile Cellular Telecommunication Service operators and through the national long - distance telecommunication service of a public switched telecommunication service operator 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)(b) of the Act.

3.4 Without prejudice to clause 3.1 above, the Licensee shall be entitled to

3.4.1 sell or lease the use of; or

3.4.2 install or maintain, or both

any telecommunication apparatus, including, without limitation, any Customer Premises Equipment, whether or not it is owned by the Licensee, subject to any terms and conditions that may from time to time

be prescribed by the Authority under Chapter VI of the Act which may be relevant to the sale, lease, installation or maintenance of any telecommunication apparatus; or

3.4.3 manufacture telecommunication apparatus, including, without limitation, Customer Premises Equipment; and

3.4.4 design, develop, manufacture or otherwise to publish in any manner or form software to be used in connection with any telecommunication apparatus, including, without limitation Customer Premises Equipment, provided that such software is not commercially distributed, marketed or sold to third parties, unless consented to by the Authority.

3.5 Subject to other provisions of this Licence, the Licensee and any or all of its Wholly-owned Subsidiaries shall be entitled by virtue of this Licence to operate the USATN and to provide all or any of the USATS together with all or any other rights granted to the Licensee under this Licence.

3.6 The Licensee is authorised to exercise its rights granted pursuant to the Licence, by itself and/or in co-operation with a third party agent, contractor, network operator or service provider, provided that-

3.6.1 the Licensee enters into a written agreement with any such third party agent, contractor, network operator or service provider;

3.6.2 the Licensee remains responsible to the Authority for the performance of its obligations under the Licence irrespective of the acts and omissions of each such third party agent, contractor, network operator or service provider; and

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

3.7 The Licensee shall notify the Authority of any agreement to outsource the provision of telecommunications services entered into by the Licensee pursuant to Clause 3.6 at least 30 days prior to the commencement of activities pursuant to such agreement. The Authority may require the Licensee to modify the proposed agreement or may prohibit such cooperation by notifying the Licensee thereof within

fifteen (15) days of receipt of the notice described in the previous sentence.

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

- 4.1 Subject to the Act and other provisions of this Licence, the Licensee is authorised to provide telecommunications services including voice over internet protocol services (VOIP), fixed-mobile services and public pay telephone service.
- 4.2 Subject to 4.1, the licensee may:
 - 4.2.1 supply telecommunications equipment, install, bring into service, maintain and repair that part of the USATN that is provided, maintained and operated by the USAL for the purpose of providing any telecommunication service or;
 - 4.2.2 provide any other service authorised by the Authority or reasonably complementary to 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.
 - 4.2.3 provide all or any telecommunication facilities to be used by any person for the provision of Value Added Network Services;
 - 4.2.4 provide all or any telecommunication facilities comprising fixed lines to be used by any Operator for the provision of Mobile Cellular Telecommunication Services;

5. FACILITIES LEASING AND INTERCONNECTION

- 5.1 With due regard to the provisions of clause 3.6 the licensee shall remain responsible for making its own arrangements for all infrastructure involved in providing the service and shall be solely responsible for installation, networking and operation of necessary equipment and systems.
- 5.2 For the purposes of interconnection, the licensee shall be subject to the provisions contained in section 43 of the Act and the Supplementary Interconnection Guidelines issued pursuant to section 40A.

6. TECHNOLOGY

- 6.1 The licensee shall be entitled to use any type of technology subject to the provisions of Chapters IV, V and VI of the Act.
- 6.2 The mode of ownership of customer premises 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 before deploying such technologies.

7. FREQUENCY AND SPECTRUM ALLOCATION

- 7.1 The frequencies available for the services provided by the Licensee shall be as determined by the Authority in terms of section 30 of the Act.
- 7.2 The licensee shall pay a nominal fee of R 1-00 for access to the allocated frequencies.
- 7.3 The licensee shall pay a spectrum usage fee as prescribed.

