

# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

Vol. 501

Pretoria, 23 March  
Maart 2007

No. 29725

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### GENERAL NOTICE

#### **Independent Communications Authority of South Africa**

##### *General Notice*

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## GENERAL NOTICE

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### NOTICE 349 OF 2007

#### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

#### NOTICE OF INTENTION TO PRESCRIBE REGULATIONS IN TERMS OF THE LICENSING FRAMEWORK APPLICABLE TO INDIVIDUAL AND CLASS LICENCES UNDER CHAPTER 3 OF THE ELECTRONIC COMMUNICATIONS ACT, 2005 (NO. 36 OF 2005)

The Independent Communications Authority of South Africa (ICASA) hereby gives notice of its intention to prescribe regulations in terms of section 4 read with Chapter 3 of the Electronic Communications Act No. 36 of 2005.

A copy of the proposed regulation is available on the Authority's website at <http://www.icasa.org.za> and in the ICASA Library at 164 Katherine Street, Pin Mill Farm, Floor, Block D, between 10h00 and 16h30, Monday to Friday.

Interested persons are hereby invited to submit written comments or written representations with regard to the proposed regulations, to be received **by no later than 16h30 on 09 May 2007** by post, hand delivery or fax transmission for the attention of:

**Mihloti Baloyi**  
ICASA,  
Private Bag X10002,  
Marlboro, 2063;

or

**Block A, Pinmill Farm**  
**164 Katherine Street**  
**Sandton**  
**2146**

**Fax: (011) 321-8547**

Further enquiries can be directed to

**Mihloti Baloyi**

Tel: (011) 321-8342 and/or e-mail: [mbaloyi@icasa.org.za](mailto:mbaloyi@icasa.org.za)

**PARIS MASHILE**  
**CHAIRPERSON**

**REGULATIONS ON THE PROCESSES AND PROCEDURES FOR APPLYING FOR OR REGISTERING, AMENDING, TRANSFERRING AND RENEWING INDIVIDUAL AND CLASS LICENCES AND TERMS AND CONDITIONS TO BE APPLIED TO SUCH LICENCES IN TERMS OF CHAPTER 3 OF THE ECA.**

**1. DEFINITIONS**

- 1.1 Unless otherwise indicated, all words and phrases shall have the meaning ascribed to them in terms of section 1 of the Electronic Communications Act, 2005 (Act No. 36 of 2005).
- 1.2 For purposes of these regulations,
- 1.2.1 "ECA" means the Electronic Communications Act, 2005 (Act No. 36 of 2005).
- 1.2.2 "exempt person" means any person, including a licensee, as applicable, providing any service, operating any electronic communications network or using any radio frequency spectrum pursuant to a licence exemption;
- 1.2.3 "ITA" means an "invitation to apply" for an individual licence to be issued in terms of Chapter 3 of the ECA; and
- 1.2.4 "special temporary authorization" means the authorisations contemplated in section 5(7)(iv) of the ECA.
- 1.2.5 "ICASA Act" means the Independent Communications Authority of South Africa Act No. 13 of 2000, as amended.

**2. GENERAL PROVISIONS APPLICABLE TO APPLICATIONS FOR INDIVIDUAL LICENCES; REGISTRATIONS FOR CLASS LICENCES AND APPLICATIONS FOR SPECIAL TEMPORARY AUTHORISATIONS**

- 2.1 Applicants for individual licences, registrants for class licences and applicants for special temporary authorisations must comply with these general application provisions and the specific provisions of these regulations applicable to individual and class licences and special temporary authorisations.
- 2.2 Application and registration forms to be used when submitting applications or when registering, together with instructions and information as to the submission of such forms, must be mailed to the Authority or obtained electronically from the Authority's website or in paper format from the Authority's offices between 09h00 and 16h00 on weekdays.

- 2.3 Applications and registrations submitted to the Authority must be complete and contain all information requested on the applicable form, together with the instructions and any additional information required by these regulations and any regulations pertaining to the specific service, application or registration. Failure to supply all required information may result in the Authority not considering the application or registration.
- 2.4 Applicants and registrants are responsible for the accuracy and completeness of information furnished in their applications or registrations during the period they are pending before the Authority. Whenever the information furnished in the pending application or registration is no longer substantially accurate and/or complete, the applicant or registrant, shall within fifteen (15) days of submission, request the amendment of his or her application or registration so as to furnish such additional or corrected information.
- 2.5 All applicants and registrants must comply with requests by the Authority to supply information, including supporting documentation to supplement their applications or registrations and participate in any process established by the Authority for reviewing and considering such applications or registrations. Failure to timely supply information or participate in a process established by the Authority, following due notice, can result in dismissal of the application or registration.
- 2.6 Every applicant and registrant must include as part of their application or registration, a form signed by the applicant or registrant stating that:
- 2.6.1 the applicant or registrant will comply with all applicable standard terms and conditions, any additional terms and conditions applicable to his or her licence, and any universal service and universal access obligations imposed by the Authority; and
  - 2.6.2 the information contained in his or her application or registration, including any attachments thereto, or documentation incorporated therein is, to the best of the applicant's or registrant's knowledge correct, complete and accurate.
- 2.7 Registrations, applications, amendments, and related statements of fact required by the Authority must be signed as follows (either electronically or manually):
- 2.7.1 by the applicant or registrant, if the applicant or registrant is a natural person;
  - 2.7.2 by one of the partners, if the applicant or registrant is a partnership;
  - 2.7.3 by one of the members, if the applicant is a close corporation;
  - 2.7.4 by an employee or director, if the applicant or registrant is a juristic person; or

- 2.7.5 where the registration, application, amendment, or related statement of fact is filed on behalf of a government entity, it must be signed by a duly appointed official who is authorised to do so under applicable law.
3. The Authority may revoke a licence if at any time any material statement made or information submitted by an applicant or registrant is found to be false and to have been made by the applicant or registrant or any member or employee thereof, knowing it to be false. Further, to provide false information or to withhold relevant information with the intention to mislead the Authority constitutes an offence which upon conviction, the person may be liable to a fine or imprisonment or other sanction including a disqualification from the holding of a licence as provided for in the ECA and the ICASA Act.
- 3.1 Applicants and registrant's attention is directed to section 17H of the ICASA Act on offences and penalties that may be imposed on anyone contravening these regulations and the provisions of the ECA.
- 3.2 The licence fees associated with applications and registrations are set out in Schedule 1.
- 3.3 The standard terms and conditions to be applied to individual and class licences and exempt services are set out in Schedule 2.
- 3.4 The additional terms and conditions that the Authority may apply to individual licences, class licences and as indicated, exempt services are set out in Schedule 3.
- 3.5 Schedule 4 provides for the designation of licensees to whom universal service and universal access obligations may be applied.

#### **4. INVITATIONS TO APPLY FOR INDIVIDUAL LICENCES**

- 4.1 This clause applies to applications for individual licences in addition to the general requirements of clause 2. The Authority will accept applications for individual licences for electronic communications network services, broadcasting services and electronic communications services in terms of section 9 of the ECA and this clause of the Regulations. The following procedure applies: -
- 4.2 No application for an individual licence will be accepted or processed by the Authority except in response to an ITA published in the *Gazette* in terms of section 9(2) of the ECA.
- 4.3 The ITA will establish the procedure to be followed in terms of applications filed in response to the ITA in accordance with section 9(2) of the ECA.

- 4.4 The ITA will specify the form, manner and format, including information that must be provided by applicants responding to the ITA.
- 4.5 The Authority will notify potential applicants of any application or other fees associated with the ITA and the annual licence fees that will apply to the individual licence to be granted, including the penalties that will apply for late payment of the annual licence fee.
- 4.6 Undertakings made by applicants responding to the ITA may be imposed by the Authority as specific terms and conditions in terms of section 9(7) of the ECA.
- 4.7 The ITA may indicate whether and to what extent the licensee will be required to have a universal service and universal access obligation and the terms and conditions applicable to such designation.

## **5. AMENDMENT OF INDIVIDUAL LICENCES**

- 5.1 Amendments to individual licenses must be made in accordance with section 10 of the ECA and this clause of the Regulations.
- 5.2 The fees set out in Schedule 1 apply to applications to amend individual licences.
- 5.3 Applications for amendment of individual licences must be submitted using the appropriate application forms posted on the Authority's website and made available in paper copy between 09h00 and 16h00 on weekdays at the Authority's offices. The application form must be completed in all respects, including attachments.
- 5.4 The general provisions of clause 2 apply to applications to amend individual licences.

## **6. RENEWAL OF INDIVIDUAL LICENCES**

- 6.1 Renewal of individual licences must be made in accordance with section 11 of the ECA and this clause of the Regulations.
- 6.2 Applications for renewal of individual licenses must be submitted at least six (6) months prior to the expiration of the licence term.
- 6.3 The fees set out in Schedule 1 apply to applications to renew individual licences.
- 6.4 Applications for renewal must be submitted using the renewal application forms posted on the Authority's website and made available in paper copy between



09h00 and 16h00 on weekdays at the Authority's offices. The renewal application form must be completed in all respects, including attachments.

6.5 The general provisions of clause 2 apply to applications for renewals.

**7. TRANSFER OF INDIVIDUAL LICENCES, AND CHANGES IN OWNERSHIP, AND CONTROL**

7.1 Applications for transfer of an individual licence, including transfers of control or ownership must be filed using the forms posted on the Authority's website and made available in paper copy between 09h00 and 16h00 on weekdays at the Authority's offices. The forms must be completed in all respects, including attachments. For the purposes of clause (7), use of the term "transfer", includes both transfers of the licence to another person and transfers of controlling interests in a licensee from one person to another.

7.2 An application for the transfer of a licence must be made in writing, by the person to whom the licence will be transferred and the application must: —

7.2.1 provide a motivation as to the reason for the requested transfer;

7.2.2 identify the licence including the licence number to be transferred; and

7.2.3 identify the applicant.

7.3 If the applicant is a natural person, the following information must be furnished —

7.3.1 the full name of the applicant;

7.3.2 the identity number of the applicant;

7.3.3 the nationality of the applicant;

7.3.4 the applicant's permanent physical address;

7.3.5 the applicant's principal place of business address; and

7.3.6 the applicant's telephone and fax numbers.

7.3.7 the applicant's e-mail address and website, if the applicant has one or both.