8 ROLL-OUT TARGETS AND PERFORMANCE GUARANTEE

- 8.1 The Licensee shall meet or exceed the Roll-out obligations as set out in the roll out plan attached herein. (The Roll-out plan shall be attached as schedule A, once the licence has been finalised). The Licensee shall be subject to a Roll-out penalty which is proportionate to the shortfall as set out in schedule B.
- 8.2 In any case where the Licensee fails to satisfy its obligations under this Licence or otherwise violates any term or conditions of this Licence, any applicable Regulation, or the Act and such failure or violation is determined by the Authority to be of a material nature, the Authority shall have the right to draw upon the guarantee to satisfy any sanction imposed by the Authority in accordance with the revocation clause of this Licence and consistent with the Act.
- 8.3 The Authority shall be entitled to regularly review compliance with the Licence 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 authorised by the Act.

9. GENERAL CONDITIONS

9.1 Licence Term

- 9.1.1 The licence term shall be twenty-five (25) years from the Effective Date.
- 9.1.2 The Authority will renew the period of the licence every ten (10) years, subject to the following conditions:

- (a) Except where the Licensee has repeatedly and materially failed to satisfy the conditions of the Licence or to comply with applicable regulations or applicable laws over the course of the Licence Term, or satisfy the Roll-out obligation in terms of the Roll-out plan contained in Schedule A.

- (b) At least 18 months prior to the expiration of the Licence 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 9.1.2 (b).
- (d) Prior to any Licence renewal the Authority may take necessary steps, in co-operation with the Licensee, to review and make modifications to the terms and conditions of the Licence in accordance with the existing regulatory framework at the time.
- (e) Prior to denying any request for renewal pursuant to Clause 9.1.2.(b), 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 eight (8) months from the date of the request). If such rectification/compensation is not achieved, only then may the Licence expire.

9.2 Annual Licence Fee

- 9.2.1 The annual licence fee payable by the Licensee from twenty-four (24) months after the effective date of the Licence shall be equal to 0.1% of the Licensee's annual revenue generated from the provision of USATS.
- 9.2.2 The annual licence fee may be adjusted downward or waived by the Authority as provided for in terms of clause that shall be provided for in schedule "A".

9.3 Bank Guarantee

- 9.3.1 The bank guarantee attached in **schedule "C"** shall be completed by the financial institution that will be providing the funding for the Licensee.
- 9.3.2 Where the Licensee fails to make any payment or to make full payment of the amounts due under Clause or Clause above, the Authority may use the bank guarantee secured pursuant to above to satisfy any outstanding payment obligations of the Licensee, as contained in **schedule "C"**.

9.3 Amendment of the Licence

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

10. SPECIAL CONDITIONS

Special conditions may be specified by the Authority in the process of re-issuing or renewal of this Licence.

11. DIRECTORY SERVICES

- 11.1 The provisions of this clause shall be suspended for a period of twenty four (24) months or until the promulgation of regulations pursuant to section 89 A, whichever is sooner.
- 11.2 The Licensee shall provide users of its USATS with Directory Services at points served by its USATN.
- 11.3 The Licensee shall provide Directory Services whereby callers may receive information concerning the telephone number of subscribers listed.
- 11.4 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.
- 11.5 Telephone directories shall also include Emergency service number 112 and the number for Emergency Organisations, general information on tariffs, information identifying any number prefixes necessary for making international and, as applicable, local and national long distance calls, and any information determined by the Licensee to be of general interest to the public.
- 11.6 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.
- 11.7 The Licensee has the right to make available commercial telephone directories ("yellow pages") in any form. Listings in these commercial telephone directories are optional. The Licensee may impose a fee for listings in the commercial directory.
- 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 release of the directory.

12. ACCESS TO PUBLIC EMERGENCY SERVICES

The Licensee shall provide access to Public Emergency Services by which 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 number as prescribed in the Act. This will include the provision of such service on a suspended line.

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

13.1 The Licensee shall, after consultation with the authorities responsible for Emergency Organisations and departments of Central, Provincial and Local Government within the Licence area, make plans for the provision or, as the case may be, the rapid restoration of such telecommunication services as are practicable and may reasonably be required in Emergencies.

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

13.3 Nothing in this Condition precludes the Licensee from:

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

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

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

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

14.2 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.

- 14.3 This clause 14. shall be governed by and construed in accordance with the regulations promulgated by the Authority under Section 52 of the Act.

15. REPORTING OF ACCOUNTS AND RECORDS

- 15.1 The Licensee shall notify the Authority of the rates that it intends implementing thirty (30) days prior to implementation.
- 15.2 The licensee shall provide the consumers with thirty day notification period in relation to increases to its tariff.
- 15.3 The licensee shall file with the Authority their audited financial statements within three months of the financial year end.
- 15.4 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.
- 15.5 The Licensee shall be required to comply with any regulations that may be prescribed in terms of section 46 for USALs.

16. UNDUE PREFERENCE OR DISCRIMINATION

- 16.1 The Licensee shall not show undue preference to, or exercise undue discrimination against, particular persons or persons of any class or description in respect of:
- 16.1.1 the provision of any telecommunication services (including, without limitation, maintenance services) in accordance with any obligations within the licenced area as imposed by this Licence;
 - 16.1.2 The connection of Approved Equipment to the Telecommunication Network;
 - 16.1.3 the granting of permission to connect any Operator's telecommunication system with the USATN in accordance with section 43 of the Act; and
 - 16.1.4 the quality and terms of any Interconnection Services provided by the Licensee to an Operator under any agreement between them.
- 16.2 The Licensee may be deemed to have shown undue preference or undue discrimination as described in clause 16.1 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.

16.3 The Licensee shall not make it a condition of

- 16.3.1 providing any telecommunication service by means of the USATN;
- 16.3.2 supplying any telecommunication apparatus for a connection to the USATN; or
- 16.3.3 connecting any telecommunication apparatus or system to the USATN

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

16.4 The above clause shall not prevent the Licensee from:

- 16.4.1 imposing any terms and conditions as are permitted under section 43 of the Act and the guidelines contemplated there under;
- 16.4.2 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; where it supplies as part of the same transaction, or related series of transactions; and
- 16.4.3 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.

16.5 Any question relating to whether any act done or course of conduct pursued by the Licensee amounts to unlawful cross-subsidisation, undue preference or undue discrimination as described in clause 16 shall be determined by the Authority, but nothing done in any matter by the Licensee shall be regarded as undue preference, undue discrimination or unfair cross-subsidisation for the purposes of this clause 16 if, and to the

extent that, the Licensee is required or permitted to do the relevant matter or thing in such manner by or under any provision of this Licence, any regulation or the Act.

17. REQUIREMENT TO PROVIDE INTERCONNECTION SERVICES AND FACILITIES LEASING

- 17.1 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 Leasing Guidelines promulgated pursuant to the provision of the Act, the Licensee shall to the extent requested by any other person providing telecommunication services, interconnect its telecommunication system to the telecommunication system of the other person and where so requested by such other person, lease or otherwise make available telecommunication facilities to such other person(s) pursuant to agreement. The processes and procedures, including the parameters of such obligation shall be governed by the Interconnection and Facilities Leasing guidelines that are in effect at the time.

18. REQUIREMENTS TO OFFER CONTRACTS FOR TELECOMMUNICATION SERVICES

- 18.1 Except in the case of prepaid services where no contract is necessary, the Licensee shall provide the USATS authorised by this Licence pursuant to a subscriber contract.
- 18.2 The subscriber contract shall either specify the type of service offered and the terms and conditions on which the telecommunication service is to be provided under the contract or shall make reference to publicly available terms and conditions. The contract or publicly available terms and conditions shall at least specify, if relevant:
- 18.2.1 the supply time for initial connection;
 - 18.2.2 the service covered by and the terms of the contract;
 - 18.2.3 the financial penalties the subscribers have to pay in case of payment delay;
 - 18.2.4 the conditions referring to suspension or interruption of the service in case of non-payment by the subscriber;
 - 18.2.5 the types of maintenance service offered;
 - 18.2.6 the compensation or refund arrangements or both for the Licensee's subscribers which apply if the contracted service is not met and, if none are applicable, a statement to that effect;
 - 18.2.7 a summary of the method of initiating procedures for the settlement of disputes; and

18.2.8 information on service quality levels offered.