7.4 Where the applicant is a juristic person, the following information must be furnished: -

7.4.1 the business name and address (including e-mail address and website) the telephone and fax numbers of the applicant, and where applicable, certified copies of all the founding documents of the applicant;



- 7.4.2 full names, business and residential addresses and the telephone numbers of each shareholder or member owning shares interests in the applicant; and
- 7.4.3 affiliated ownership interests of the applicant in other persons holding a licence in terms of the ECA and related legislation.
- 7.5 The applicant must identify the licensee, in the case where the licence is being transferred from one person to another or, in the case of a transfer of control, the identity of the persons transferring control of the licensee to the applicant.
- 7.6 In the case where the licensee has been liquidated, the applicant must identify the liquidator, including all relevant contact details and obtain from the liquidator written consent of the transfer to the applicant.
- 7.7 In the case of a deceased estate, the executor of the deceased estate must give written consent to the transfer.
- 7.8 Except in cases involving sections 7.6, and 7.7, the applicant must include with its registration form an affidavit from the licensee or, in the case of a transfer of control, the controlling shareholders consent to the transfer of the licence to the applicant.
- 7.9 The fees set out in Schedule 1 apply to applications for individual licences.
- 7.10 The general filing provisions of section 2 apply to applications for transfer individual licences.

## **8. SURRENDER OF INDIVIDUAL LICENCES**

- 8.1 Individual license holders may surrender their licences in accordance with section 12 of the ECA and this clause of these regulations.
- 8.2 Except as provided for in clause 8.3, an individual license holder may surrender its licence by filing written notification with the Authority in compliance with clauses 8.5 and 8.6 of these regulations.
- 8.3 Where the surrender of a licence involves the discontinuation of any service, at least sixty (60) days before discontinuation of service and the surrender an individual licence, the licensee shall notify in writing all affected subscribers of the licensee's intention to discontinue the service and surrender its licence. At a minimum the notice must inform subscribers of the date service will be discontinued, which date may not be less than thirty (30) days before the date of the notice.

- 8.4 In addition to notifying subscribers per section 8.3, licensees intending to discontinue service and surrender their licences, shall post a notice on their website and post a public notice in at least one newspaper of general circulation servicing the geographic area covered by the licence.
- 8.5 To effect the surrender of an individual licence the licensee shall file with the Authority, written notification of its intention to surrender the licence. Further, the notice of surrender of the individual license must be published in three (3) different newspapers or less where three (3) do not exist, having a wide circulation in the area of the licensee where the latter carries on its business operations. The written notice must be accompanied by a copy of the licence to be surrendered and, where clause 8.3 applies, (i) a copy of the notification to subscribers; and (ii) a copy of the newspaper publication.
- 8.6 The licensee must include with the notification, full payment of any outstanding monies owed to the Authority, or in cases where no outstanding balance is owed, certification stating that all accounts have been paid.

## **9. REGISTRATION FOR CLASS LICENCES**

- 9.1 The Authority will accept registrations for class licences for the provision of electronic communications network services, broadcasting services and electronic communications services in terms of Chapter 3 of the ECA and this clause of the Regulations. The following procedure applies: -
- 9.2 A registration for class licence must be made by the person to whom the class licence is to be granted and such registration must —
- 9.2.1 be in writing using the registration forms posted on the Authority's website and made available in paper copy between 09h00 and 16h00 on weekdays at the Authority's offices;
  - 9.2.2 identify the class licence for which registration is being made;
  - 9.2.3 identify the geographic territory to be covered by the class licence in terms of section 5 of the ECA;
  - 9.2.4 provide a general description of the service or services to be provided; and
  - 9.2.5 identify the registrant.
- 9.3 Where the registrant is—
- 9.3.1 a natural person, the following information shall be furnished—

- 9.3.1.1 the full name of the registrant;
  - 9.3.1.2 the identity number of the registrant;
  - 9.3.1.3 the nationality of the registrant;
  - 9.3.1.4 the registrant's permanent physical address;
  - 9.3.1.5 the registrant's principal place of business address;
  - 9.3.1.6 the registrant's telephone and fax numbers; and
  - 9.3.1.7 the registrant's e-mail address and web address.
- 9.3.2 Where the registrant is a juristic person, the following information must be furnished—
- 9.3.2.1 the business name and address, the telephone and fax numbers, e-mail address and web address of the registrant and certified copies of all the founding documents of the registrant;
  - 9.3.2.2 full names, business and residential addresses, the telephone numbers and fax numbers, e-mail address of each shareholder or member owning shares or interests of the registrant; and
  - 9.3.2.3 affiliated ownership interests of the registrant and holder of more the total shares or interests of the registrant in other in terms of Chapter 3 of the ECA.
- 9.3.3 The registrant must provide the identity of the controlling shareholder or shareholders of the registrant in the case of juristic persons and, where applicable, any party having actual or working control whether through the management contract or otherwise.
- 9.3.4 In the case where (i) the registrant; (ii) any controlling shareholder; or (iii) any party having actual or working control of the registrant has been liquidated, identify the liquidator, including all relevant contact details.
- 9.4 The general provisions of clause 2 apply to registrations for class licences.

## **10. AMENDMENTS OF CLASS LICENCES**

- 10.1 Class licences may be amended by submitting a registration to the Authority in terms of clause 9, marked to identify for the Authority that the registration is to modify an existing class licence.

## **11. TRANSFER OF CLASS LICENCES**

- 11.1 Registrations for transfer of a class licence, including transfers of control or ownership must be filed using the forms posted on the Authority's website and made available in paper copy between 09h00 and 16h00 on weekdays at the Authority's offices. The forms must be completed in all respects, including attachments. For the purpose of section 11, use of the term "transfer" shall include both transfers of the licence to another person and transfers of controlling interests in a licensee from one person to another.