- 18.3 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 clause 18 shall be approved by the Authority. Any amendments to the form or model of the contract shall be submitted to the Authority at least 22 business days prior to its coming into force.
- 18.4 The Licensee shall secure such alteration to the terms and conditions of any such contract, and the conditions of any compensation or refund arrangements or both used by the Licensee, as the Authority may direct.
- 18.5 The Licensee shall make the form or model contract, including any amendments approved by the Authority available to the public by filing a copy with the Authority; making copies available during regular business hours at its principal offices and any branch offices open to the public; and by posting an electronic version on its web site.
- 18.6 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 of each subscriber for at least one year following the corresponding activity and billing.

19. NUMBERING PLAN

- 19.1 The Authority shall make available to the Licensee sufficient blocks of number, 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 19, pursuant to the Numbering Plan prescribed by the Authority.
- 19.2 The Licensee and the Authority shall from time to time consult with each other with respect to:
- 19.2.1 the arrangements for the allocation and re-allocation of number within the Numbering Plan, as may be amended from time to time; and
- 19.2.3 any developments of, additions to, or replacements of the Numbering Plan.
- 19.3 The Licensee shall not charge any person for a Number allocated to that person; provided however, nothing in this clause 19.3 shall preclude the Licensee from recovering from an Operator the reasonable cost of allocating a Number or block of number and carrying out any change to the USATN, 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.

20. NUMBER PORTABILITY

The implementation of Number Portability shall be suspended for a period of twenty four (24) months and thereafter the Licensee shall provide Number Portability in accordance with regulations in effect at the time, of expiry of the twenty four (24) month period.

21. CARRIER PRE-SELECTION

The provision of this clause shall be suspended for a period of twenty four months thereafter; the Licensee shall provide Carrier Pre-selection in accordance with and on terms and conditions specified in the regulations in effect at the time of expiry of the twenty four (24) month period.

22. PROVISION OF INFORMATION

22.1 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.

22.2 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 22.1 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.

22.3 For purposes of this Clause 22 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.

23. BILLING ARRANGEMENTS

23.1 Except in the case of prepaid services where no bill is necessary, the Licensee shall provide a bill to each subscriber, in a form that complies with clause 24 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.

23.2 Without prejudice to the generality of clause 23.1 above, the Licensee shall at all times maintain in operation such a Billing Process as facilitates

compliance by the Licensee with clause 23.1, and is calculated to prevent contravention by it of, clause 23.1. The Licensee may at its discretion outsource its billing obligation provided; it shall remain primarily responsible for meeting its obligations under this Licence.

- 23.3 The Licensee shall not be regarded as being in contravention of its obligation under clause 23.2 above except where the failure is in relation to the billing process and the Licensee has failed to take all reasonable steps to prevent a contravention of that obligation.
- 23.4 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 23.2 above.
- 23.5 The Authority shall have the right to inspect and independently verify the Licensee's billing process for purposes of ensuring compliance with the Licensee's obligations under this clause 23. Where the Authority provides written notice to the Licensee that it is exercising its right under this clause, the Licensee shall cooperate with the Authority by making available appropriate personnel with knowledge of the billing process; providing all back up and support documentation and other information that the Authority may request and otherwise assisting the Authority in the process.

24. ITEMISED BILLS

- 24.1 Except in the case of prepaid service, the Licensee shall provide each subscriber who so requests, an itemised bill in such a form and with appropriate explanation to plainly show the call details of the subscriber for the billing period to verify the billed amount.
- 24.2 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
- 24.3 The Licensee may make an itemised bill available in a secure location on its website if so requested by a subscriber.

25. NON-PAYMENT OF BILLS

- 25.1 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:

25.1 be proportionate and non-discriminatory;

- 25.1.2 be set out in the subscriber contract entered into with the subscriber pursuant to clause 19 above and published in accordance with that clause;
- 25.1.3 give due warning in advance of any consequent service interruption or disconnection to the Subscriber; and
- 25.1.4 except in cases of fraud, persistent late payment or non-payment, ensure, as far as is technically possible, that any service interruption is confined to the service concerned.

26. PUBLIC PAY-TELEPHONE SERVICES

- 26.1 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 USATN and the population density in the respective area.
- 26.2 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.
- 26.3 Public Pay-telephones that are installed, modified or replaced by the Licensee shall be accompanied by information panels placed on or near them in plain view of users which shall specify: instructions for use, applied tariffs (or a telephone number where up-to-date tariff information may be obtained), and telephone number for Emergency services, operator assistance and directory information services.
- 26.4 In addition to the information required to be available at each Public Pay-telephone pursuant to clause 26.3, the Licensee shall also post the name, address and telephone number for the reporting of complaints.

27. SERVICES FOR PEOPLE WITH DISABILITIES

The Licensee shall provide services for people with disabilities as and when such regulations are promulgated by the Authority under the Act.

28. CONFIDENTIALITY OF INFORMATION

- 28.1 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.
- 28.2 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.

28.3 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.

28.4 The prohibitions contained in clause 28.1 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 11.4 above.

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

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

29.1.1 Specifies the persons or classes of persons to whom they may disclose information which has been acquired in the course of the Licensee's business about a subscriber or that subscriber's business without the prior consent of that subscriber; and

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

29.2 The Licensee shall within 6 months from the effective date of this Licence, file a draft of its code of conduct with the Authority for its approval. In the event of a disagreement between the Licensee and the Authority on the contents of the code of practice or any portion thereof, the Authority's ruling shall prevail.

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

30. EMPLOYMENT EQUITY, HUMAN RESOURCE DEVELOPMENT AND TRAINING.

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, Basic Conditions of Employment Act 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.

31. MISCELLANEOUS**31.1 Adherence to International Standards**

The Licensee shall comply with the applicable standards and requirements as prescribed by the Authority.

31.2 Legal compliance

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

31.3 Access to network facilities

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

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

31.4 Force Majeure

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

31.5 Notices and addresses

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

31.5.2 If delivered by hand to the Licensee's address, it shall be deemed, until the contrary is proved by the Licensee, to have been received by the Licensee at the time of delivery; and

- 31.5.3 If posted by pre-paid registered post from an address within the Republic to the Licensee at the address furnished by it, it shall be deemed, until the contrary is proved by the Licensee, to have been received by the Licensee on the 14th day of posting.

32. REVOCATION

- 32.1 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:
- 32.1.1 If the Licensee agrees in writing with the Authority that this Licence should be revoked; or
- 32.1.2 if the Licensee repeatedly fails to comply with an order by the Authority under section 100 of the Act (which order has not been set aside by, or is not the subject to proceeding before, a court as referred to in section 100 of the Act) and such failure is not rectified within ninety (90) days after the Authority has notified the Licensee in writing; or
- 32.1.3 if the Licensee is placed in final liquidation or under a provisional or final judicial management order.
- 32.2 Except in cases set out in clause 32.1 above, where a breach or violation of this Licence occurs, no fine, penalty or sanction shall be imposed on the Licensee in the absence of written notice ("Notice of Non-Compliance") having been given to the Licensee, stating clearly and specifically the nature of the alleged breach or infraction and stating the precise penalty or sanction which might be imposed in the absence of a cure of the alleged breach or infraction.
- 32.3 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 Licence or applicable law or regulations and whether the Licensee took any actions to mitigate the effects of the contravention.
- 32.4 Where the Licensee receives notice of violation pursuant to this clause 33.1, the Licensee shall have three (3) months from receipt of the Notice of Non-Compliance to demonstrate its compliance or to cure any breach or infraction in order to avoid imposition of the contemplated penalty or sanction. Where the Licensee cannot demonstrate compliance or cure the breach or infraction within the three month period to the reasonable satisfaction of the Authority, the Authority may impose fines or other penalties in accordance with the Act.