The provisions of sections 7.2 apply with the necessary changes to registrations for transfers of class licences.

## **12. LICENCE RENEWAL**

- 12.1 Renewal of class licences must be made in accordance with section 19 of the ECA and this clause of the Regulations.
- 12.2 The fees set out in Schedule 1 apply to registrations to renew class licences.
- 12.3 Registrations for renewal must be filed using the renewal forms posted on the Authority's website and made available in paper copy between 09h00 and 16h00 on weekdays at the Authority's offices. The renewal form must be completed in all respects, including attachments.
- 12.4 The general provisions of section 2 apply to registrations for renewal.

## **13. SPECIAL TEMPORARY AUTHORISATIONS ("TEST LICENCES") AND/OR TRIALS**

- 13.1 The Authority may grant special temporary authorisations ("test licences") or trials to construct and operate electronic communications networks and provide electronic communications services on a limited basis for purposes of undertaking tests, including testing for purposes of determining whether equipment may cause harmful interference to other licensed operators; giving demonstrations, including demonstrating equipment that may not have received type-approval for use in the Republic, and for research.
- 13.2 In addition to any terms and conditions the Authority may impose in the authorisation document, special temporary authorisations shall be subject to the following terms and conditions—

- 13.2.1 Special temporary authorisations are granted subject to the condition that they may be cancelled by the Authority at any time upon due notice to the licensee.
- 13.2.2 Special temporary authorisations are intended to be of limited duration, unless a longer duration is specified by the Authority and shall automatically expire and have no further force or effect twelve (12) months from the effective date.
- 13.2.3 Any person operating any radio apparatus or radio station or using the radio frequency spectrum pursuant to a special temporary authorisation must not cause harmful interference with other licensees, including radio frequency spectrum licensees.
- 13.3 A grant of special temporary authorisation does not provide any right to or provide any assurance that the Authority will grant an application for an individual licence, a registration for a class licence or a radio frequency spectrum licence to continue operation of any electronic communication network, the provision of any electronic communication service or the continued use of any radio frequency spectrum that was the subject of the special temporary authorisation.
- 13.4 A grant of special temporary authorisation does not vest any rights in the authorisation holder beyond the rights specified in the authorisation and the rights and subject to the limitations set out in this section 13.

#### **14. COMPLIANCE**

Failure to comply with any provision of this regulation constitutes an offence and is subject to the penalties set out in the ECA; ICASA Act and related legislation. In this regard, section 17H of the ICASA Act applies to offences and penalties that may be imposed on anyone acting contrary to these regulations and the provisions of the ECA.

**SCHEDULE 1****1. APPLICATION AND REGISTRATION FEES**

- 1.1 Every applicant for an individual licence, registrant for a class licence and applicant for special temporary authorisation must pay the applicable application or registration fee set out in the table below. The fees in the table below are subject to change and may be modified from time to time by amendment to this regulation in accordance with the ECA and related legislation.

**APPLICATION FEES****Individual Licences**

<u>Initial Applications for Licences</u>	<u>Fees</u>
Electronic Communication Network Services	To be set in ITA
Broadcasting Services	To be set in ITA
Electronic Communication Services	To be set in ITA
<u>Applications for Transfers of Control</u>	<u>Fees</u>
Electronic Communication Network Services	R50 000
Broadcasting Services	R50 000
Electronic Communication Services	R50 000
<u>Renewal Applications</u>	<u>Fees</u>
Electronic Communication Network Services	R100 000
Broadcasting Services	R100 000
Electronic Communication Services	R100 000

**REGISTRATION FEES****Class Licences**

<u>Initial Registration for Licences</u>	<u>Fees</u>
Electronic Communication Network Services	R5000
Broadcasting Services	R3500
Electronic Communication Services	R3500
<u>Registration for Transfers of Control</u>	<u>Fees</u>
Electronic Communication Network Services	R1500
Broadcasting Services	R1500
Electronic Communication Services	R1500
<u>Renewal Registrations</u>	<u>Fees</u>



Electronic Communication Network Services	R 1 500
Broadcasting Services	R 1 500
Electronic Communication Services	R 1 500

## **APPLICATION FEES**

### **Special Temporary Authorisations**

Applications for Special Temporary Authorisations	R10 000
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The application and registration fees specified are applicable until 31 December 2007.

- 1.2 For each subsequent year the application and registration fee shall automatically be adjusted annually by taking into account the cumulative changes in the consumer price index (CPI) for the immediate preceding calendar year using the 2007 as the base year.
- 1.3 Every application and registration filed with the Authority must be accompanied by the appropriate application or registration fee or the application or registration will be deemed unacceptable for submission and returned. The general submission provisions of section 2 apply to applications and registrations returned for failure to supply the applicable fee.

#### **• ANNUAL LICENCE FEES**

- 1.4 Every licensee must pay the Authority an annual licence fee equal to 0.1% of the licensee's annual turnover for the licensed activity. The licence fee is based on turnover and not dependent upon the number of licences that a particular licensee may hold.
- 1.5 Payment of the annual licence fee must be accompanied by a copy of audited financial statements of the Licensee.

#### **• TIME FOR PAYMENT OF LICENCE FEES**

- 1.6 The first payment of the annual licence fee for any licence must be made within three (3) months after the first anniversary of the first issued licence. Subsequent annual licence fees for a licensee must be paid on or before each anniversary thereafter.

#### **• PENALTY FOR LATE PAYMENT**

- 1.7 A licensee who fails to pay the annual licence fee on or before the required date shall, in addition to the annual licence fee, pay a penalty comprising ten (10) per cent of the annual licence fee per month overdue up to three (3) months after the required date, failing which the penalty provisions of the ECA, ICASA Act and related legislation shall be invoked.



## **SCHEDULE 2**

### **Standard Terms and Conditions**

#### **Applicable to Individual and Class Licensees And Exempt Persons**

Unless otherwise indicated, these standard terms and conditions apply to all individual and class licensees (electronic communications network services licensees, broadcasting services licensees and electronic communications services licensees) and persons providing any service, operating any electronic communications network or using any radio frequency spectrum pursuant to a licence exemption in terms of section 6 of the Electronic Communications Act, 2005 (No. 36 of 2005) ("ECA").

References to "licensees" is a reference to electronic communications network services licensees, broadcasting services licensees and electronic communications services licensees collectively. Otherwise, specific reference is made to the type of licence or licensee, the standard term or condition applies (e.g., electronic communications services licensee or broadcasting services licensee, etc.).

#### **1. DEFINITIONS**

- 1.1 Unless otherwise indicated, all words and phrases shall have the meaning ascribed to them in the ECA and related legislation, as may be amended from time to time.
- 1.2 For purposes of this schedule,
  - 1.2.1 "ECA" means the Electronic Communications Act, 2005 (Act No. 36 of 2005)
  - 1.2.2 "ICASA Act" means the Independent Communications Authority of South Africa Amendment Act (Act No. 3 of 2006).
  - 1.2.3 "CCC" means the Complaints and Compliance Committee established by the Authority in terms of section 17A of the ICASA Act.
  - 1.2.4 "exempt person" means any person, including a licensee, as applicable, providing any service, operating any electronic communications network or using any radio frequency spectrum pursuant to a licence exemption.
  - 1.2.5 "Interconnection regulations" mean the regulations promulgated by the Authority in terms of Chapter 7 of the ECA.
  - 1.2.6 "Facilities leasing regulations" mean the regulations promulgated by the Authority in terms of Chapter 8 of the ECA.

- 1.2.7 "Voice telephony services" mean any electronic communications service or application where real-time voice service is made available to end users using numbers from the national numbering plan regardless of technology or protocol used by the service provider.

## **2. COMPLIANCE WITH THE LAW**

### **2.1 Licensees and all exempt persons must comply with—**

- 2.1.1 the ECA and applicable legislation;
- 2.1.2 all regulations, orders, determinations and guidelines of the Authority as may be promulgated and/or amended from time to time;
- 2.1.3 the specific terms and conditions that may be contained in their licences, including any additional terms and conditions in terms of section 8(3) of the ECA, universal service and universal access obligations in terms of section 8(4) of the ECA or any other term or condition that may be applied to a licence and an exempt person in terms of the ECA and the related legislation;
- 2.1.4 the Complaints and Compliance Committee and participate in any of the processes, including hearings of the CCC where the licensee or exempt person may be required.
- 2.1.5 any request made by the Authority to appear and/or submit written representations, produce documents and other information in the exercise of its functions under the ECA and related legislation; and
- 2.1.6 the demands of any inspector appointed in terms of the ICASA Act in the exercise of his or her functions as set out in section 17G of the ICASA Act.

- 2.2 Where a licensee or an exempt person fails to comply with these standard terms and conditions or any specific term or condition of its licence or term or condition applicable to exempt persons, such licensee or exempt person shall be subject to the penalties set out in the ECA; ICASA Act and related legislation. Section 17H of the ICASA Act applies to offences and penalties that may be imposed on anyone acting contrary to these regulations and the provisions the ECA.

## **3. PROHIBITION ON PROVISION OF SERVICE WITHOUT A LICENCE**

### **LEGAL QUALIFICATIONS**

### **3.1 Licensees must be, in the case of a—**

- 3.1.1 natural person, a citizen of the Republic; or

3.1.2 juristic person, registered under the laws of the Republic with its principal place of business located within the Republic.

3.2 Class and individual broadcasting service licensees are also subject to the legal and ownership qualifications in terms of Chapter 9 of the ECA and the related legislation, including restrictions contained therein.

#### **4. TRANSFERS AND CHANGES OF OWNERSHIP**

4.1 Individual and class licences may only be assigned, ceded or transferred directly or indirectly in accordance with the provisions of the ECA and related legislation and any regulations promulgated by the Authority.

#### **5. CESSATION AND INSOLVENCY**

5.1 A licensee must notify the Authority in writing in any case where it—

5.1.1 ceases to do business;

5.1.2 becomes or is declared insolvent or bankrupt;

5.1.3 is the subject of any proceedings related to its liquidation or insolvency (whether voluntary or involuntary); or

5.1.4 makes an assignment for the benefit of creditors.

5.2 Where any of the matters identified in section 5.1 occur, the Authority may take any action authorised under the ECA and the related legislation as it deems appropriate under the circumstances.

#### **6. HISTORICALLY DISADVANTAGED INDIVIDUALS**

6.1 Individual and class licensees must promote the empowerment of historically disadvantaged persons including women and the youth and people with disabilities, in accordance with the requirements of the ICT charter.