SCHEDULE "A"

ROLL-OUT PLAN SCHEDULE

(Roll-out plan as proposed by an applicant in its application)

"SCHEDULE B"**ROLL-OUT PLAN SECURITY GUARANTEE**

To: The Authority

1. In consideration of the Authority having issued a Licence to (Name of the Licensee).....of
(District Name) to establish, maintain and operate an Under-Served Area Telecommunications Network Service (USATNS), the Licence having been issued on the(Date of issue of Licence).
2. We (Name of the Licensee) (indicate the name and address and other particulars of the Licensee) (hereinafter referred to as 'the Licensee') at the request of the ICASA, hereby irrevocably and unconditionally guarantee to ICASA that the Licensee shall render all necessary and efficient completion of each phase of the Roll-out plan as submitted by the licensee as contained in Schedule "A" attached hereto.
3. We further undertake that this serves as a guarantee for security, for the due observance and performance of the terms and conditions of Clause 8 and the Roll-out plan attached hereto.
4. We further guarantee that the Service, which shall be provided by the Licensee under the said licence, shall actually be performed in accordance with the Roll-out plan as contained in schedule A, attached to the Licence.
5. We, (the Licensee], hereby undertake to pay to the ICASA the following amounts as set out in the table hereunder:

PENALTY FOR FAILURE TO ACHIEVE ROLL OUT TARGET BY MARGIN OF FAILURE			
LEVEL	CATEGORY A ≤ 5 %	CATEGORY B > 5 % AND ≤ 10 %	CATEGORY C > 10 %
PENALTY AMOUNT	R 25 000 .00	R 50 000.00	R100 000.00

6. We, (Name of the Licensee), hereby also undertake to pay the amounts due and payable in terms of the provisions of the table in clause 5 above to the Authority without any dispute, merely on a written demand from the Authority stating that the amount claimed is due by way of non compliance by the Licensee for failure to perform any of its obligations in terms of each phase of the Roll-out plan as per the Roll-out schedule.
7. We, the Licensee, do hereby agree that the decision of ICASA as to whether the Licensee has failed to or neglected to perform or discharge its duties and obligations as aforesaid in accordance with clause 5 above, shall be final and binding on the Licensee.
8. WE, THE LICENSEE, DO HEREBY DECLARE AND AGREE THAT:
 - 8.1 The Guarantee contained herein shall remain in full force and effect for the period of the Licence from the date hereof and that it shall continue to be enforceable till all the obligations stipulated in the table are fulfilled and discharged.
 - 8.2 This Guarantee shall be irrevocable.
9. We, the Licensee, undertake not to revoke this Guarantee during its currency except with the previous consent of the Authority in writing.
10. The Licensee shall accept all notification at the following address:

Dated this day for

.....
(name of the Licensee)

Witnesses:

1:.....

2:.....

SCHEDULE "C"**FINANCIAL GUARANTEE**

We (Name of the bank or financial institution) having considered the application by (Consortium name) and in the event that the licence is granted to (Consortium name) do hereby irrevocably and unconditionally guarantee the following:

1. We, (the bank/financial institution) are prepared to provide the applicant with funding in the amount of _____ which shall be made available to the applicant on (date/period)
2. The conditions on which the funding is made available are briefly as follows.
 - 2.1
 - 2.2
3. We further undertake to pay to the Authority of any licence fee due or charges as stipulated in the licence, in the event that the (Consortium name) who by reason of failure is unable to pay such fee or charges.
4. This amount shall be payable to the Authority upon demand in writing, setting out the details of the amount claimed in terms of the relevant licence condition.
5. That the decision by the Authority that the Licensee has failed to pay the said licence fee or any other charges under the said licence, shall be final and binding.
6. The guarantee contained herein shall remain in full force and effect from the effective date of the licence and shall continue to remain enforceable until all amounts have been fully paid and all claims have been discharged, and that the conditions of the licence has been fully met.

Dated at _____ on the _____ day of _____ 2003.

.....
Signature on behalf of Licensee

Witnesses:

1.
2.