6.2 Individual licensees must maintain the percentage of equity ownership held by persons from historically disadvantaged groups that is specified in their licence.

#### **7. EQUIPMENT**

7.1 No licensee or exempt person may use, supply, sell, offer for sale or lease or hire any type of electronic communications equipment or electronic communications facility, including radio apparatus, used or to be used in connection with the provision of electronic communications, unless such equipment, electronic communications facility or radio apparatus has been approved by the Authority or exempted from approval as may be prescribed.

## **8. INTERCONNECTION**

- 8.1 Licensees shall comply with the provisions of the interconnection regulations and with any decisions, determinations, requirements, specifications and notices issued by the Authority from time to time regarding access and interconnection under applicable laws and regulations.
- 8.2 Except as where exempted by regulation, all licensees must interconnect with every other licensee requesting interconnection under terms and conditions as set out in Chapter 7 of the ECA, and the interconnection regulations in order to ensure provision and interoperability of services throughout the Republic and internationally.
- 8.3 Licensees shall in respect of information acquired from another licensee before, during or after the process of negotiating access or interconnection arrangements as contemplated in Chapter 7 of the ECA, use such information solely for the purpose for which it was supplied and shall respect at all times the confidentiality of such information transmitted or stored.

## **9. FACILITIES LEASING**

- 9.1 Licensees shall comply with the provisions of the facilities leasing regulations and with any decisions, determinations, requirements, specifications and notices issued by the Authority from time to time regarding access to facilities and making such facilities available for lease under applicable laws and regulations.
- 9.2 Except as where exempted pursuant to regulation, all electronic communications network service licensees shall, upon request, lease electronic communications facilities to any other person licensed in terms of the ECA and exempt persons under terms and conditions as set out in Chapter 8 of the ECA, the related legislation, and the facilities leasing regulations.
- 9.3 No electronic communications network service licensee may enter into any agreement or other arrangement with any person for access to, or use of, any international electronic communications facilities that would contravene the provisions of section 43(10) of the ECA.
- 9.4 Licensees shall, in respect of information acquired from another licensee before, during or after the process of negotiating facilities leasing arrangements as contemplated in Chapter 8 of the ECA, use such information solely for the purpose for which it was supplied and shall respect at all times the confidentiality of such information transmitted or stored.

## **10. INTEGRITY OF ELECTRONIC COMMUNICATIONS NETWORKS**

- 10.1 Electronic communications network licensees and exempt persons shall ensure that his or her electronic communications network and parts thereof shall be designed, constructed, installed, maintained, operated and used so as not to

cause harmful interference with the lawful use or operation of any other electronic communications network.

- 10.2 Electronic communications network licensees and exempt persons shall comply with any decisions, determinations, requirements, specifications and notices issued by the Authority regarding the maintenance of the integrity of electronic communications networks and in connection with investigations by the Authority into cases of interference with the operation of other electronic communications networks or other authorised radio apparatus.

**11. STANDARDS TO ENSURE HARMONIZED ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES**

- 11.1 Licensees and exempt persons shall comply with any decisions, determinations, requirements, specifications, directions, notices, orders or guidelines issued by the Authority which are issued for the purpose of setting standards, specifications or implementing recommendations adopted by the International Telecommunications Union (ITU), the International Organisation for Standardisation (ISO) or other international standards organisations.

**12. NUMBERING**

- 12.1 Licensees and exempt persons shall comply with the numbering plan in force in respect of numbers allocated from the numbering plan, as well as any special conditions that the Authority may attach to specific numbers from time to time.
- 12.2 Subject to the provisions of section 92 and 93 of the ECA, no person may provide electronic communications services consisting of voice telephony utilising numbers from the national numbering plan without obtaining an individual licence.

**13. CONSUMER ISSUES**

- 13.1 Licensees and exempt persons shall safeguard the privacy and confidentiality of any electronic communications associated with the licensed or exempt services in accordance with applicable laws in force.
- 13.2 Licensees and exempt persons must comply with all applicable laws regarding personal data and privacy protection.
- 13.3 Licensees and exempt persons shall comply with all decisions, determinations, requirements, specifications, notifications and directions issued by the Authority in relation to end users including the Code of Conduct contemplated pursuant to Chapter 12 of the ECA and matters identified in section 69 of the ECA.
- 13.4 Licensees will be required on a quarterly basis, to publish quality of service data/indicators on the website of the Authority and/or on the website of the licensee or exempt person as the case may be.



- 13.5 Electronic communications services licensees and resellers shall provide electronic communications services to subscribers in accordance with the minimum contractual terms specified in section 13.6.
- 13.6 A contract required in terms of section 13.4 may be in the form of publicly available standardised terms and conditions (the "Standard Terms and Conditions"). At a minimum, subscriber contracts shall specify the following:
- 13.6.1 the supply time for initial connection;
  - 13.6.2 the electronic communications services covered by and the terms of the contract;
  - 13.6.3 the financial penalties subscribers have to pay in case of any payment delay;
  - 13.6.4 the conditions referring to suspension or interruption of the service in the case of non-payment by a subscriber;
  - 13.6.5 the types of maintenance services offered;
  - 13.6.6 the compensation or refund arrangements or both which will apply to subscribers if the contracted service is not met and, if none are applicable, a statement to that effect;
  - 13.6.7 a summary of the method of initiating procedures for the settlement of disputes;
  - 13.6.8 information on service quality levels offered; and
  - 13.6.9 the duration of the contract, the conditions of renewal and the rights of the subscriber to terminate the contract.
- 13.7 The contract shall also specify that the subscriber shall have the right to terminate the contract without any penalty if a proposed amendment by the electronic communications services licensee or reseller, as applicable, is not acceptable to the subscriber.
- 13.8 Electronic communications services licensees and resellers must make known all Standard Terms and Conditions available to the public by filing a copy with the Authority and making copies available between 09h00 and 16h00 on weekdays at its principal offices and any branch offices open to the public; and by posting an electronic version on its website.

#### **14. SUBSCRIBER BILLING**

- 14.1 Licensees and exempt persons shall provide a bill to each post paid subscriber, in a form that complies with this section for the services rendered during the

applicable billing period. Licensees and exempt persons 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 purchased by the post paid subscriber and provided by the licensee, or as applicable, exempt person to the subscriber in question.

- 14.2 Licensees and exempt persons shall provide each post paid subscriber who so requests, an itemised bill in such a form and with appropriate explanation to plainly show the service details including at a minimum, the set up costs, the starting time of each connection, the number called in the case of a voice application, the duration, and number of units of each use of the service being purchased by the subscriber for the billing period in order to enable the subscriber to verify the billed amount.

- 14.3 Licensees may make an itemised bill available in a secure location on its website if so requested by a subscriber.

- 14.4 Licensees and exempt persons shall retain in a transparent manner in their records sufficient information:

14.4.1 to enable post paid subscribers to verify the charges incurred by them for the use of the services; and

14.4.2 to satisfy the Authority that the billing process complies with the requirements of these standard terms and conditions, provided that nothing in this clause shall require licensees or exempt persons to retain billing records for more than three (3) years from the date on which they came into being.

- 14.5 In any event, where the Authority promulgates regulations relating to itemised billing, licensees' compliance with such regulations shall satisfy its obligations in terms of this clause.

- 14.6 Licensees and exempt persons may in their discretion outsource their billing obligation; provided however, they shall remain primarily responsible for meeting their obligations under these standard terms and conditions.

## **15. NON-PAYMENT OF BILLS**

- 15.1 Where a subscriber of a Licensee or an exempt person has not paid all or part of a bill for the services rendered to that subscriber, the licensee or, as applicable, the exempt person may take steps to secure payment or to discontinue the service; provided that any measure taken by the licensee or exempt person shall-

15.1.1 be proportionate and non-discriminatory;

15.1.2 be set as out in a written subscriber contract;



15.1.3 give due warning in advance of any consequent service interruption or disconnection to the subscriber; and

15.1.4 interrupt only the service for which the subscriber has failed to make payment, except in cases of fraud or persistent late payment or non-payment.

## **16. DIRECTORY SERVICES**

16.1 Electronic communications services licensees and resellers that provide voice telephony using numbers from the numbering plan shall make available directory enquiry services and government directory information services to end users.

16.2 Except as provide in section 16.3, electronic communications services licensees and resellers may charge end users a reasonable fee for making directory enquiry services available to them.

16.3 Electronic communication services licensees and resellers may not charge for government directory information and emergency services. The cost of providing government directory enquiry services must be borne by the electronic communications service licensees, provided that such electronic communications service licensees may recoup from resellers of their electronic communications services a portion of their costs associated with the provision of government directory information services.

16.4 Electronic communications services licensees and resellers shall ensure that end users can access and receive directory enquiry services, of their subscribers and the subscribers of other electronic communications services licensees and resellers that provide directory enquiry services.

16.5 Electronic communications services licensees and resellers shall co-operate, make available and give access to each other's directories for purposes of meeting their obligation in terms of clause 16.1.

16.6 At a minimum, a directory shall consist of the name and number of a subscriber and may also include a subscriber's address.

16.7 Subject to clause 16.8, subscribers to a voice telephony service that use numbers from the numbering plan shall have the right for their name and number to be included in the directory of its electronic communications services provider or reseller, as applicable, and to have its name and number made available by such provider, free of charge to other electronic communication services licensees and resellers as part of the directory enquiry services obligation in terms of this clause.

16.8 Where requested in writing by a subscriber, electronic communications services licensees and resellers shall keep such subscriber's directory enquiry information

and directory entry confidential and not make such information publicly available in any directory or as part of any directory enquiry service or otherwise.

- 16.9 Electronic communications services licensees and resellers shall correct their internal records for purposes of providing directory enquiry services as soon as is reasonably possible after a mistake in the directory or directory information is brought to the electronic communications services licensee's or reseller's attention and such electronic communication services licensee or reseller shall pass on such corrections to other persons who legitimately require them for the purposes of providing directory enquiry services.
- 16.10 The provisions of this clause 16 shall be subject to any regulations passed in terms of section 75 of the ECA and the provisions of any relevant data protection and privacy legislation that may be passed in the Republic in the future.

## **17. EMERGENCY SERVICES AND MAJOR DISASTERS**

- 17.1 Licensees and exempt persons shall comply with any decisions, guidelines, determinations, requirements, specifications, notifications, orders and direction issued by the Authority from time to time regarding emergency services and the provision of facilities and services during major disasters.
- 17.2 Electronic communications services licensees and resellers providing voice telephony services using numbers from the numbering plan shall provide end users with operator assistance.
- 17.3 Electronic communications services licensees and resellers providing voice telephony services using numbers from the numbering plan may charge end users a reasonable fee for making operator assistance available to them.
- 17.4 Electronic communications services licensees and resellers providing voice telephony services shall ensure that any end user can access emergency organisations by using the emergency call number "112" at any time and at no charge.

## **18. CONFIDENTIALITY**

- 18.1 Licensees and exempt persons shall not disclose information regarding an end user without the consent of the end user 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 applicable law.
- 18.2 Licensees and exempt persons shall not use information provided by end users or obtained in the course of provision of services to their end users other than for and in relation to the provision of services in terms of the licensee or exempt person.

- 18.3 Licensees and exempt persons shall not make use of electronic communications 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 or exempt person directly or indirectly as a result of entering into interconnection arrangements or facilities leasing arrangements or otherwise as a result of carrying telecommunications traffic except in rendering the authorised services.
- 18.4 The prohibitions contained in this clause 18 shall not apply with respect to the name, address and telephone number of subscribers for purposes of providing directories and/or directory enquiry facilities or services.

**19. CONTRIBUTIONS TO THE UNIVERSAL SERVICE AND ACCESS FUND AND OTHER FEES**

- 19.1 Licensees shall contribute to the universal service and access fund in the manner and in the amounts as prescribed.
- 19.2 Licensees must pay on or before the due date, all applicable licence and other fees due and owing in terms of the ECA and the related legislation.

**20. INTERPRETATION**

- 20.1 Section and other headings are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of text or any provision of these standard terms and conditions. Unless the context shall require otherwise:

20.1.1 words importing the singular or plural shall include the plural and singular respectively;

20.1.2 words importing the masculine gender shall include the feminine and vice versa;

20.1.3 reference to "include," "includes", and "including" shall be deemed to be followed by the phrase "without limitation";

20.1.4 reference to "herein", "hereby", "hereof," or "hereunder", or any similar formulation, shall be deemed to refer to these standard terms and conditions unless the context otherwise requires.

**21. MISCELLANEOUS**

- 21.1 These standard terms and conditions may be amended from time to time by the Authority in accordance with section 4 of the ECA read with 4B and 4C of the ICASA Act. Upon the coming into force of any such amendment, the standard terms and conditions, as amended, shall be binding on all current and future holders of any licences and exempt persons.

- 21.2 Nothing in these standard terms and conditions shall absolve a licensee or exempt person from any requirement in law or otherwise to obtain any additional consents, permissions, licences or authorisations as may be necessary for the provision of the licensed or exempt services and for the exercise of its rights or discharge of its obligations under the individual or class licence issued by the Authority or in terms of the exempt services.

**SCHEDULE 3**

## Additional Terms and Conditions

**22. ADDITIONAL TERMS AND CONDITIONS FOR INDIVIDUAL AND CLASS LICENCES**

- 22.1 The Authority may impose additional terms and conditions on any individual licence or class licence in terms of section 8(3) of the ECA that are consistent with the objects of the ECA, the ICASA Act and the related legislation.
- 22.2 Additional terms and conditions that apply to individual licences may be specified in the Invitation to Apply ("ITA").
- 22.3 Where the Authority intends to apply additional terms and conditions to an individual licence, such additional terms and conditions will be published in the *Gazette* as part of the invitation to apply.

## **SCHEDULE 4**

### **Provisions for the Designation of Licensees to Whom Universal Service and Universal Access Obligations Apply**

#### **1. GENERAL PROVISIONS**

- 1.1 Unless otherwise indicated, Schedule 3 applies to individual and class licensees to whom universal service and universal access obligations apply.
- 1.2 The Authority may designate licensees to whom universal service and universal access obligations are applicable and the universal service and universal access obligations that will apply. Any such universal service and universal access obligations must be consistent with the objects of the ECA and applicable legislation.

#### **2. INDIVIDUAL AND CLASS LICENSEES**

- 2.1 The Authority may apply universal service and universal access obligations on any licensee determined to have significant market power in terms of Chapter 10 of the ECA.
- 2.2 Where the Authority applies universal service and universal access obligations under this clause 2, the provisions of Chapter 10 of the ECA and any regulations promulgated by the Authority thereunder shall apply.

#### **3. UNDERSERVED AREAS**

- 3.1 The Authority shall from time to time define and declare certain areas as underserved in terms of section 88(2) of the ECA and publish a list of such areas in the government gazette.
- 3.2 The under serviced areas defined pursuant to section 3.1 are eligible for subsidy payments from the Universal Service and Access Fund pursuant to section 88(1) of the ECA.
- 3.3 Broadcasting service licensees and electronic communications network service licensees that contribute to the Universal Service and Access Fund and construct or extend their electronic communications networks in any one or more under serviced areas as defined following the process referred to under clause 3 above, are eligible to receive subsidies from the Universal Service and Access Fund.
- 3.4 To receive subsidies from the Universal Service and Access Fund eligible licenses must comply with the procedure established pursuant to section 90 of the ECA in terms of project grants.

- 3.5 Any licensee receiving a project grant pursuant to section 90 of the ECA shall be deemed to be designated by the Authority as having a universal service and universal access obligation and the project, including the electronic communication network construction and rollout obligation and any terms and conditions applicable thereto shall apply to the licensee.

**Interested persons are invited to comment on these and other regulations of the Authority that they believe require amendment or modification in light of the draft Chapter 3 regulations.**